

OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2004-2005 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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PUBLIC COMMENT PERIOD PROPOSED FINAL CLEANUP ACTIONS DETROIT LAKE GASOLINE SPILL SITE NEAR DETROIT LAKE ON HIGHWAY 22, OREGON

COMMENTS DUE: January 2, 2006

PROJECT LOCATION: Detroit Lake Gasoline Spill Site, Highway 22 at milepost 46 near Detroit Lake, Oregon

PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-0465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for petroleum contamination at the Detroit Lake Gasoline Spill Site near Detroit Lake Reservoir.

BACKGROUND: On December 5, 2002, a tanker owned and operated by Capital City Trucking was involved in a crash on Oregon Highway 22 near milepost 46 in Marion County. The tanker trailer overturned spilling approximately 11,000 gallons of gasoline to the roadway just above Detroit Lake Reservoir. The reservoir is on the North Santiam River providing resources for power generation and drinking water for the cities of Salem, Gates, Mill City, Lyons, Mehama, Stayton, and Jefferson.

During the initial response phase 521 tons of gasoline-impacted soil was excavated and disposed at Riverbend Landfill in McMinnville, Oregon. Total petroleum hydrocarbons (TPH) concentrations ranged from 570 to 11,000 parts per million (ppm) in fourteen confirmation samples that were collected from site soils after the clean up.

Ten test pits were dug within the dry lake shore down slope of the spill site. The test pits were dug to approximately 11 feet or to refusal. Soil samples were collected from the test pits. None of the samples contained any detectable concentrations of gasoline.

In December 2002, a soil vapor extraction system (SVE) was installed to extract additional gasoline from soils along the south side of Highway 22 and near the reservoir. During 11 months of operations the SVE system removed over 7,000 pounds or 1,226 gallons of gasoline vapor.

Water aeration systems were installed and operated for four months within the reservoir to remove dissolved gasoline constituents including benzene, and prevent their migration beyond the shore area into the reservoir.

Four groundwater monitoring wells were installed to evaluate groundwater conditions down slope of the release site. Wells were sampled 11 to 12 times from December 2002 through January 2004. Samples were analyzed for gasoline and gasoline constituents. Concentrations have decreased since the spill occurred. Sample results are below screening values for workers and users of the reservoir.

Initially surface water was sampled daily in 9 locations for gasoline and gasoline constituents. Dissolved gasoline constituents were detected along the shoreline for about 500 feet. The maximum concentrated detected was 2,400 parts per billion (ppb). By the end of January 2003, dissolved gasoline constituents were below 2.7 ppb. Surface water was monitored through January 2004 and concentrations were below levels of concern.

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

HOW TO COMMENT: The project files in addition to the site summary report, may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, and Salem office, 750 Front Street NE, Suite 120. Written comments must be received by January 2, 2006. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail to camarata.mary@deq.state.or.us. Questions may also be directed to

Mary Camarata at the Eugene address or by calling her at 1-800-844-8467 ext 259. The TTY number for the hearing impaired is 541-687-5603.

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

PUBLIC COMMENT PERIOD PROPOSED FINAL CLEANUP ACTIONS PORT OF PORT ORFORD — BROWNFIELD REMOVAL PORT ORFORD, OREGON

COMMENTS DUE: January 2, 2006

PROJECT LOCATION: Port of Port Orford — Creosote Building Soil Removal, Dock Road, Port Orford, Oregon

PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-0465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for creosote-contaminated soil at the Port of Port Orford's creosote building in Port Orford.

BACKGROUND: The site is approximately 400 feet from the ocean, located on a bluff overlooking the Port of Port Orford operations and the South Coast. From the 1980s through 1995, the Port applied creosote to large timbers used for piers and decking material in the building. Any creosote drippage during the wood treating process went onto the earthen floor. The extent of creosote-contaminated soil needed to be assessed prior to commercial redevelopment of the site by the Port.

In September 2004, DEQ collected 22 samples from 13 test pits inside and along the outside of the building. Samples were analyzed for polynuclear aromatic hydrocarbons (PAHs), arsenic, and chromium. Sample results indicated that shallow soils with visual staining inside the building exceeded DEQ's safe levels. The area outside the building did not exceed safe levels.

In the May 2005 the building was demolished and approximately 290 tons of soil contaminated with creosote were excavated and disposed of at Arlington Hazardous Waste Landfill. Twelve soil samples were collected from the excavation side walls and bottom after the soil removal. Samples were analyzed for PAHs, arsenic, and chromium. Sample results were below safe levels for commercial redevelopment. Therefore, DEQ has recommended that no further investigation or remedial action is needed for environmental impacts from the Port's Creosote Building Site.

HOW TO COMMENT: The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, and Coos Bay office, 381 N. Second St. Written comments must be received by January 2, 2006. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at thoms.bryn@deq.state.or.us. Questions may also be directed to Bryn Thoms at the Eugene address or by calling him at 1-800-844-8467 ext 254. The TTY number for the hearing impaired is 541-687-5603.

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

PUBLIC COMMENT PERIOD PROPOSED FINAL CLEANUP ACTIONS FORMER ROGUE RIVER TOWING SITE ROGUE RIVER, OREGON

COMMENTS DUE: January 2, 2006

PROJECT LOCATION: Former Rogue River Towing Site, 107 Depot Street and 202 East Main Street, Rogue River, Oregon

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PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for petroleum-contaminated soil at the former Rogue River Towing site in Rogue River.

BACKGROUND: The former Rogue River Towing site has been a service station, auto supply store, hardware store, and a center for operations of a local towing company. In 2003 the City of Rogue River purchased the site for redevelopment as a visitor center. Environmental assessments were conducted in May 2004, December 2004, and April 2005. Areas of concern included the hydraulic hoist inside the shop and the waste-oil area outside of the building.

In December 2004 the hoist was removed and samples were collected from the excavation pit for total petroleum hydrocarbons (TPH), and polychlorinated biphenyls (PCBs) and. Soil samples from the hoist area are below levels of concern for TPH and PCBs.

In the fall of 2005 the building was demolished and approximately 28 cubic yards of soil contaminated with waste oil were excavated and disposed of at Dry Creek Landfill. Soil samples collected from the excavation were analyzed for TPH, PCBs, metals, volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs). Sample results were below levels of concern for the above compounds.

The site was screened by DEQ for human health and ecological risk from exposures to petroleum-contaminated soil. DEQ has concluded that for the intended future use of the property (as a visitors center) there should be no significant human health or ecological risks associated with the petroleum-contamination in soil at the Site. Therefore, DEQ has recommended that no further investigation or remedial action is needed for environmental impacts from the former Rogue River Towing Site.

HOW TO COMMENT: The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, and Grants Pass office, 510 NW 4th, Room 76. Written comments must be received by January 2, 2006. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at camarata.mary@deq.state.or.us. Questions may also be directed to Mary Camarata at the Eugene address or by calling her at 1-800-844-8467 ext 259. The TTY number for the hearing impaired is 541-687-5603.

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

PROPOSED APPROVAL OF CLEANUP AT LEE'S RADIATOR SERVICE KLAMATH FALLS, OREGON

COMMENT DUE: December 30, 2005

PROJECT LOCATION: 1906 South 6th Street, Klamath Falls, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) intends to issue a No Further Action (NFA) finding for the subject property known as Lee's Radiator Service, based upon completed site investigations and cleanup of soils contaminated by lead compounds.

A total of 7,794 pounds of lead-contaminated soil were excavated and removed from the site and disposed off-site as hazardous waste at a permitted Subtitle C waste facility. All residual contamination at this site is documented at levels below selected cleanup and/or screening standards established by the DEQ for this site. More information concerning this investigation and cleanup is available by contacting Mr. Cliff Walkey, DEQ's project manager located in Bend, Oregon.

HOW TO COMMENT: A public comment period will extend to December 30, 2005. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

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

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

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

NOTICE OF PROPOSED REMEDIAL ACTION CHEVRON BULK PLANT (FORMER) LA GRANDE, OREGON

COMMENTS DUE: December 31, 2005

PROJECT LOCATION: 2219 Island Avenue, La Grande, OR

Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the proposed remedial action and Conditional No Further Action for the Former Chevron Bulk Plant #100-1204 located at 2219 Island Avenue in La Grande, Oregon.

The proposed remedial action is documented in the *Proposed Remedial Action* staff report dated February 4, 2004 and the *Proposed Remedial Action (Addendum)* staff report dated October 13 2005. The remedial action selected for this site is institutional controls in the form of an Equitable Easement and Servitude (EE&S) at the former Chevron Bulk Plant and the Skipper's properties to prohibit the installation of water wells. This control will prevent use of shallow groundwater and maintain protective conditions at the site and the Skipper's property. The site will remain 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.

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

PUBLIC NOTICE PROPOSED REMEDIAL ACTION AT THE OLE TURNBOW EXXON & AVIATION FUELING FACILITY (FORMER) CHRISTMAS VALLEY, OREGON

COMMENTS DUE: January 2, 2006

PROJECT LOCATION: 87634 Christmas Valley Highway, Christmas Valley, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a remedial action at the former Ole Turnbow Exxon and Aviation Fueling Facility. The site is located at 87634 Christmas Valley Highway in Christmas Valley.

HIGHLIGHTS: DEQ has reviewed the information gathered during site investigation activities performed at the site. Gasoline and several VOCs were identified at elevated levels in soil and groundwater. Potential unacceptable risks that were identified include: 1) groundwater use by future residents and future occupational work-

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ers; 2) inhalation by current or future residents and future occupational workers of benzene that has volatilized into indoor and/or outdoor air from contaminated soil and/or groundwater; 3) inhalation by future residents that has volatilized into indoor air from contaminated soil; and 4) direct contact by current and future construction and excavation workers with contaminated groundwater.

The following remedial action objectives were developed to address the areas of concern identified: 1) reduce benzene concentrations in subsurface media to acceptable risk levels via the volatilization to outdoor air pathway; 2) require institutional and engineering controls to prevent or mitigate exposures from petroleum-contaminated media above acceptable risk levels via indoor air intrusion, groundwater use, and groundwater contact; 3) attain compliance with regulations for tank systems through permanent decommissioning of the systems; and 4) accomplish the above objectives within the time and budget restraints of the EPA Brownfields Grant and afterwards allows for redevelopment of the property to occur.

Six remedial alternatives were evaluated. All of the alternatives excluding the No Action alternative include deed restrictions and the proper decommissioning of the tank systems remaining at the site. The alternatives were evaluated based on protectiveness, effectiveness, long term reliability, implementability, implementation risk, reasonableness of cost, and their ability to treat hot spots. The In-Situ Air Sparging/Passive Soil Venting System was selected as the cleanup alternative for the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620 or by email at robertson.katie@deq.state.or.us. Written comments should be sent by 5 p.m. on January 2, 2006 to Katie Robertson, Project Manager, at the address listed above.

Significant portions of the project file are also located at the Christmas Valley Library in a file entitled the "Christmas Valley Airport Enhancement Project".

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the proposed remedial action.

PUBLIC NOTICE PROPOSED ALTERNATIVE REMEDY FORMER CAR WASH POND, UPRR HINKLE RAIL YARD, HERMISTON, OREGON

COMMENTS DUE: December 31, 2005

PROJECT LOCATION: UPRR Hinkle Rail Yard, Hermiston, OR

PROPOSAL: The Department of Environmental Quality is proposing an amendment to the Record of Decision dated June 20, 2005 approving cleanup actions proposed at the Union Pacific Railroad (UPRR) Hinkle Rail Yard located in Hermiston, Oregon

HIGHLIGHTS: The proposed remedial action for the former car wash pond has been revised from excavation and removal to capping in place. Specifically, a vegetated soil cover will be placed over the northern portion of the former pond to limit water infiltration through the vadose zone and to reduce or eliminate leaching of contamination to groundwater. The soil cap is anticipated to be between 3 feet to 4 feet thick. The soil cap will also prevent direct contact by human or ecological receptors. A deed restriction, in the form of an Equitable Easement and Servitude will be placed on the property documenting the location of the engineering control and prohibiting disturbance of the cap. The deed restriction will also detail a schedule for the inspection of the cap.

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

31, 2005 to Katie Robertson, Project Manager, at the address listed above.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding proposed alternative remedial action for the former car wash pond.

PUBLIC NOTICE PROPOSED CONDITIONAL NO FURTHER ACTION UPRR HUNTINGTON RAIL YARD HUNTINGTON, OREGON

COMMENTS DUE: December 31, 2005

PROJECT LOCATION: Directly North of Huntington, Baker County, OR

PROPOSAL: The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based on the completion of cleanup actions performed at the Union Pacific Railroad (UPRR) Huntington Rail Yard located immediately north of the City of Huntington in Baker County, Oregon

HIGHLIGHTS: The DEQ issued a Record of Decision (ROD) dated October 1, 2004 approving the Stabilization In Place cleanup alternative to address contamination identified in the former surface water lagoon. Stabilization activities were initiated in August 2005 and consisted of mixing portland cement with sediments within the former lagoon. Following the completion of stabilization activities the former surface water lagoon was filled to match the surrounding grade through the placement of on-site and imported fill. The fill placed on top of the stabilized area ranged in thickness from 3 feet to 7 feet. The area was later hydro-seeded. A deed notice will be recorded documenting the location of the stabilized area and the site will remain listed on the Confirmed Release List and Inventory of Hazardous Substances.

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

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

PROPOSED NO FURTHER ACTION DETERMINATION HEATING OIL TANK RELEASE ON WADA PROPERTY, ECSI # 4521 ONTARIO, OREGON

COMMENTS DUE: January 3, 2006

PROJECT LOCATION: 3019 SW Fourth Avenue, Ontario, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes to issue a No Further Action determination following excavation and disposal of petroleum contaminated soil on property owned by Mr. Shingo Wada. Public notification is required by ORS 465.320.

HIGHLIGHTS: The Ontario School District plans to build a high school on a 75 acre parcel currently owned by Mr. Wada. This parcel lies along the north side of SW Fourth Avenue and just west of the Yturri Rose Beltline Bypass (Highway 201). A release of heating oil was discovered near a rental house on the southeast corner of this property. Diesel-range petroleum was found in surface soil at a concentration of 14,700 parts per million. Heavy oil was found at a concentration of 1,200 parts per million.

Four cubic yards of soil was excavated and disposed of at the Riverbend Landfill in McMinnville, Oregon for disposal on October 17, 2005. No petroleum was detected in confirmation samples

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collected at the bottom of the excavation. Groundwater was not encountered in this excavation, which indicates that the heating oil has not contaminated groundwater. Based on these results, DEQ proposes to issue a No Further Action determination regarding this heating oil release.

DEQ also reviewed documentation of sampling at other potential source areas on the property. These included a septic tank drain field and an underground heating oil tank on the southwestern portion of the property. They also included a pesticide/herbicide mixing area, a former underground petroleum storage tank, a septic tank, a septic tank drain field, and a former underground storage tank basin on the southeastern portion of the property. Human health screening levels were not exceeded at any of these locations. The School District therefore requested that DEQ's evaluation and No Further Action determination focus solely on the heating oil release.

To our knowledge, no groundwater sampling was done, and no samples were collected on the portions of the property where crops were grown. DEQ has recently completed draft guidance on evaluating residual pesticides on lands formerly used for agricultural production. A copy of this draft guidance has been provided to the school district.

This recommended action was selected following completion of a site investigation conducted under Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 010 to 115.

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 Tuesday, January 3, 2006.

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

PROPOSED NO FURTHER ACTION AT THE FORMER UNITED DISPOSAL SITE IN SILVERTON

COMMENTS DUE: December 31, 2005

PROJECT LOCATION: Former United Disposal Site, 309 Wilson Street, Silverton

PROPOSAL: DEQ is recommending no further cleanup action at the Former United Disposal Site. This notification is required by ORS 465.320.

HIGHLIGHTS: The site is a former recycling facility that will be redeveloped into residential housing units. During August 2004, 291 tons cubic yards of total petroleum hydrocarbon (TPH) impacted soil was removed and disposed of offsite. There is no unacceptable human health residual risk for this site, as a removal action was undertaken and petroleum contaminated soils have been removed and disposed of. Remaining concentrations of TPH-diesel petroleum hydrocarbons in soil are below residential risk-based concentrations for ingestion, dermal contact, and inhalation human exposure. DEQ recommends no further action at the site. A copy of the staff report will be available for review at DEQ's Salem and Eugene offices during the public comment period.

HOW TO COMMENT: The staff report and project files Project documents are available for review at DEQ's Eugene Office. The Eugene office is located at 1102 Lincoln Street, Suite 210 in Eugene, Oregon. A copy of the staff report will also be available for review at DEQ's Salem Office, located at 750 Front Street Northeast, Suite 120 in Salem, Oregon. Comments should be directed to Mindi English at 1102 Lincoln Street, Suite 210, Eugene, Oregon 97401 or (800)844-8467 extension 269 by December 31, 2005. A public meet-

ing will be held to receive verbal 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 and the director will before making a final decision in this matter, expected in January 2006, and publish the final decision after consideration of public comments.

PROPOSED CONDITIONAL NO FURTHER ACTION BOISE BUILDING SOLUTIONS MANUFACTURING PARTICLEBOARD FACILITY UNION COUNTY, OREGON

COMMENTS DUE: January 3, 2006

PROJECT LOCATION: 62621 Highway 82 LaGrande, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based on site investigations, removal of petroleum-contaminated soil, and institutional controls performed at the Boise Building Solutions Particleboard Facility site, located at 62621 Highway 82, LaGrande, Oregon.

HIGHLIGHTS: On May 4, 2004, a leak was found in an oil transfer line in the vicinity of the oil/water separator. Further research also revealed a former oil/water disposal pond in the vicinity of the current oil/water separator.

In June and July of 2004, approximately 620 cubic yards of petroleum contaminated soil was excavated from the area. Excavation was terminated at the water table at a depth of approximately eight feet below the ground surface. Soil confirmation samples indicated that residual soil contamination remains at the site at depths greater than eight feet. Groundwater monitoring indicates that applicable groundwater risk-based standards were met.

The site has been proposed for a risk-based closure. All of the potential exposure concerns are proposed to be addressed though: 1) elimination of potential pathways; and 2) by placement of institutional controls on the property. The institutional control consists of deed restrictions with the following restrictions: 1) no residential use; 2) monitoring of an on-site well; and 3) any subsurface excavation of contaminated soil must include proper handling, characterization, and disposal of soil.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact John Dadoly at (541) 278-4616. Written comments should be received by January 3, 2006 and sent to John Dadoly, Project Manager, at the address listed above.

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

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

PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION FORMER BOISE CASCADE SAWMILL JOSEPH, OREGON

COMMENTS DUE: January 3, 2006

PROJECT LOCATION: One quarter mile west of Joseph, Wallowa County, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a No Further Action determination following remediation of petroleum-contaminated soil at the former Boise Cascade sawmill. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

OTHER NOTICES

HIGHLIGHTS: The former Boise Cascade sawmill in Joseph consisted of tax lots 300, 700, 1600, 1700 and 1800 and the railroad property leased from the Union Pacific Railroad (UPRR). In 1994, about 10,500 cubic yards of petroleum-contaminated soil from tax lots 1600, 1800 and the UPRR right-of-way property were removed to lined bioremediation cells on tax lot 1700. The soil in the six acres of treatment cells was applied in a 12 to 18-inch thick layer. Beneath the soil are two 6-mil sheets of plastic covered by a geotextile fabric.

On August 12, 1998, DEQ issued an interim record of decision for that portion of the former sawmill south of the railroad right of way. This includes all the properties listed above except for tax lot 1700, which contains the soil treatment area as well as a wood waste landfill. The remedial measures selected in the record of decision included placing a barrier around the municipal waste landfill, improving grass cover on the landfill, and implementing a deed restriction stating that tax lots 1600, 1800 and the UPRR right-of-way property shall be and shall remain industrially zoned.

The soil treatment cells on tax lot 1700 were not included in DEQ's August 1998 decision document because Boise Cascade was still considering options for managing that soil. Based on test results, some of which were submitted to DEQ in September 2005, DEQ has concluded that contaminant concentrations in this material are below acceptable levels. DEQ is therefore proposing to issue a No Further Action (NFA) determination. This determination is based on the condition that a deed restriction be implemented. This document will prohibit the following activities within the six-acre area occupied by the soil treatment cells:

- residential development of the area occupied by the soil treatment cells,
- agricultural development of the area occupied by the soil treatment cells,
- installation of groundwater wells,
- disturbance of the soil within the treatment cells, unless reviewed and approved beforehand by DEQ.

This site will remain on DEQ's Confirmed Release List as long as the deed restriction is in place.

The wood waste landfill just north of the soil treatment cells is under the purview of DEQ's Solid Waste Program. The No Further Action determination proposed in this report pertains only to the six-acre soil treatment cell area, and not the wood waste landfill.

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. Written comments should be sent by Tuesday, January 3, 2006.

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.

PUBLIC NOTICE PROPOSED NO FURTHER ACTION DEANGELO BROTHERS PESTICIDE RELEASE BAKER CITY, OREGON

COMMENTS DUE: January 3, 2006

PROJECT LOCATION: NW corner of intersection of UPRR railway with Broadway Ave. in Baker City, OR

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on the completion of cleanup actions performed at the DeAngelo pesticide residue release site located in the northwest corner of the intersection of the railway with Broadway Avenue in Baker City, Oregon.

HIGHLIGHTS: A complaint was received by DEQ on May 20, 2005 regarding the dumping of what appeared to be a pesticide residue by DeAngelo Brothers, Inc. Two areas, each approximately 30 feet long by 10 feet wide, with a white crusty residue were observed. Additional interviews with parties involved determined that the material dumped consisted of about 1,500 gallons of water and about 30 gallons of mixed pesticide residue. A mixture of Diuron, Roundup and Oust was being used. Concentrations of Diuron, Glyphosate and their primary breakdown products were identified at elevated levels. Additional soil samples were collected in July and October 2005 to monitor the degradation of the pesticides. Concentrations of Diuron, Glyphosate and their primary breakdown products have naturally attenuated to levels less than residential Preliminary Remedial Goals.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be sent by January 3, 2006 to Katie Robertson, Project Manager, at the address listed above.

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

CHANCE TO COMMENT ON... RECOMMENDED NO FURTHER ACTION FOR THE WEST LINN THRIFTY CLEANERS SITE WEST LINN, OREGON

COMMENTS DUE: January 1, 2006

PROJECT LOCATION: 5662 Hood Street, West Linn, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on a proposed "No Further Action" cleanup decision for the West Linn Thrifty Cleaners Site in West Linn, Oregon.

HIGHLIGHTS: DEQ has completed an evaluation of the investigation and cleanup conducted at the former West Linn Thrifty Cleaners Site. The work was completed by the Gramor Development Company under an agreement with DEQ for reimbursement of cleanup costs by the Oregon Dry Cleaner Program. Soil contamination, attributed to past use of chlorinated solvents used in dry cleaning operations, was found at the site during site investigations completed in 2003 and 2004. Approximately 30 tons of chlorinated solvent contaminated soils were removed from the site in August 2005 and disposed of in a solid waste landfill. The objective of the removal action was to remove soil contamination exceeding DEQ risk-based concentrations (RBCs) and eliminate potential impacts to seasonally present perched groundwater.

A remediation site activity plan was submitted to DEQ in 2005 to evaluate residual contamination in soil at the site. The evaluation concluded that there is no significant risk to human health or the environment from residual soil contamination at the site based on a comparison of site concentrations to DEQ risk-based concentrations.

DEQ has made a preliminary determination that cleanup measures undertaken by Gramor Development of chlorinated solvents released at the site during historical dry cleaning operations are complete and the site is currently protective of public health and the environment, and requires no further action under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written

OTHER NOTICES

comments to Chris Kaufman, Project Manager, at the address listed above or via email at kaufman.chris@deq.state.or.us by 5 p.m., October 1, 2005. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317. **THE NEXT STEP:** DEQ will consider all public comments received by the January 1, 2006 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

NOTICE OF CLEANUP COMPLETION ICN PHARMACEUTICALS SITE

PROJECT LOCATION: 6060 NE 112th Ave, Portland, OR
PROPOSAL: The Department of Environmental Quality (DEQ) has determined that no further action is warranted to address contaminated groundwater at the ICN Pharmaceuticals site.
HIGHLIGHTS: Between 1961 and 1980 United Medical Laboratory and subsequently ICN used the property at 6060 NE 112th Ave. as a mail-order clinical laboratory. ICN Pharmaceuticals shut down the laboratory in 1980 and demolished buildings during 1993 and 1994. DEQ investigations at the site revealed high concentrations of volatile organic contaminants such as trichloroethene, dichloroethene, vinyl chloride, benzene and toluene in groundwater in the vicinity of a former dry well located on the property. Cleanup of contaminated groundwater at the site began in May 2000 using a six-phase electrical resistive heating and vapor extraction process to address trichloroethene, dichloroethene and vinyl chloride which appeared to be present as separate phase solvents (dense, non-aqueous phase liquids or DNAPLs). This technology works by raising the temperature of the impacted soil and groundwater until the contaminants volatilize. The resulting steam and volatilized contaminants are captured in a vapor collection system. The steam vapors are subsequently condensed, with the air stream discharged directly to the air, and the water collected into storage tanks, prior to discharge to the City of Portland sewer system. In November 2001, DEQ concluded that six phase heating had successfully removed most of the groundwater contamination. Heating was discontinued at that time. The existing treatment system vents and wells were then used to inject air into the groundwater with the intent of improving conditions for biodegradation of the remaining contaminants.

Groundwater monitoring data collected during and after cleanup indicates that the cleanup technologies were successful in reducing groundwater contamination to levels that are protective of human health and the environment. Remaining levels of contaminants are generally below EPA drinking water standards, with the exception of a few locations. These exceedances, however, are localized, decreasing, and migration to underlying aquifers that may be used for drinking water is not expected. DEQ has therefore concluded that no additional site remediation is necessary beyond periodic monitoring to confirm contaminant trends.

DEQ held a public comment on the proposed No Further Action determination in September 2005. No comments were received.

The No Further Action determination and supporting memo as well as the complete Administrative Record for the project is available for

public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files call (503) 229-6729. Questions on the project can be directed to the DEQ Project Manager, Jennifer Sutter, (503) 229-6148, sutter.jennifer@deq.state.or.us.

THE NEXT STEP: Long-term monitoring of the groundwater will continue at the site for a minimum of five years to ensure remaining contaminant levels continue to decline as expected.

PROPOSED CLOSEOUT AT UNION STATION-HORSE BARN SITE

COMMENTS DUE: December 30, 2005

PROJECT LOCATION: NW Lovejoy Street and NW 9th Avenue, Portland, 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 on Lots 1, 3, and 7 of the Union Station-Horse Barn (aka Station Place Redevelopment) site.

HIGHLIGHTS: The 7.1-acre site is located at the northeast corner of NW Lovejoy Street and NW 9th Avenue in downtown Portland, and from the late 1800s to 1970s was used as a rail yard. The Portland Development Commission purchased the property in 1987, and initiated site investigation work through DEQ's Voluntary Cleanup Program in 1999. Soil and groundwater were determined to contain elevated metals and volatile and semi-volatile organic compounds (largely from an off-site manufactured gas plant), and pose a risk to site occupants. Contaminated soil removal actions were completed in 2001 and 2003, and a Record of Decision (ROD) approved by DEQ in 2003 which identified site-wide capping and vapor mitigation on Lots 1 and 2 as the remedy to address remaining site contamination. Capping on Lots 1, 3, and 7 was performed starting in 2003 concurrent with site development. Installation of the required vapor mitigation system on Lot 1 was completed in 2005. Individual closure reports were submitted and approved by DEQ as follows: Lot 7 (August 2003); Lot 3 (March 2005); and Lot 1 (October 2005). As required by the ROD and RAP, periodic groundwater monitoring is being performed for the entire site to confirm that site-related contamination is not expanding, and air monitoring is being performed at Lot 1 to confirm the effectiveness of vapor mitigation efforts. There is limited off-site migration of groundwater contaminants to both the east and west, but no significant risk to either human or ecological receptors has been identified. Based on this information, DEQ has concluded that remedial work at Lots 1, 3, and 7 has been successfully completed. A no further action determination for the lots is therefore proposed. Yearly inspection on the lots is necessary to confirm cap integrity; site-wide groundwater monitoring will continue through 2008, and air monitoring on Lot 1 through 2009.

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 December 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.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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**Board of Massage Therapists
Chapter 334**

Date:	Time:	Location:
12-22-05	1:30 p.m.	Board Office Salem, OR

Hearing Officer: Patty Glenn
Stat. Auth.: ORS 687.121, 182.466 & 183
Stats. Implemented: ORS 687.051 & 687.061
Proposed Amendments: 334-010-0010, 334-010-0015, 334-010-0017, 334-010-0033, 334-010-0050
Last Date for Comment: 12-22-05, 11:30 a.m.
Summary: 334-010-0010 allows an applicant to take either the NCETM, the NCETMB or the NESL exam for the written exam as required to become licensed.

The remaining rules clarify the new renewal cycle, effective January 1, 2006.

Rules Coordinator: Michelle Sherman
Address: Board of Massage Therapists, 748 Hawthorne Ave. NE, Salem, OR 97301
Telephone: (503) 365-8657

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**Bureau of Labor and Industries
Chapter 839**

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800, 659A.850, 659A.860 & 659A.865
Proposed Amendments: 839-003-0090
Last Date for Comment: 12-21-05
Summary: The amendment to 839-003-0090 clarifies section (4)(b) to establish that unearned income such as unemployment or public assistance benefits shall not be deducted from lost wage damages.
Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.046
Proposed Amendments: 839-006-0136
Last Date for Comment: 12-21-05
Summary: The amendment conforms the rule with ORS 659A.046, which provides that an injured worker's right to reemployment terminates if the worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.
Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

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Stat. Auth.: ORS 279C & 651.060
Other Auth.: SB 477 (2005)
Stats. Implemented: ORS 279C.800 - 279C.870
Proposed Adoptions: 839-025-0015
Last Date for Comment: 12-23-05
Summary: The proposed rule implements and conforms existing rules to the provisions of SB 477 (2005). This legislation requires contractors and subcontractors to file with the Construction Contractors Board a public works bond with a corporate surety in the amount of \$30,000 before starting work on a contract or subcontract for a public works project subject to the provisions of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870). SB 477 further requires the Commissioner of the Bureau of Labor and Industries, with approval of the board, to adopt rules that establish language for public works bonds. The proposed rule adopts language to be included in the Statutory Public Works Bond and prescribes which parties must be named/bonded.
Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

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Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.421, 659A.043, 659A.046, 659A.145, 659A.100, 659A.103 & 659A.800 - .890
Proposed Amendments: 839-003-0020, 839-006-0145, 839-006-0205, 839-006-0305, 839-006-0405
Last Date for Comment: 12-21-05
Summary: The amendment to 839-003-0020 substitutes the term "formal" for "specific" in order to conform the language with ORS 659A.

The amendment to 839-006-0145 separates one section into two distinct sections to provide greater clarity.

The amendments to 839-006-0205(6)(a), 839-006-0205(10), 839-006-0305(2)(a), 839-006-0305(4), 839-006-0405(2)(a), and 839-006-0405(5) provide additional examples of "major life activities" and "physical and mental impairments" to disability discrimination rules to conform them with applicable federal case law and to make the disability rules internally consistent.

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

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**Department of Administrative Services
Chapter 125**

Date:	Time:	Location:
12-15-05	8 a.m.-3 p.m.	155 Cottage St. NE Conference Rm. B Salem, OR

Hearing Officer: Margaret McDowell
Stat. Auth.: 2005 OL, Ch. 373
Stats. Implemented: 2005 OL, Ch. 373

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 125-700-0010, 125-700-0015, 127-700-0020, 125-700-0025, 125-700-0030, 125-700-0035, 125-700-0040, 125-700-0045, 125-700-0050, 125-700-0055, 125-700-0060

Last Date for Comment: 12-19-05

Summary: The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. Rules 125-700-0010 through 125-700-0060 establish the standards and policies for internal audit functions within state government.

Rules Coordinator: Kristin Keith

Address: Department of Administrative Services, 155 Cottage St. NE U90, Salem, OR 97301-3972

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

Date:	Time:	Location:
12-15-05	2-2:30 p.m.	Front Conference Rm. General Service Bldg. 1225 Ferry St. SE U100 Salem, OR 97301-4281

Hearing Officer: Bill Foster or designee

Stat. Auth.: ORS 276.227

Stats. Implemented: ORS 276.227

Proposed Amendments: 125-125-0050, 125-125-0100, 125-125-0150, 125-125-0200, 125-125-0250, 125-125-0300, 125-125-0350, 125-125-0400, 125-125-0450

Last Date for Comment: 12-15-05, 5 p.m.

Summary: Implement minor changes to OAR 125-125-0050 through OAR 125-125-0450 for the Statewide Facility Planning Process under ORS 276.227 and the mandates of Senate Bill 90.

Rules Coordinator: Kristin Keith

Address: Department of Administrative Services, 155 Cottage St. NE U90, Salem, OR 97301-3972

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Other Auth.: Health Insurance Portability and Accountability Act of 1996 (42 USC 1320d - 1320d-8, sec. 262 & sec. 264) & 45 CFR 164.314

Stats. Implemented: ORS 192.519 & 279A.140

Proposed Repeals: 125-055-0110

Last Date for Comment: 12-21-05

Summary: The Health Insurance Portability and Accountability Act (HIPAA) Security Rules, 45 CFR 164.302 - 164.318, became effective on April 20, 2005. OAR 125-055-0100 through 125-055-0130 implement contract requirements for agencies that are "covered entities" that contract with a business associate, as defined under HIPAA.

OAR 125-055-0110 is no longer needed to incorporate the requirements imposed by the HIPAA Security Rules and is being permanently repealed.

Rules Coordinator: Kristin Keith

Address: Department of Administrative Services, 155 Cottage St. NE U90, Salem, OR 97301

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

Department of Agriculture Chapter 603

Date:	Time:	Location:
1-26-06	9 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Brent Searle

Stat. Auth.: Ch. 1059, OL 1999 & SB 290, 2005 Oregon Legislature

Other Auth.: ORS 634, 561.190 & 2005-2007 Approved Budget, OR Dept. of Agriculture

Stats. Implemented: Ch. 1059, OL 1999 & SB 290, 2005 Oregon Legislature

Proposed Amendments: 603-057-0006

Last Date for Comment: 2-9-06

Summary: Increases the annual pesticide product registration fee by \$40 per product, with the additional revenue to be used in implementing a comprehensive pesticide use reporting system.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

Telephone: (503) 986-4583

Date:	Time:	Location:
1-24-06	1:30 p.m.	2411 NW Carden Ave. Pendleton, OR
1-26-06	1:30 p.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Brent Searle

Stat. Auth.: Ch. 1059, OL 1999 & SB 290, 2005 Oregon Legislature

Other Auth.: ORS 634 & 561

Stats. Implemented: Ch. 1059, OL 1999 & SB 290, 2005 Oregon Legislature

Proposed Amendments: 603-057-0405 – 603-057-0425

Last Date for Comment: 2-9-06

Summary: Pertains to the pesticides use reporting system specified in Chapter 1059, Oregon Law 1999. Amends language to be consistent with changes in statute language made through adoption of SB 290 by 2005 Oregon Legislature. Defines "urban area"; specifies how to report location of pesticide use; clarifies handling of confidential information.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

Telephone: (503) 986-4583

Stat. Auth.: ORS 561.190, 561.510 & 570.405

Other Auth.: ORS 570.305

Stats. Implemented: ORS 561.510 & 570.405

Proposed Amendments: 603-052-0116, 603-052-0117, 603-052-0129, 603-052-0150, 603-052-1221, 603-052-0355, 603-052-0360, 603-052-0385, 603-052-1200

Proposed Repeals: 603-052-0349

Last Date for Comment: 12-23-05

Summary: Housekeeping updates are proposed for the following rules: 603-052-0116 (change title from Quarantine Against Peach Phytoplasma to Quarantine Against Peach Yellow's Phytoplasma); 603-052-0117 (change title from Quarantine Against Peach Mosaic Virus Disease to Quarantine Against Peach Latent Mosaic Viroid, drop Arkansas from area under quarantine, add Garfield Co., Colorado); 603-052-0129 (change title from Quarantine Against Brown Garden Snail to Quarantine Against Exotic Phytophagous Snails, add to areas under quarantines "and any other state or territory where phytophagous snails are established"); 603-052-0150 (update pest management guides to 2005 editions); 603-052-0355 (delete "1945" date); 603-052-0360 (update pest management guide to 2005 edition); 603-052-0385 (update scientific names); 603-052-1200 (update noxious weed quarantine to include four weeds recently added to the state noxious weed list: yellow floating heart, garlic mustard, policeman's helmet and yellow flag iris); 603-052-1221 (update email address for notification). Repeal is proposed for the following rule: 603-052-0349 (a statewide Allium white rot program, OAR 603-051-1050, is now in place making the Union co. Allium disease control area redundant).

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

NOTICES OF PROPOSED RULEMAKING

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

Date: 12-20-05 **Time:** 9:30 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97310

Hearing Officer: Chris Huntington

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Proposed Adoptions: 918-261-0025

Last Date for Comment: 12-23-05, 5 p.m.

Summary: This rulemaking creates an exemption from the licensing and permitting requirements for individuals who install limited energy underground signaling circuits or loops into roadways.

In certain circumstances "splicing" or "connecting" signaling circuits or loops may still require a license and permit.

Rules Coordinator: Nicole M. Jantz

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

Telephone: (503) 373-0226

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Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Proposed Amendments: Rules in 918-305

Last Date for Comment: 12-21-05, 5 p.m.

Summary: This proposed rule clarifies Raceway construction requirements for SR-1 Occupancies, under the Oregon Electrical Specialty Code and corrects typographical and code reference errors in the Oregon amendments.

Rules Coordinator: Nicole M. Jantz

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

Telephone: (503) 373-0226

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

Stat. Auth.:

Other Auth.: 2005 OL, Ch. 80 & 2005 OL, Ch. 118

Stats. Implemented:

Proposed Repeals: 441-750-0000, 441-750-0010, 441-750-0020, 441-750-0030, 441-750-0040, 441-780-0010, 441-780-0020, 441-780-0030, 441-780-0040, 441-780-0050, 441-780-0060, 441-780-0070, 441-780-0080, 441-780-0090, 441-950-0010, 441-950-0020, 441-950-0030, 441-950-0040, 441-950-0050

Last Date for Comment: 12-30-05

Summary: The 2005 Legislature eliminated this agency's jurisdiction in three small programs, effective January 1, 2006. These programs are the Oregon Capital Corporation, Digital Signatures Authority, and International Trade Consultants Programs. The rules that had been adopted for each of these programs are proposed to be repealed.

Rules Coordinator: Berri Leslie

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Salem, OR 97309

Telephone: (503) 947-7478

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Department of Consumer and Business Services, Insurance Division Chapter 836

Date: 12-22-05 **Time:** 1:30 p.m. **Location:** Conf. Rm. F (Basement)
350 Winter St. NE
Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244, 731.804 & 744.058

Stats. Implemented: ORS 744.058, 744.064 & 744.067

Proposed Amendments: 836-071-0120, 836-071-0180

Last Date for Comment: 1-9-06

Summary: The rules proposed to be amended establish preexamination training requirements for applicants for insurance producer licenses. The proposed amendments will allow applicants to use online self-study programs for their training requirements.

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

Telephone: (503) 947-7272

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Date: 1-19-06 **Time:** 2 p.m. **Location:** Conference Rm. F
350 Winter St. NE
Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244 & 743.769

Stats. Implemented: ORS 743.737, 743.754, 743.766, 743.700(2), 743.556, 743.691 - 743.729 & 743.766 - 743.769

Proposed Adoptions: 836-053-0003

Proposed Amendments: 836-053-0460

Last Date for Comment: 1-26-06

Summary: This proposed rulemaking is intended to affirm the statutory prohibition against the use of policy exclusions in health insurance policies to exclude coverage of a service, provider or condition to which a statutory mandate applies and to spell out the manner in which pregnancy and childbirth expenses may be made subject to a preexisting conditions provision in an individual health benefit plan.

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

Telephone: (503) 947-7272

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Department of Consumer and Business Services, Minority, Women and Emerging Small Business Chapter 445

Stat. Auth.: ORS 200.055

Stats. Implemented: 2005 OL, Ch. 683

Proposed Amendments: 445-050-0115, 445-050-0125, 445-050-0135

Last Date for Comment: 12-21-05

Summary: These rule changes implement the following changes made by 2005 Oregon Laws Chapter 683:

Creates a two-tier system for certification of emerging small businesses and modifies the qualifications by increasing the employee and gross-receipts thresholds. "Tier one firm" means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for a business performing construction, as defined in ORS 446.310, or \$600,000 for a business not performing construction. "Tier two firm" means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for a business performing construction, as defined in ORS 446.310, or \$1 million for a business not performing construction.

Increases the limit on certification from seven to twelve years, six years at each tier. Allows reinstatement of a formerly certified business if the business still qualifies as an emerging small business and has eligibility remaining.

Transfers the Emerging Small Business Account from the Consumer and Business Services Fund to the State Highway Fund.

Rules Coordinator: Sheila Haywood

Address: Department of Consumer and Business Services, Office for Minority, Women and Emerging Small Business, 350 Winter St. NE, Salem, OR 97309

Telephone: (503) 947-7950

NOTICES OF PROPOSED RULEMAKING

Department of Consumer and Business Services, Oregon Medical Insurance Pool Board Chapter 443

Stat. Auth.: ORS 735.610

Other Auth.: SB 117, 123 & 130

Stats. Implemented: ORS 735.600 & 735.650

Proposed Adoptions: 443-002-0095

Proposed Amendments: 443-002-0010, 443-002-0060, 443-002-0070, 443-002-0080, 443-002-0090, 443-002-0110, 443-002-0120

Last Date for Comment: 12-22-05

Summary: The Department of Consumer and Business Services is modifying the administrative rules for the Oregon Medical Insurance Pool in order to implement changes made in Senate Bill 117, Senate Bill 123, and Senate Bill 130. Changes include:

- Allow individuals who qualify for the federal health coverage tax credit to be eligible for the high-risk pool.
- Create exceptions to the 12-month waiting period following OMIP termination.
 - Agents will no longer determine whether or not a commercial carrier would deny coverage to an individual. Applicants to the pool will now disclose their medical conditions on the OMIP application.
 - Members will no longer be eligible for OMIP if they are eligible for Medicare.
 - OMIP will allow applicants to join the pool if a commercial carrier has approved them for coverage, but the carrier imposed a waiting period for certain medical conditions or limited the plans available to that applicant because of a medical condition.
 - The lifetime benefit is being increased from \$1 million to \$2 million.
 - Modify the date that carriers use to determine the number of lives enrolled to March 31 of each year.

A draft of the rules are posted on the OMIP website at <http://egov.oregon.gov/DCBS/OMIP/>. Anyone who would like a copy of the rules mailed to them may contact Nicole Shuba at 503-378-4676 or 1-800-542-3104 x84676.

Rules Coordinator: Nicole Shuba

Address: Department of Consumer and Business Services, Oregon Medical Insurance Pool, 250 Church St. SE, Ste. 200, Salem, OR 97301

Telephone: (503) 378-4676

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**Department of Corrections
Chapter 291**

Date:	Time:	Location:
12-22-05	8:30 a.m.	ODOC Brentwood Bldg. Aspen Conf. Rm. 1793 13th St. SE Salem, OR 97302

Hearing Officer: Birdie Worley

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 423.020, 423.030 & 423.075

Other Auth.: 2005 OL, Ch. 439

Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-047-0021, 291-047-0061 - 291-047-0110

Proposed Amendments: 291-047-0005, 291-047-0010

Proposed Repeals: 291-047-0020, 291-047-0025

Proposed Ren. & Amends: 291-047-0030 to 291-047-0115, 291-047-0035 to 291-047-0120, 291-047-0040 to 291-047-0125, 291-047-0045 to 291-047-0130, 291-047-0050 to 291-047-0135, 291-047-0055 to 291-047-0140

Last Date for Comment: 12-22-05, 5 p.m.

Summary: These rule amendments are necessary to implement 2005 Oregon Laws, Ch. 439 (HB 2141) relating to the assignment and transfer of Department of Corrections inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment. Other non-

substantive housekeeping revisions have been made to update terminology and correct statute references.

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 Environmental Quality
Chapter 340**

Date:	Time:	Location:
12-27-05	9 a.m.	DEQ Headquarters 811 SW Sixth Ave. Rm. 3a Portland, OR 97204

Hearing Officer: Angela Parker, DEQ

Stat. Auth.: 2005 OL, Ch. 1 (also known as 2004 Oregon Ballot Measure 37)

Other Auth.: OAR 125-145 (administrative rules adopted by the Department of Administrative Services)

Stats. Implemented: 2005 OL, Ch. 1 (2004 Oregon Ballot Measure 37) & ORS 468.020

Proposed Adoptions: 340-011-0605

Last Date for Comment: 12-30-05

Summary: 2005 Oregon Laws chapter 1 (2004 Oregon ballot Measure 37) provides that if a present owner of real property makes written demand for compensation to a public entity for a reduction in the fair market value of the property resulting from enactment or enforcement of a land use regulation, and the land use regulation continues to be enforced 180 days after the date the written demand is made, then the owner will be due just compensation. The effective date of Measure 37 was December 2, 2004.

The proposed rules provide the Director of the Department of Environmental Quality with the authority to review, approve and deny written demands for relief under Measure 37. The rules also provide that the Director may approve a Measure 37 claim only by not applying the statute or rule that is the basis for the claim unless the Legislative Assembly has appropriated funds for payment of claims made under Chapter 1, Oregon Laws 2005.

To submit comments or request additional information, please contact Jeff Christensen at the Department of Environmental Quality (DEQ), 811 S.W. Sixth Avenue, Portland OR, 97204, toll free in Oregon at 800-452-4011 or (503) 229-6391, christensen.jeff@deq.state.or.us, (503) 229-6977 (fax), or visit DEQ's website <http://www.deq.state.or.us/news/publications>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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**Department of Fish and Wildlife
Chapter 635**

Date:	Time:	Location:
1-6-06	8 a.m.	ODFW Salem, OR

Hearing Officer: ODFW Commission

Stat. Auth.: ORS 496.138

Stats. Implemented: ORS 509.580, 509.585, 509.610, 509.625 & 509.645

Proposed Adoptions: Rules in 635-412

Proposed Amendments: Rules in 635-412

Proposed Repeals: Rules in 635-412

Last Date for Comment: 1-6-06

Summary: It is the policy of the State to provide for upstream and downstream passage for native migratory fish. Consistent with this purpose, these rules address statutory needs, establish criteria for fish passage and alternatives to fish passage, streamline the fish passage approval process, and provide clarification of actions (i.e., "triggers")

NOTICES OF PROPOSED RULEMAKING

that require an owner or operator of an artificial obstruction to address fish passage.

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

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

Date:	Time:	Location:
1-6-06	8 a.m.	ODFW Salem, OR

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.720
Proposed Amendments: 635-006-0232
Last Date for Comment: 1-6-06

Summary: Amend rules to establish the average market value of food fish species used to determine damages for commercial fishing violations.

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

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

Date:	Time:	Location:
1-6-06	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138 & 497.112
Stats. Implemented: ORS 496.012, 496.138 & 497.112
Proposed Amendments: Rules in 635-075
Last Date for Comment: 1-6-06
Summary: Rules will be amended regarding the Outfitter and Guide Nonresident Tag Allocation Program.
Rules Coordinator: Tina Edwards
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

Department of Forestry Chapter 629

Stat. Auth.: 2005 OL Ch. 1 (2004 Oregon Ballot Measure 37), ORS 526 & 527

Other Auth.: OAR 125-145
Stats. Implemented: 2005 OL Ch. 1 (2004 Oregon Ballot Measure 37), ORS 526.016, 526.031 & 526.041
Proposed Adoptions: 629-001-0057
Last Date for Comment: 12-23-05, 5 p.m.

Summary: 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
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

Department of Human Services, Child Welfare Programs Chapter 413

Date:	Time:	Location:
12-21-05	9:30 a.m.	Rm. 255 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Other Auth.: Federal CAPTA legislation requires each state to have rules directing CPS practice
Stats. Implemented: ORS 418.005
Proposed Amendments: 413-015-0405, 413-015-0710
Last Date for Comment: 12-30-05

Summary: These Child Protective Services Assessment and Interviewing rules are being amended to reflect a new process that will outline steps to take when a Department or Oregon Youth Authority (OYA) employee is the alleged perpetrator of child abuse or neglect.

These 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, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

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

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

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-141-0520
Last Date for Comment: 12-16-05, 5 p.m.

Summary: The Oregon Health Plan (OHP) Services program rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to certain clients. Rule 410-141-0520 incorporates in rule by reference the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List). OMAP will amend 410-141-0520 to incorporate the January 1, 2006, Prioritized List.

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077
Telephone: (503) 945-6927

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

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-120-0250, 410-120-1280
Last Date for Comment: 12-16-05, 12 p.m.

Summary: The General Rules (Division 120) administrative rules govern the Office of Medical Assistance Programs' (OMAP) payment for services rendered to clients. OMAP will amend OAR 410-120-0250 to clarify that although Managed Care Plans' service limitations may vary, the benefit coverage is the same. OMAP will amend OAR 410-120-1280 to reference in rule, the CMS published

NOTICES OF PROPOSED RULEMAKING

2006 national code set, Healthcare Common Procedure Coding System (HCPCS).

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077

Telephone: (503) 945-6927

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

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-122-xxxx

Proposed Amendments: 410-122-0040, 410-122-0180, 410-122-0300, 410-122-0320, 410-122-0325, 410-122-0330, 410-122-0340, 410-122-0510

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

Summary: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will adopt 410-122-xxxx, Neuromuscular Stimulators to emulate Medicare's coverage criteria.

OMAP will amend rules as follows: 410-122-0040, 410-122-0320, 410-122-0325 and 410-122-0330 to clarify intent and revise coverage criteria; 410-122-0180 to clarify intent and to rename the rule to Healthcare Common Procedure Coding System (HCPCS) Level II Coding; 410-122-0510 to clarify language and intent, revise coverage criteria and rename the rule to Osteogenesis Stimulators and move two codes to 410-122-xxxx (Neuromuscular Stimulators); 410-122-0300 and 410-122-0340 to reflect technical changes, code updates and clarify intent.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077

Telephone: (503) 945-6927

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

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-0090, 410-125-0181, 410-125-0190, 410-125-0195, 410-125-0201, 410-125-0210, 410-125-1020, 410-125-1060

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

Summary: The Hospital Services program administrative rules govern the Office of Medical Assistance Programs' (OMAP) payment for hospital services to clients. OMAP will amend OAR 410-125-0210 to match reimbursement methodology. OMAP will amend OAR 410-125-1060 to comply with the Centers of Medicare and Medicaid Systems (CMS) direction on reimbursement to Hospital Based Rural Health Clinics (HBRHC). OMAP will amend OARs 410-125-0090, 410-125-0181, 410-125-0190, 410-125-0195, 410-125-0201, and 410-125-1020 to reflect a change in policy and the State Plan to allow only hospital clinical laboratory and maternity case management services to be reimbursed using the OMAP fee schedule and bring OMAP interim payments closer to actual applicable percentage of cost. Implementation of this change remains contingent on final federal approval of the State Plan Amendment.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077

Telephone: (503) 945-6927

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Date:	Time:	Location:
12-19-05	9:30–10:30 a.m.	500 Summer St. NE Rm. 160 Salem, OR

Hearing Officer: MaryAnn Evans

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Proposed Amendments: 410-050-0861

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

Summary: The tax rate stated in OAR 410-050-0861 is .68% and does not have an end date. The proposed amendment sets an end date of December 31, 2005 for the .68% tax rate and the Department of Human Services Director sets a new tax rate of .82% beginning January 1, 2006.

Rules Coordinator: Pat Bougher

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-22, Salem, OR 97301-1099

Telephone: (503) 945-5844

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Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0300

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

Summary: The Pharmaceutical Rules govern Office of Medical Assistance Programs' payment for pharmaceutical products provided to clients. OMAP, having temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing, will permanently amend the rule with this Notice filing. OMAP updated Transmittal #37, with the October 17, 2005 email notice of Title XIX State Agency Letter Number, changes to the list, effective for services rendered on or after November 12, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077

Telephone: (503) 945-6927

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Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0320

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

Summary: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. OMAP will revise rule 410-121-0320 to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2006 through and including December 1, 2006. Current OMAC lists are available on OMAP's website.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301-1077

Telephone: (503) 945-6927

NOTICES OF PROPOSED RULEMAKING

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

Date: 12-21-05 **Time:** 4 p.m. **Location:** Human Services Bldg.
Rms. 137B, C & D
500 Summer St. NE
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Other Auth.: 2005 OL, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Proposed Adoptions: Rules in 309-120
Proposed Repeals: 309-120-0070(T), 309-120-0075(T), 309-120-0080(T)

Last Date for Comment: 12-21-05, 5 p.m.
Summary: The Department of Human Services (DHS), Office of Mental Health and Addiction Services is proposing to permanently adopt rules relating to the Oregon Youth Authority (OYA) Mental Health Treatment Program. These rules are necessary in order to implement 2005 Oregon Laws, Chapter 439 (HB 2141) 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
Address: Department of Human Services, Mental Health and Developmental Disability Services, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Date: 12-22-05 **Time:** 8:30 a.m. **Location:** ODOC Brentwood Bldg.
Aspen Conf. Rm.
1793 13th St., SE
Salem, OR 97302

Hearing Officer: Birdie Worley
Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495 & 179.505

Other Auth.: 2005 OL, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 420.500 & 420.505

Proposed Adoptions: 309-120-0210, 309-120-0215, 309-120-0220, 309-120-0225, 309-120-0230, 309-120-0235, 309-120-0240, 309-120-0245, 309-120-0250, 309-120-0255, 309-120-0260, 309-120-0265

Proposed Repeals: 309-120-0015, 309-120-0020, 309-120-0000(T), 309-120-0005(T), 309-120-0021(T)

Proposed Ren. & Amends: 309-120-0000 to 309-120-0200, 309-120-0005 to 309-120-0205, 309-120-0030 to 309-120-0270, 309-120-0035 to 309-120-0275, 309-120-0040 to 309-120-0280, 309-120-0045 to 309-120-0285, 309-120-0050 to 309-120-0290, 309-120-0055 to 309-120-0295

Last Date for Comment: 12-22-05, 5 p.m.
Summary: The Department of Human Services (DHS), Office of Mental Health and Addiction Services is proposing to permanently adopt rules relating to the Oregon Department of Corrections (ODOC) Mental Health Treatment Programs. These rules are necessary in order to implement 2005 Oregon Laws, Chapter 439 (HB 2141) relating to the assignment and transfer of ODOC inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment. Other nonsubstantive housekeeping revisions have been made to update terminology and correct statute references.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Mental Health and Developmental Disability Services, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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

Date: 12-21-05 **Time:** 10 a.m. **Location:** Portland State Office Bldg.
800 NE Oregon St.
Rm. 710
Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 431, 432 & 433
Other Auth.: HB 2706 (2005 Legislative Session)
Stats. Implemented: ORS 433.017

Proposed Amendments: 333-019-0036
Last Date for Comment: 12-21-05, 5 p.m.
Summary: Proposes changes to Oregon Administrative Rule 333-019-0036, pursuant to HB 2706 (2005 Legislative Session), requiring physicians and others attending pregnant women in Oregon to include HIV testing among other previously required prenatal tests for infectious diseases.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Date: 12-22-05 **Time:** 1 p.m. **Location:** State of Oregon - Office Bldg.
Dept. of Human Services
3420 Cherry Ave. NE
Suite 110
Keizer, OR 97303-5328

Hearing Officer: Shannon O'Fallon, Assistant Attorney General
Stat. Auth.: ORS 475.338
Other Auth.: SB 1085 (2005 Legislative Session) & OL 2005, Ch. 822

Stats. Implemented: ORS 475.300 & 475.346
Proposed Adoptions: 333-008-0025, 333-008-0110, 333-008-0120

Proposed Amendments: 333-008-0000, 333-008-0010, 333-008-0020, 333-008-0030, 333-008-0040, 333-008-0050, 333-008-0060, 333-008-0070, 333-008-0080, 333-008-0090

Last Date for Comment: 12-22-05, 5 p.m.
Summary: Proposes changes in Oregon Administrative Rules, pursuant to Senate Bill 1085, for the Oregon Medical Marijuana Program.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Date: 12-21-05 **Time:** 2 p.m. **Location:** Portland State Office Bldg.
800 NE Oregon St.
Suite 918
Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 433.001, 433.004, 433.006, 433.235, 433.280 & 433.284

Other Auth.: SB 225 (2005 Legislative Session) & OL 2005, Ch. 343
Stats. Implemented: ORS 433.273

Proposed Amendments: 333-050-0010, 333-050-0020, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130

Last Date for Comment: 12-21-05, 5 p.m.
Summary: Amends rules to incorporate changes made by Senate Bill 225 during the 2005 Oregon Legislative Assembly. Removes requirement that schools issue an exclusion order to transferring students. Allows children to sign their own Certificate of Immunization

NOTICES OF PROPOSED RULEMAKING

Status at age 15 years. Requires students attending a four year college or university pursuant to a non-immigrant visa to show documentation of measles vaccination before attending classes.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

Date:	Time:	Location:
1-5-06	10 a.m.	Portland State Office Bldg. 800 NE Oregon St. Suite 120B Portland, OR
1-6-06	1 p.m.	Douglas County Health 621 W. Madrone Rm. 101 Roseburg, OR
1-12-06	10 a.m.	Deschutes Services Center 300 NW Wall Barnes Rm. Bend, OR

Hearing Officer: Shannon O'Fallon
Stat. Auth.: ORS 431 & 448
Other Auth.: SB 1080, HB 3093 & HB 3108 (2005 Legislative Assembly)
Stats. Implemented: ORS 431.110, 431.150, 448.115, 448.119 - 448.285, 448.407 & 455.110
Proposed Amendments: 333-061-0020, 333-061-0030, 333-061-0032, 333-061-0036, 333-061-0040, 333-061-0042, 333-061-0043, 333-061-0057, 333-061-0060, 333-061-0070, 333-061-0071, 333-061-0072, 333-061-0090, 333-061-0097, 333-061-0215, 333-061-0220, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0290
Last Date for Comment: 1-12-06, 5 p.m.

Summary: The proposed changes to the Public Water Systems/ Water Personnel Certification rules primarily increase fees by amending or adding fee schedules to the rules relating to Cross Connection Control, Water System Plan Review and Water Operator Certification Programs. Specifically, HB 3108 authorizes the Department of Human Services (DHS), Drinking Water Program (DWP) to assess an annual Cross Connection Control Program implementation fee on Community Public Water Systems with 15 or more service connections and HB 3093 exempts certain plumbers from the certification requirements for backflow assembly testing. Fees for Operator Certification and Water System Plan Review have been increased to make these programs fee supportive. In addition, SB 1080 authorizes a direct reporting requirement for drinking water-certified testing laboratories when analyses show that a sample contains contaminant levels in excess of Maximum Contaminant Levels (MCL). Also included in these revisions are housekeeping and clarification changes relating to Groundwater Under the Direct Influence of Surface Water (GWUDI), Drinking Water Protection Program, Operator Certification Program, Cross Connection Control Program and corrections required as a conditional of approval for the previously adopted Environmental Protection Agency (EPA) Long Term Enhanced Surface Water Treatment rule.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
12-22-05	2 p.m.	Rm. 252 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060, 411.816, 418.100 & OL 2005, Ch. 692
Other Auth.: Federal waiver authorized by section 1115 of the Social Security Act

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.025, 418.100 & OL 2005, Ch. 692

Proposed Amendments: 461-110-0750, 461-135-1100, 461-135-1120, 461-155-0235

Proposed Repeals: 461-135-1130

Last Date for Comment: 12-22-05

Summary: Rule 461-110-0750 is being amended to clarify that persons requesting benefits must meet all nonfinancial requirements, resource limits, and income limits to be included in the benefit group and to remove conditions for OHP-OPU clients regarding inclusion or exclusion from the benefit group.

Rule 461-135-1100 is being amended to include the requirement that premiums be paid in accordance with Rule 461-135-1120 as a condition of eligibility for the Oregon Health Plan (OHP) Standard program and to clarify that not all eligibility requirements are covered in this rule.

Rule 461-135-1120 is being amended to exempt — from the requirement to pay premiums and to cancel any unpaid premiums — clients in a need group: whose countable income assigned to the budget month at certification or recertification is 10% or less of the federal poverty level; formed when an OHP client leaves the filing group if the countable income assigned to the budget month from the current certification for the new need group(s) is 10% or less of the federal poverty level; or formed when two OHP households are combined if the countable income assigned to the budget month from the current certification for the new need group is 10% or less of the federal poverty level. Rule 461-135-1120 is also being amended to indicate that a client who is required to pay premiums will not be disenrolled from OHP Standard during their certification period for past due premiums; indicate that all past due premiums must be paid before a filing group can establish a new certification period; remove the disqualification provision for clients who fail to pay required premiums on time; remove the ADA accommodation for late payment of premiums; and add language regarding the cancellation of arrearages.

Rule 461-135-1130 — which establishes criteria for disqualification from receiving OHP (Oregon Health Plan) benefits for failure to pay premiums on time — is being repealed. A client will no longer be subject to disqualification for failure to pay premiums on time in the OHP Standard program. Sections 3 and 4 of this rule address cancellation of arrearages and are being moved to OAR 461-135-1120.

Rule 461-155-0235 is being amended to eliminate premiums for some OHP (Oregon Health Plan) benefit groups.

In addition to receiving public comment on the proposed rules at the hearing listed, the Department will also accept public comment on the Centers for Medicare and Medicaid Services (CMS) waiver request submitted as a result of the passage of Senate Bill 782 during the 2005 Oregon legislative session. The proposed rule text and the letter requesting the waivers are available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm (to request a hardcopy, please contact the Rules Coordinator listed near the top of this page). Written comments should be mailed to Annette Tesch, Hearings Officer, Human Services Building, 500 Summer St. NE - E48, Salem, OR 97301-1066

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, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

NOTICES OF PROPOSED RULEMAKING

Date: 12-22-05
Time: 1 p.m.
Location: Rm. 252
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 411, 411.060, 411.070, 411.105, 411.111, 411.117, 411.120, 411.300, 411.632, 411.700, 411.710, 411.816, 412, 412.025, 412.520, 413, 413.009, 414, 414.032, 414.042, 418 & 418.100

Other Auth.: OAR 137-055-1140 – 137-055-1360
Stats. Implemented: ORS 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100 & 418.130

Proposed Amendments: 461-105-0060, 461-105-0070, 461-105-0100, 461-105-0110, 461-105-0120, 461-105-0130, 461-120-0125, 461-135-1200

Last Date for Comment: 12-22-05

Summary: Rule 461-105-0050 concerning disclosure of client information is being repealed.

Rule 461-105-0060 is being amended to change the policy on branch office destruction of client records, to incorporate and amend current rule 461-105-0140 (which is being repealed) regarding the policy on disclosure of third party information to clients, and to amend the policy on release of information to clients by telephone.

Rule 461-105-0070 is being amended to change the policy on attorney access to client records, to remove references to written authorization requirements, and to remove redundant language covered in other rules.

Rule 461-105-0080 concerning disclosure of information to a client's or support obligee or obligor's attorney is being repealed.

Rule 461-105-0090 concerning disclosure of information to collateral contacts is being repealed.

Rule 461-105-0095 concerning requirement to report child abuse and abuse of the elderly is being repealed.

Rule 461-105-0100 is being amended to comply with laws about release of client information to law enforcement officers, including situations that involve domestic violence, and to define terms used in this rule.

Rule 461-105-0110 is being amended to change the policy on release of client information to service providers, public officials, and judicial proceedings in the absence of client authorization.

Rule 461-105-0120 about information on child support and paternity cases is being amended to delete topics covered under Department of Justice rules and to clarify the remaining sections.

Rule 461-105-0130 is being amended to change the policy on disclosure of client information in the absence of client authorization for administrative and referral purposes, and to remove language covered under other rules.

Rule 461-105-0140 concerning release of information from other people or agencies is being repealed.

Rule 461-120-0125 is being amended to indicate the alien status requirements for ERDC (child care) services.

Rule 461-135-1200 is being amended due to an erroneous rule citation. The reference to rule 461-135-0630 in subsection (4)(b) is being changed to 461-120-0630.

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, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

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

Date: 12-20-05
Time: 8:30 a.m.
Location: 500 Summer St. NE
Rm. 137D
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.060, 410.070 & 414.065
Proposed Amendments: 411-015-0005, 411-015-0015, 411-015-0100

Last Date for Comment: 12-20-05

Summary: References to the General Assistance Program are being deleted from OAR 411-015-0015 and 411-015-0100. Definitions of "Mental or Emotional Disorder" and "Substance Abuse Related Disorder" have been added to OAR 411-015-0005.

Language clarifying how to establish service eligibility for clients with mental, emotional or substance related disorder diagnoses is being added to OAR 411-015-0015.

Rules Coordinator: Lisa Richards

Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1098
Telephone: (503) 945-6398

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**Department of Justice
Chapter 137**

Date: 12-19-05
Time: 10:30–11:30 a.m.
Location: 1215 State St. NE
Salem, OR

Hearing Officer: Mary Schnabel-Bray

Stat. Auth.: ORS 291.047

Stats. Implemented: ORS 291.045 & 291.047

Proposed Amendments: 137-045-0010, 137-045-0035, 137-045-0050, 137-045-0070, 137-045-0080

Last Date for Comment: 12-19-05

Summary: Rules concerning the Attorney General's review of state contracts for legal sufficiency are being changed to align them with 2003 and 2005 revisions to the Oregon Public Contracting Code, to modify and explain certain exceptions and exemptions, and to clarify other provisions. Changes are being made to the definitions of architectural and engineering and personal services contracts; the requirement to submit procurement documents to the Attorney General prior to release; and exemptions from legal sufficiency review for amendments to non-public improvement contracts, bonds and certificates of participation, foster care agreements, reinstated public contracts and emergencies.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

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Date: 12-20-05
Time: 2 p.m.
Location: 1162 Court St. NE
Justice Bldg., Appellate Div.
1st Flr. Conf. Rm.
Salem, OR

Hearing Officer: Kevin Neely

Stat. Auth.: ORS 180.160, 192.430(2) & 192.440(3) as amended by OL 2005, Ch. 272

Other Auth.: 2005–2007 Department of Justice Legislatively Approved Budget

Stats. Implemented: ORS 180.160 & 192.440(3) as amended by OL 2005, Ch. 272

Proposed Amendments: 137-008-0010

Proposed Repeals: 137-008-0010(T)

Last Date for Comment: 12-23-05

Summary: The rule establishes the fees the Department may charge to reimburse it for costs of providing public records and also establishes the prices of Department publications. Amendments reflect changes to hourly billing rates of Department staff, upon which the Department's Legislatively Approved Budget was based, changes to ORS 192.440(3), as enacted by the 2005 Legislative Assembly, and an increase in the price of the Attorney General's Public Records and Meetings Manual. This permanent rule will replace a temporary ver-

NOTICES OF PROPOSED RULEMAKING

sion of the same rule that was filed November 2, 2005, which included the same amendments to the staff billing rate and price of the Public Records and Meetings Manual, but did not include the amendments to subsections (2)(g) and (3), which reflect 2005 legislative changes to ORS 192.440(3).

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

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Date:	Time:	Location:
12-19-05	10:30-11:30 a.m.	1215 State St. NE Salem, OR

Hearing Officer: Mary Schnabel-Bray

Stat. Auth.: ORS 279A.065, 279A.205, 279B.015, 279B.050, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.400, 279B.405 & 279B.410

Other Auth.:OL 2005, Ch. 360 & 413

Stats. Implemented: ORS 200.035, 200.065, 200.075, 279A.015, 279A.205, 279A.030, 279A.050, 279A.055, 279A.065, 279A.180, 279A.105, 279A.110, 279A.120, 279A.125, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225, 279B.015, 279B.050, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, 279B.100, 279B.110, 279B.115, 279B.120, 279B.130, 279B.135, 279B.400, 279B.405, 279B.410, 279B.415, 279B.420, 279B.425, 279C.100, 279C.110, 279C.115, 279C.120, 279C.125, 279C.335, 279C.375, 279C.410, 279C.830 & 279C.845

Proposed Adoptions: 137-047-0810, 137-049-0395, 137-049-0645, 137-049-0815

Proposed Amendments: 137-046-0100, 137-046-0110, 137-046-0130, 137-046-0200, 137-046-0210, 137-046-0300, 137-046-0310, 137-046-0320, 137-046-0400, 137-046-0410, 137-046-0440, 137-046-0460, 137-046-0470, 137-046-0480, 137-047-0000, 137-047-0100, 137-047-0250, 137-047-0257, 137-047-0260, 137-047-0262, 137-047-0263, 137-047-0265, 137-047-0270, 137-047-0275, 137-047-0280, 137-047-0285, 137-047-0300, 137-047-0330, 137-047-0400, 137-047-0410, 137-047-0700, 137-047-0730, 137-047-0740, 137-047-0745, 137-047-0800, 137-048-0100, 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0300, 137-048-0310, 137-048-0320, 137-049-0100, 137-049-0120, 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0220, 137-049-0260, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0400, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0820, 137-049-0860; 137-049-0870, 137-049-0900, 137-049-0910

Last Date for Comment: 12-19-05

Summary: The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies.

Division 46 has been revised to address any 2005 legislative changes to public procurements in general. Several new definitions have been added including separate definitions for "Goods" and "Services" and definitions for "Request for Qualifications," "Request for Quotes," "Responsible" and "Responsive." Division 46 has been revised to incorporate the requirement for notice to the Advocate for Minorities, Women and Emerging Small Businesses. Division 46 also has been revised to eliminate redundant language and to simplify and clarify several provisions.

Division 47 has been revised to address 2005 legislative changes affecting public procurements of goods and services. It clarifies that agencies may revise bid specifications after closing of phase one in multistep sealed bidding and may employ methods of contractor selection such as discussions and negotiations and best and final

offers in conducting phase one of multistep sealed proposals. The public notice period for approval of special procurements has been reduced to seven days to be consistent with other public notice periods. Division 47 has also been revised to eliminate redundancy and to simplify and clarify several provisions.

Division 48 has been revised to address 2005 legislative changes affecting public procurements of Architectural, Engineering and Land Surveying Services, and Related Services. Division 48 has also been revised to more clearly and consistently refer to defined terms such as "Architectural, Engineering and Land Surveying Services," "Related Services" and "Consultant," to clarify provisions pertaining to cancellation of a procurement, to clarify provisions related to expired and terminated contracts, to generally clarify and simplify other provisions, and to better coordinate the Division 48 rules with the Division 46 rules by relocating terms or provisions of broader application to Division 46.

Division 49 has been revised to address 2005 legislative changes affecting public improvement and public works contracting. It provides a new definition of "Work", places new requirements on competitive bidding exemption findings, clarifies the use of Requests for Qualifications in a new rule and provides other clarifications to existing rules.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

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Date:	Time:	Location:
12-15-05	10 a.m.	1515 SW Fifth Ave. Suite 410 Portland, OR 97201

Hearing Officer: Ross Laybourn

Stat. Auth.: ORS 464.250(1)(a)

Stats. Implemented: ORS 464.250(3)

Proposed Amendments: 137-025-0300

Last Date for Comment: 12-23-05

Summary: OAR 137-025-0300 currently caps the retail value for non-cash raffle prizes at \$50,000 per prize. The proposed amendment would increase this amount to \$75,000.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4096

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Stat. Auth.: ORS 25.270 - 25.290 & 180.340

Stats. Implemented: ORS 25.270 - 25.290

Proposed Amendments: 137-050-0450

Last Date for Comment: 12-30-05

Summary: The proposed change to OAR 137-050-0450 adds administrative law judge authority to make a finding as to actual parenting time during a hearing.

Rules Coordinator: Shawn Brenizer

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

Telephone: (503) 986-6240

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Department of Transportation Chapter 731

Stat. Auth.: ORS 184.616, 184.619, 192.430 & 192.440

Stats. Implemented: ORS 192.410 - 192.505

Proposed Amendments: 731-001-0025

Last Date for Comment: 12-21-05

Summary: The Department of Transportation proposes to amend OAR 731-001-0025 to add and increase rates for record requests and to add the option for electronic transmission of requested information. The proposed fees are intended to more adequately cover the cost of providing the records. Sections are also added to address the

NOTICES OF PROPOSED RULEMAKING

cost of an attorney to redact material as provided by House Bill 2545 (2005) and petition for unreasonable denial of fee waiver or reduction.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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**Department of Transportation,
Board of Maritime Pilots
Chapter 856**

Date: 1-24-06 **Time:** 10 a.m. **Location:** 800 NE Oregon St.
Conf. Rm. 120C

Hearing Officer: Board of Maritime Pilots

Stat. Auth.: ORS 776

Stats. Implemented: ORS 776.115 & 776.300

Proposed Adoptions: 856-010-0026

Last Date for Comment: 1-24-06

Summary: Establishes selection criteria for pilot trainee applicants for the Coos Bay and Yaquina Bay pilotage grounds.

Rules Coordinator: Susan Johnson

Address: Department of Transportation, Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232

Telephone: (503) 731-4044

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**Department of Transportation,
Highway Division
Chapter 734**

Stat. Auth.: ORS 184.616, 184.619, 366.205 & 366.490

Stats. Implemented: ORS 164.805, 366.490, 374.305, 377.030 & 810.030

Proposed Amendments: 734-030-0010, 734-030-0025

Last Date for Comment: 12-21-05

Summary: These rules establish the requirements for issuance of permits for distribution of coffee, other nonalcoholic beverages, and cookies by non profit organizations in rest areas ("Free Coffee" program). The rules also establish the types of activities prohibited in rest areas. Chapter 256, Oregon Laws 2005 (Senate Bill 481) amended ORS 366.490 to delete prohibitions against using structures at a rest area for distribution of coffee and cookies. The proposed amendments make similar changes to the rules, clarify the conditions under which a permit may be issued for the "Free Coffee" program, and clarify the activities that are prohibited in a rest area.

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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**Department of Veterans' Affairs
Chapter 274**

Stat. Auth.: ORS 406.030, 407.115, 407.169, 407.179, 407.181, 407.225 & 407.275

Other Auth.: SB 223, 2005 Regular Leg. Session

Stats. Implemented: ORS 406.030 & 407

Proposed Amendments: 274-020-0340, 274-045-0060

Last Date for Comment: 12-23-05

Summary: Senate Bill 223, of the 2005 Regular Session of Legislature amended ORS 407.225(3).

The maximum allowable loan amount for a veterans' home loan amount increased from 97 percent of the net appraised value to 100 percent of the net appraised value.

Rules Coordinator: Herbert D. Riley

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

Telephone: (503) 373-2055

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**Economic and Community Development Department
Chapter 123**

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

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065

Proposed Amendments: 123-024-0031

Last Date for Comment: 12-21-05

Summary: The new methodology concentrates on four variables to capture economic conditions at the county level. It then uses information from those counties to determine counties and areas to designate as distressed. To determine economic conditions of a county, the approach calculates changes in the average wage per job and the employment for all major sectors and weights them by their payroll for those sectors over a two-year period. Those measurements are then combined to develop a measure of economic change in an economy over the two-year period. Next, the economic standing of the county relative to the state is estimated by comparing the county's per capita personal income and unemployment rate with those of the state. This relative measure is then used to adjust the level of economic change in the county. The measure that results becomes the index that is used to judge whether a county is distressed or not.

Rules Coordinator: Paulina Bernard

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

Telephone: (503) 986-0036

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Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.095(2), 285C.115(6), 285C.140(1)(c) & (12)(a), 285C.215(3), 285C.250(4), 285C.353(2) & 285C.370

Other Auth.: OL 2005 Ch. 704 Sec. 5 & 6

Stats. Implemented: ORS 285C.050 - 285C.250, 285C.260, 285C.350 - 285C.370, 285C.400 - 285C.420 & OL 2005 Ch. 704, Sec. 5 & 6

Proposed Adoptions: Rules in 123-065

Proposed Amendments: Rules in 123-065

Proposed Renumberings: 123-065-0049 to 123-065-0059

Last Date for Comment: 1-6-06

Summary: These rules make minor technical corrections or enhancements to the guidelines for enterprise zones, as well as implement legislative changes found in chapters 94, 595 and 704, Oregon Laws 2005, especially requirements for consultation with local taxing districts by governments seeking zone designation.

Rules Coordinator: Paulina Bernard

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

Telephone: (503) 986-0036

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**Employment Department
Chapter 471**

Date: 12-15-05 **Time:** 1 p.m. **Location:** Employment Dept.
Auditorium
Salem, OR

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657

Proposed Adoptions: Rules in 471-030

Proposed Amendments: Rules in 471-020, 471-030

Last Date for Comment: 12-15-05, 5 p.m.

Summary: OAR 471-020 clarifying language regarding exemptions from enrollment

OAR 471-030 language changing "work week" to "calendar week" and adding information to temporary layoffs and work search.

NOTICES OF PROPOSED RULEMAKING

Rule language added defining investigatory subpoenas and authorized representative. Language clarifying lost, stolen or destroyed benefit checks.

Rules Coordinator: Lynn M. Nelson
Address: 875 Union Street NE, Salem OR 97311
Telephone: (503) 947-1724

**Health Licensing Office,
Board of Cosmetology
Chapter 817**

Date:	Time:	Location:
1-23-06	9 a.m.	700 Summer St. Rhoades Conf. Rm. Salem, OR

Hearing Officer: Bert Krages
Stat. Auth.: ORS 676.615, 690.046, 690.048, 690.165 & OL 2005, Ch. 117
Other Auth.: ORS 676.605
Stats. Implemented: ORS 676.615, 690.046, 690.048, 690.165 & OL 2005, Ch. 117

Proposed Amendments: 817-005-0005, 817-010-0065, 817-010-0068, 817-010-0101, 817-010-0106, 817-015-0050, 817-015-0065, 817-020-0305, 817-030-0005, 817-030-0015, 817-030-0018, 817-030-0020, 817-030-0040, 817-030-0045, 817-030-0100, 817-035-0010, 817-035-0030, 817-040-0003, 817-080-0005, 817-090-0025, 817-090-0035, 817-090-0045, 817-090-0050, 817-090-0105, 817-100-0005, 817-120-0005

Last Date for Comment: 1-23-06

Summary: Amendments to the administrative rules address changes resulting from passage of HB 2105 by the 2005 Legislature. The legislation revises statutory definitions in ORS 690.005 for the four cosmetology fields of practice, changes "facial technology to "esthetics" to conform with national and international industry standards and reinstates full body skin care by removing the seventh vertebra restriction implemented in 1987, and adds clarification that nail technology services apply to the arm below the elbow and the leg below the knee. Amendments to rule definitions modify some definitions for clarity and delete others that are redundant or unnecessary. Revisions improve rule construction and wording, and correct specific statutory/rule citations throughout OAR 817.

FEE INCREASE: The written examination fee is being increased from \$10 to \$25 (per section) to enable use of a national examination. The fee increase was reviewed and approved by the 2005 Legislature and is included in the agency's 2005-07 Legislatively Adopted Budget, presented as *Policy Package 103 – National Testing*.

Administrative Rules are available on the agency's website – www.oregon.gov/ohla. Material is available in alternative formats. Please contact Samie Patnode, Executive Assistant/Board Liaison for additional information.

Rules Coordinator: Patricia C. Allbritton
Address: Health Licensing Office, Board of Cosmetology, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287
Telephone: (503) 378-8667, ext. 4322

**Insurance Pool Governing Board
Chapter 442**

Stat. Auth.: ORS 735.734
Other Auth.: SB 303, HB 2064
Stats. Implemented: ORS 735.720 - 735.740
Proposed Adoptions: Rules in 442-005
Proposed Repeals: Rules in 442-004
Last Date for Comment: 12-22-05

Summary: IPGB is repealing Division 4 and adopting Division 5 in an effort to clarify the intent of the rules. The new rules will streamline the application and determination process for the Family Health Insurance Assistance Program (FHIAP). In early 2005 FHIAP con-

ducted a Business Process Improvement study. Many of the rule changes are a direct result of the report that was generated from that study.

Other changes being implemented include: no longer counting 529 College Savings Plans as an asset; no longer allowing group applicants to enroll into an individual plan before they can access a group plan; no longer including some educational income as family income; and adding rules relating to enrollment and payment processing. With the passage of SB 303, the Insurance Pool Governing Board's name is changing to the Office of Private Health Partnerships effective January 1, 2006. The name change is reflected in the new rules. The rules will also implement House Bill 2064 (2005), which changes the definition of family by allowing FHIAP to consider elderly relatives and adult disabled children as family members.

The rules are available on the FHIAP website at <http://egov.oregon.gov/IPGB/FHIAP/index.shtml>. The drafts will be updated weekly until the effective date. Anyone who would like a set of the drafted rules mailed to them may contact Nicole Shuba at 503-378-4676, or 1-888-564-9669 x 84676.

Rules Coordinator: Nicole Shuba
Address: Insurance Pool Governing Board, 250 Church St. SE, Ste. 200, Salem, OR 97301
Telephone: (503) 378-4676

**Oregon Department of Education
Chapter 581**

Date:	Time:	Location:
12-20-05	3 p.m.	255 Capitol St. NE Rm. 251-A Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051 & 346.010
Stats. Implemented: ORS 326.051
Proposed Amendments: 581-021-0110
Last Date for Comment: 12-20-05

Summary: The proposed amendment would extend to the State School for the Deaf and State School for the Blind, the requirement to have policies establishing "zero-tolerance" for tobacco and tobacco products to include students, staff and visitors.

Rules Coordinator: Debby Ryan
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

Date:	Time:	Location:
12-20-05	3 p.m.	255 Capitol St. NE Rm. 251-A Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Proposed Adoptions: 581-021-0042
Last Date for Comment: 12-20-05

Summary: The current administrative rule, 581-021-0035, establishes the process for appeals of decisions of interscholastic activity organizations regarding student eligibility. The proposed rule will define the process and the standard for review of decisions in other than eligibility cases.

Rules Coordinator: Debby Ryan
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

Date:	Time:	Location:
12-20-05	3 p.m.	255 Capitol St. NE Rm. 251-A Salem, OR

Hearing Officer: Randy Harnisch

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 337.035
Proposed Amendments: 581-011-0119
Last Date for Comment: 12-20-05

Summary: ORS 337.035 requires the State Board of Education to adopt criteria for the selection and adoption of instructional materials. Instructional materials for English/Language Arts and English as a Second Language are to be adopted in 2006. A committee of teachers from around the state met in October to review the English/Language Arts and English as a Second Language criteria from the last adoption cycle and develop new criteria for the upcoming adoption cycle. The committee compiled new criteria and recommends these criteria to the State Board for adoption.

Rules Coordinator: Debby Ryan
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

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Date:	Time:	Location:
12-20-05	3 p.m.	255 Capitol St. NE Rm. 251-A Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.465
Proposed Amendments: 581-022-1110, 581-022-1120, 581-022-1210
Last Date for Comment: 12-20-05

Summary: The amendments clarify requirements for the Certificate of Initial Mastery (CAM) as required by the 2003 Legislative Assembly and will allow school districts to make decisions that are appropriate to statutory requirements.

Rules Coordinator: Debby Ryan
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

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Oregon Housing and Community Services Chapter 813

Date:	Time:	Location:
1-12-06	2 p.m.	725 Summer Street NE Suite B Salem, OR 97301-1270

Hearing Officer: Sandy McDonnell
Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Proposed Adoptions: 813-005-0001, 813-005-0016
Proposed Amendments: 813-005-0005
Proposed Repeals: 813-005-0001(T), 813-005-0005(T), 813-005-0010, 813-005-0015, 813-005-0016(T), 813-005-0020, 813-005-0025, 813-005-0030

Last Date for Comment: 1-12-06, 5 p.m.
Summary: 813-005-0001 describes the the purpose for the rules. 813-005-0005 clarifies the common definitions founds within programs of the department and clarifies the programs that fall by statute under the purview of Oregon Housing and Community Services. 813-005-0010, 813-005-0015, 813-005-0020, 813-005-0025 and 813-005-0030 are administrative corrections intended to remove unnecessary language from department rules. 813-005-0016 adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell

Address: 725 Summer Street NE, Suite B, Salem Oregon 97301-1270 (Mailing: PO Box 14508, Salem Oregon 97309-0409)
Telephone: (503) 986-2012

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Date:	Time:	Location:
1-12-06	2 p.m.	725 Summer Street NE Suite B Salem, OR 97301-1271

Hearing Officer: Sandy McDonnell
Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 813, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350, 757.612 - 757.617, 91.886, 456.720 & HB 2054 - 2005 Leg. Assembly

Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 813, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350, 757.612 - 757.617, 91.886, 456.720 & HB 2054 - 2005 Leg. Assembly

Proposed Adoptions: 813-001-0002, 813-001-0007, 813-001-0011

Proposed Repeals: 813-001-0000, 813-001-0002(T), 813-001-0005, 813-001-0008, 813-001-0011(T), 813-001-0066, 813-001-0069, 813-001-0080, 813-001-0090

Proposed Ren. & Amends: 813-001-0001 to 813-001-0003

Last Date for Comment: 1-12-06, 2 p.m.

Summary: 813-001-0002 sets forth the purpose for the rules. Amendments to 813-001-0003 updates the agencies and/or committees, established by statute, that have an advisory capacity to the department. 813-001-0011 adds waiver language already provided for by statute.

813-001-0007 establishes the threshold for loans requiring State Housing Council review arising under ORS 456.515 to 456.726. HB 2054 removed from statute the \$150,000 threshold for single-family loan review and allows the department, with State Housing Council approval, to enact administrative rules establishing the single-family loan review threshold. 813-001-0006 establishes the single-family review threshold.

813-001-0000, 813-001-0005, 813-001-0008, 813-001-0066, 813-001-0068, 813-001-0069, 813-001-0080 and 813-001-0090 are administrative corrections intended to remove unnecessary language, already provided for by statute, from department rules.

Rules Coordinator: Sandy McDonnell
Address: 725 Summer Street NE, Suite B, Salem Oregon 97301-1271 (Mailing: PO Box 14508, Salem Oregon 97309-0409)
Telephone: (503) 986-2012

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Oregon Patient Safety Commission Chapter 325

Date:	Time:	Location:
1-10-06	4 p.m.	800 NE Oregon St. Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 442.820
Stats. Implemented: ORS 182.462(1) & 182.462(2)
Proposed Adoptions: 325-005-0015
Last Date for Comment: 1-6-06

Summary: This rule establishes the Patient Safety Commission's biennial budget. It replaces temporary rule 325-005-0010.

Rules Coordinator: James C. Dameron
Address: Oregon Patient Safety Commission, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1266

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Date:	Time:	Location:
1-10-06	4 p.m.	800 NE Oregon St. Portland, OR

Hearing Officer: Jana Fussell

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 686 & OL 2003, Sec. 4, 6, 9
Other Auth.: ORS 182.456 - 182.472
Stats. Implemented: ORS 442.820 - 442.835
Proposed Adoptions: 325-010-0001 - 325-010-0060
Last Date for Comment: 1-6-06

Summary: These rules, taken together, establish the Oregon Patient Safety Reporting Program for Oregon hospitals. They also establish a hospital fee structure to partially fund the work of the Patient Safety Commission.

Rules Coordinator: James C. Dameron
Address: Oregon Patient Safety Commission, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1266

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**Oregon Public Employees Retirement System
Chapter 459**

Date: 12-27-05 **Time:** 2 p.m. **Location:** Boardroom, PERS Headquarters, 11410 SW 68th Pkwy, Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.078 & 238.082
Proposed Amendments: 459-017-0060
Last Date for Comment: 1-31-06

Summary: OAR 459-017-0060 pertains to retired members who return to work in a PERS-covered position, reestablish active membership, and their subsequent retirement and to retired members who return to work in a PERS-covered position, but do not reestablish active membership by complying with limitations on work after retirement. The rule is being amended to clarify limitations on work after retirement, reestablishment of active membership, the method of rebuilding member accounts, calculation of the subsequent retirement benefit, and to comply with state and federal statutes.

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

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

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**Oregon State Library
Chapter 543**

Date: 2-3-06 **Time:** 10-11 a.m. **Location:** Oregon State Library, 250 Winter St. NE, Salem, OR 97301

Hearing Officer: Jim Hayden

Stat. Auth.: ORS 357.015(2) & 357.090
Other Auth.: HB 2118
Stats. Implemented: ORS 357.005(2)(j) & 357.090 - 357.105
Proposed Amendments: 543-070-0000
Last Date for Comment: 2-3-06, 11 a.m.

Summary: This rule establishes the framework for the state publication depository program. This amendment accomplishes four things:

1. Reduces the number of print copies required from state agencies;
2. Eliminates the "core depository" category;
3. Establishes the framework for state agencies to deposit electronic documents as required by HB 2118; and
4. Establishes reasonable parameters for what constitutes an electronic document.

Rules Coordinator: James B. Schepcke

Address: Oregon State Library, State Library Building, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 378-4367

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Date: 2-3-06 **Time:** 10-11 a.m. **Location:** Oregon State Library, 250 Winter St. NE, Salem, OR 97301

Hearing Officer: Jim Hayden

Stat. Auth.: ORS 357.015(2)
Other Auth.: HB 2674 (2005 Legislative Assembly)
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Proposed Amendments: 543-060-0000 - 543-060-0060
Last Date for Comment: 2-3-06, 11 a.m.

Summary: This rule provides the framework for the Statewide Database Licensing Program in public, school, academic, and tribal libraries in Oregon. This amendment provides for the addition of tribal libraries to the program as required by HB 2674.

Rules Coordinator: James B. Schepcke
Address: Oregon State Library, State Library Building, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 378-4367

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Date: 2-3-06 **Time:** 10-11 a.m. **Location:** Oregon State Library, 250 Winter St. NE, Salem, OR 97301

Hearing Officer: Jim Hayden

Stat. Auth.: ORS 357.015(2) & 357.760
Other Auth.: HB 2916 (2005 Legislative Assembly)
Stats. Implemented: ORS 357.740 - 357.780
Proposed Amendments: 543-040-0005 - 543-040-0040
Last Date for Comment: 2-3-06, 11 a.m.

Summary: This rule provides a framework for awarding grants to public libraries to establish, develop or improve public library services to children. This amendment corrects the title of the publication that is used to determine populations served and removes the maintenance of support requirement for eligibility as required by HB 2916.

Rules Coordinator: James B. Schepcke
Address: Oregon State Library, State Library Building, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 378-4367

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Date: 2-3-06 **Time:** 10-11 a.m. **Location:** Oregon State Library, 250 Winter St. NE, Salem, OR 97301

Hearing Officer: Jim Hayden

Stat. Auth.: ORS 357.015(2) & 357.206 - 357.212
Other Auth.: SB 12 (2003 Legislative Assembly)
Stats. Implemented:
Proposed Repeals: 543-050-0010
Last Date for Comment: 2-3-06, 11 a.m.

Summary: This rule provides definitions for a program of the State Library that was eliminated by SB 12, passed by the 2003 Legislative Assembly.

Rules Coordinator: James B. Schepcke
Address: Oregon State Library, State Library Building, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 378-4367

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**Oregon State Lottery
Chapter 177**

Date: 12-20-05 **Time:** 9:30-10:30 a.m. **Location:** Oregon Lottery, 500 Airport Rd. SE, Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Larry Trott
Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Proposed Repeals: 177-035-0000, 177-035-0110, 177-035-0115, 177-035-0120, 177-035-0130, 177-035-0140, 177-035-0150, 177-035-0160, 177-035-0200, 177-035-0210, 177-035-0220, 177-035-0230, 177-035-0300, 177-035-0310, 177-035-0400, 177-035-0600
Last Date for Comment: 12-21-05, 9 a.m.
Summary: OAR Division 35 is the Lottery's existing contracting rules. It is being repealed and replaced with a new Division 36 - Lottery Procurement Rules, and a new Division 37 - Lottery Vendor Disclosure Rules, which are being filed separately from this filing.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Date: 12-20-05 **Time:** 9:30-10:30 a.m. **Location:** Oregon Lottery
500 Airport Rd. SE
Salem, OR

Hearing Officer: Larry Trott
Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Proposed Adoptions: 177-036-0000, 177-036-0010, 177-036-0020, 177-036-0030, 177-036-0040, 177-036-0050, 177-036-0055, 177-036-0060, 177-036-0070, 177-036-0080, 177-036-0090, 177-036-0100, 177-036-0110, 177-036-0115, 177-036-0120, 177-036-0130, 177-036-0140, 177-036-0150, 177-036-0160, 177-036-0170, 177-036-0180, 177-036-0190, 177-036-0200, 177-036-0210
Last Date for Comment: 12-21-05, 9 a.m.
Summary: The Oregon Lottery has redrafted its vendor contracting rules. The Lottery proposes to adopt these rules to set forth the Lottery's process for the procurement of goods and services.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Date: 12-20-05 **Time:** 9:30-10:30 a.m. **Location:** Oregon Lottery
500 Airport Rd. SE
Salem, OR

Hearing Officer: Larry Trott
Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Proposed Adoptions: 177-037-0000, 177-037-0010, 177-037-0020, 177-037-0030, 177-037-0040, 177-037-0050, 177-037-0060, 177-037-0070
Last Date for Comment: 12-21-05, 9 a.m.
Summary: The Oregon Lottery has redrafted its vendor contracting rules. The Lottery proposes to adopt these rules to set forth the application and disclosure requirements for approval to be a Lottery vendor or contractor. These proposed rules also set forth the criteria for denying approval to be a Lottery vendor or contractor.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.230, 461.240, 461.250 & 461.260
Proposed Amendments: 177-046-0020, 177-046-0110, 177-050-0025, 177-050-0027, 177-070-0025, 177-070-0035, 177-200-0020
Last Date for Comment: 12-21-05, 9 a.m.

Summary: The amendments clarify that the Lottery may pay winning tickets and shares with cash at its own retail locations. Payments in cash will be limited to \$50 per person per day. All payments to multiple owners of a winning ticket or share will be by check only. Other amendments clarify that the Lottery's policy on a dishonored check issued by a retailer for a prize payment is applicable to prize payments for all Lottery tickets and shares, not just winning Scratch-it tickets.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461
Proposed Amendments: 177-040-0010, 177-040-0105
Last Date for Comment: 12-21-05, 9 a.m.
Summary: The proposed amendments create additional grounds for denial of a Lottery retailer contract, and clarify the requirements for moving an existing Lottery retailer business to new premises.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

Oregon State Marine Board Chapter 250

Stat. Auth.: ORS 704 & 830.110
Stats. Implemented: ORS 704 & 830.110
Proposed Adoptions: 250-016-0012
Last Date for Comment: 12-15-05
Summary: SB-579 (2005 Legislative Session) requires outfitters and guides who carry passengers in Class III and higher whitewater to have the guides and passengers wear an approved personal flotation device (PFD) while operating in Class III or higher rapids. The law requires the Marine Board to adopt, by rule, the TYPE of Coast Guard approved PFD to be used. The proposed rule requires outfitters and guides to use a U.S. Coast Guard Approved Type I, III or V PFD that is suitable for use in whitewater (not restricted in its approval). Inflatable PFDs are not approved for whitewater use.
Rules Coordinator: Jill E. Andrick
Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309
Telephone: (503) 378-2617

Oregon Student Assistance Commission Chapter 575

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Date: 1-20-06 **Time:** 9 a.m. **Location:** 2305 SE 82nd
Tabor Rm. 130
Portland, OR 97216
Hearing Officer: Brian Clem, Commission Chair
Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.180, 348.205, 348.250 & 348.260
Proposed Amendments: 575-060-0005
Last Date for Comment: 1-20-06
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. This definition has already been implemented for publicly funded grant and scholarship programs and is now being extended to include the same provision

NOTICES OF PROPOSED RULEMAKING

for privately funded scholarship programs administered by the Commission.

Rules Coordinator: Margie Lowe
Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401
Telephone: (541) 687-7377

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Date: 1-20-06 **Time:** 9 a.m. **Location:** 2305 SE 82nd Tabor Rm. 130 Portland, OR 97216

Hearing Officer: Brian Clem, Commission Chair
Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.180, 348.205, 348.250 & 348.260
Proposed Amendments: 575-031-0030
Last Date for Comment: 1-20-06
Summary: The Oregon Administrative Rules revisions the Oregon Student Assistance Commission proposes clarify when eligibility begins for an Opportunity Grant recipient who first applies after the start of the academic year.
Rules Coordinator: Margie Lowe
Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401
Telephone: (541) 687-7377

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Oregon University System
Chapter 580

Stat. Auth.: ORS 351.070
Stats. Implemented:
Proposed Amendments: 580-022-0030, 580-022-0031
Last Date for Comment: 12-27-05
Summary: Amendments to OAR 580-022-0030 and OAR 580-022-0031 update provisions of the staff fee rules. Updates to OAR 580-022-0030 include specifying that staff fee privileges apply only to employees of the Oregon University System; change the term "Centralized Activities" to "Chancellor's Office"; remove elapsed effective and review dates; and correct a typographical error. OAR 580-022-0031 is amended to remove reference to an affidavit used by the Public Employee's Benefit Board; clarifies that the benefit may not be parceled out to multiple family members during a single academic term; eliminates reference to employees of Oregon Health & Science University which has not participated in OUS staff fee privileges since 2001; and removes elapsed effective and review dates.
Rules Coordinator: Marcia M. Stuart
Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175
Telephone: (541) 346-5749

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Oregon Youth Authority
Chapter 416

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Proposed Amendments: 416-530-0010, 416-530-0040
Last Date for Comment: 1-3-06
Summary: OAR 416-530-0010 will be amended to add a definition of "computerized criminal history checks" and subsequent definitions will be renumbered. OAR 416-530-0040 will be amended to include language regarding incidents of abuse and neglect as it relates to foster care applicants. These rules will become permanent and replace existing 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 433.045 - 433.085 & 420A.105

Proposed Amendments: 416-600-0000, 416-600-0010, 416-600-0020, 416-600-0030, 416-600-0040, 416-600-0050
Last Date for Comment: 1-5-06
Summary: OAR Division 600 will have the title changed to HIV Testing of OYA Offenders in Close Custody. OAR 416-600-0000 will have a new purpose statement; OAR 416-600-0010 will have definitions reformatted; OAR 416-600-0020 HIV Antibody Testing, 0030 Informed Consent, 0040 Counseling, and 0050 Confidentiality language has been clarified in accordance with statute. Interested persons may request a copy of the current rule from Mike Riggan, OYA Rules/Policy Coordinator, 530 Center St., Suite 200, Salem, OR 97301; 503-378-3864.
Rules Coordinator: Mike Riggan
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
Other Auth.: U.S. Code: Title 42, Section 2000bb-1 - 2000bb-4, Religious Land Use and Institutionalized Persons Act of 2000, RLUIPA, PL 106-274
Stats. Implemented: ORS 420A.105
Proposed Amendments: 416-480-0000, 416-480-0010, 416-480-0020, 416-480-0040, 416-480-0060, 416-480-0070, 416-480-0080
Last Date for Comment: 1-5-06
Summary: OAR Chapter 416 Division 480 will have the title changed to Offender Religious Activities in Close Custody Facilities; OAR 416-480-0000, 0010, 0020, 0040, 0060, 0070, and 0080 will have grammatical changes and rule numbers have been re-ordered. Interested persons may request a copy of the current rule from Mike Riggan, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.
Rules Coordinator: Mike Riggan
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: 416-310-0000, 416-310-0010, 416-310-0020, 416-310-0030
Last Date for Comment: 1-5-06
Summary: The relevant topics in this rule division were moved to Division 300. Interested persons may request a copy of the current rule from Mike Riggan, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.
Rules Coordinator: Mike Riggan
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 378-3864

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Parks and Recreation Department
Chapter 736

Stat. Auth.: ORS 358.545
Stats. Implemented: ORS 358.475 - 358.543
Proposed Amendments: 736-050-0100 - 736-050-0150
Last Date for Comment: 12-30-05
Summary: HB 2776 (05-07 Session) revised the Special Assessment for Historic Property Program to allow residential historic property owners a second 15-year period of special assessment as a local government option. The rule amendments have been drafted to respond to the legislative changes.
Rules Coordinator: Colleen Rogers
Address: Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301
Telephone: (503) 986-0730

NOTICES OF PROPOSED RULEMAKING

Real Estate Agency Chapter 863

Date: 12-23-05 **Time:** 10 a.m. **Location:** 1177 Center St. NE
Salem, OR 97301

Hearing Officer: Bryan Cavanaugh
Stat. Auth.: ORS 696.385 & 2005 OL, Ch. 393
Other Auth.: 2005 OL, Ch. 393
Stats. Implemented: ORS 696.026, 696.241, 696.301, 696.395 - 696.430, 696.805, 696.810, 696.990 & 696.800 - 696.855
Proposed Adoptions: 863-015-0186, 863-015-0225, 863-015-0230

Proposed Amendments: Rules in 863-015
Last Date for Comment: 12-23-05, 5 p.m.
Summary: This rulemaking implements HB 2604 (2005 Oregon Law, Chapter 393), passed during the 2005 Legislative Session, which requires the Real Estate Agency to adopt rules to establish a procedure for disbursement of disputed funds from a Clients' Trust Account by a sole practitioner or real estate broker; provide for the progressive discipline of real estate licensees; and to provide for an objective method for investigation of complaints alleging grounds for discipline under ORS 693.301.

Rules Coordinator: Laurie Skillman
Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505

Telephone: (503) 378-4170, ext. 237

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**Secretary of State,
Elections Division
Chapter 165**

Date: 12-21-05 **Time:** 9-9:30 a.m. **Location:** 900 Court St. NE
Rm. 257
Salem, OR 97301

Hearing Officer: Brenda Bayes
Stat. Auth.: ORS 246.150
Stats. Implemented: HB 2614, Ch. 593, 2005 OL
Proposed Adoptions: 165-010-0120
Last Date for Comment: 12-21-05, 5 p.m.
Summary: House Bill 2614 (chapter 593, 2005 Oregon Laws) provides that an elector may only participate in one nominating process for each partisan office to be filled at the general election. An individual participates by returning a partisan primary election ballot, participating in a minor political party's nominating process, signing the minutes of an assembly of electors, or by signing a certificate of nomination made by individual electors. This proposed rule adoption further defines when an elector is deemed to have participated in a nominating process for partisan office and sets forth penalties for failure to submit the required documentation. Filing officers are directed that a signature of an elector who has attempted to participate in more than one nominating process for the same office may not be counted toward satisfying the number of valid signatures required to nominate a candidate for the office by an assembly of electors or a certificate of nomination made by individual electors.
Rules Coordinator: Brenda Bayes
Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
Telephone: (503) 986-1518

Date: 12-21-05 **Time:** 9-9:30 a.m. **Location:** 900 Court St. NE
Rm. 257
Salem, OR 97301

Hearing Officer: Fred Neal
Stat. Auth.: ORS 246.150 & HB 2167 (Ch. 797, Sec. 5, 2005 OL)
Stats. Implemented: HB 2167 (Ch. 797, Sec. 5, 2005 OL)
Proposed Adoptions: 165-012-0240
Last Date for Comment: 12-21-05, 5 p.m.

Summary: House Bill 2167 (chapter 797, 2005 Oregon Laws) allows a filing officer to discontinue a political committee if it has not filed a required campaign finance report. This proposed rule adoption prescribes the criteria for a filing officer to administratively discontinue a political committee and provides a requirement for the filing officer to attempt to notify the committee of the proposed discontinuation no later than 30 days prior to administratively discontinuing the committee.

Rules Coordinator: Brenda Bayes
Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
Telephone: (503) 986-1518

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**Teacher Standards and Practices Commission
Chapter 584**

Date: 1-6-06 **Time:** 11 a.m. **Location:** TSPC Office
465 Commercial St. NE
Salem, OR 97301

Hearing Officer: Victoria Chamberlain
Stat. Auth.: ORS 342.165
Other Auth.: 2005 OL, Ch. 730, Sec. 2 & HB 2550 (1999)
Stats. Implemented: ORS 342.127, 342.223 - 232, 342.120 - 342.200, 342.400, 342.985, 181.525 & 342.455 - 342.495
Proposed Amendments: 584-021-0170, 584-021-0177, 584-023-0025, 584-036-0055, 584-036-0062
Last Date for Comment: 1-6-06
Summary: 584-021-0170: *Fees* — Increases fees for issuance of a School Nurse License.

584-021-0177: *Criminal Records Check Requirement* — Amends Record Check administrative rule for School Nurses to incorporate reduced number of fingerprint cards required and increased fingerprint fees required.

584-023-0025: *Fees* — Increases fees for Charter School Registrations to incorporate increased fingerprint fees.

584-036-0055: *Fees* — Increases all fees for the agency for licensure and licensure services. Generates income to fund the increase in technological, telephonic and other services being provided by the agency.

584-036-0062: *Criminal Records Check Requirement* — Amends Record Check administrative rule for licensed educators to incorporate reduced number of fingerprint cards required and increased fingerprint fees required.

Rules Coordinator: Victoria Chamberlain
Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301
Telephone: (503) 378-6813

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Adm. Order No.: ACLB 4-2005

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

Certified to be Effective: 11-2-05

Notice Publication Date: 9-1-05

Rules Adopted: 161-025-0025

Rules Amended: 161-001-0005, 161-002-0000, 161-003-0020, 161-006-0025, 161-010-0080, 161-015-0030, 161-020-0035, 161-025-0000, 161-025-0005, 161-025-0010, 161-025-0030, 161-025-0060, 161-050-0000, 161-050-0040

Subject: Permanent changes to Oregon Administrative Rules 161, Division 1 regarding rulemaking authority; Division 2 regarding definitions; Division 3 regarding fees; 6 regarding the Board's budget; Division 10 regarding licensure and certification requirements; Division 15 regarding submission of application; Division 20 regarding educational courses, requirements and providers; Division 25 regarding scope of practice and procedures; and Division 50 regarding temporary non-resident registrations and address changes.

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

161-001-0005

Model Rules of Procedure

(1) The Model Rules of Procedure, OAR 137-003-0501 to 137-003-0700, as promulgated by the Attorney General of the State of Oregon, apply to all contested case hearings conducted by a hearing officer from the Hearing Officer Panel on behalf of the Board.

(2) The Board adopts the current edition of the Model Rules of Procedure, OAR chapter 137, division 001, as promulgated by the Attorney General of the State of Oregon and effective January 15, 2004.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure are available from the office of the Attorney General or the Appraiser Certification and Licensure Board.]
Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674

Hist.: ACLB 6-1991, f. & cert. ef. 12-4-91; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05

161-002-0000

Definitions

As used in OAR 161-001-0005 to 161-050-0050, the following terms (whether capitalized or not) shall have the following meanings:

(1) "Administrator" means the administrator of the Board appointed by the Board.

(2) "Affiliate" means a business organization sharing with a financial institution or insurance company some aspect of common ownership and control.

(3) "Appraisal" or "Real Estate Appraisal" means "appraisal" as defined in USPAP.

(4) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) "Appraisal Report" means "report" as defined in USPAP.

(6) "Appraiser Assistant" or "AA" means a person who is not licensed or certified as an appraiser, but is registered as an appraiser assistant under ORS 674.310, and who assists with real estate appraisal activity under the direct supervision of a certified or licensed appraiser.

(7) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) established pursuant to the Federal Act.

(8) "Board" or "ACLB" means the Appraiser Certification and Licensure Board established under ORS Chapter 674.

(9) "Certificate" means the document issued by the Board indicating that the person named thereon has satisfied the requirements for certification as a state certified residential or state certified general appraiser.

(10) "Classroom hour" as used in reference to qualifying and continuing education means 50 minutes out of each 60 minute segment.

(11) "Completion" means interpreting, analyzing and reconciling data or compiled data, including reviewing and adopting another person's interpretations and reconciliations as one's own.

(12) "Complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, market conditions, or form of ownership is atypical. For example, atypical factors may include, but are not limited to:

- (a) Architectural style;
- (b) Age of improvements;
- (c) Size of improvements;
- (d) Size of lot;
- (e) Neighborhood land use;
- (f) Potential environmental hazard liability;
- (g) Property interests;
- (h) Limited readily available comparable sales data; or
- (i) Other unusual factors.

(13) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied to renew a license, certificate or appraiser assistant registration.

(14) "Direct Supervision" of an appraiser assistant means:

(a) Disclosing in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; and

(b) Reviewing the appraiser assistant's appraisal report(s) to ensure research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(c) Reviewing the appraiser assistant's work product and discussing with the appraiser assistant any edits, corrections or modifications that need to be made to that work product to satisfy OAR 161-002-0000(14)(b); and

(d) Accepting sole and total responsibility for the appraisal report by signing the appraisal report and certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice.

(15) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(16) "Federal Financial Institution Regulatory Agency" means:

- (a) The Board of Governors of the Federal Reserve System;
- (b) The Federal Deposit Insurance Corporation;
- (c) The Office of the Comptroller of the Currency;
- (d) The Office of Thrift Supervision; or
- (e) The National Credit Union Administration.

(17) "Financial Institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(18) "Good Standing" means the status of a person whose license, certificate or registration is not currently suspended or been revoked.

(19) "Issuance" means the act of communicating the opinion of value either in writing or orally.

(20) "License" means the document issued by the Board indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

(21) "Licensee" means any person who holds an active or inactive Oregon appraiser license, certified residential appraiser certificate, or certified general appraiser certificate.

(22) "Mortgage banker" has the meaning defined in ORS 59.840.

(23) "Non-residential" appraising means to render a value on real property other than one-to-four family residential properties.

(24) "One-to-four family residential property" means a property that includes one to four residential units and is residential in character, i.e., zoning, land use.

(25) "Preparation" means compiling data, including reviewing and adopting such compiled data as one's own.

(26) "Prerequisite education" means the initial qualifying educational requirements to become licensed or certified with the Board.

(27) "Professional real estate activity" has the meaning defined in ORS 696.010.

(28) "Qualifying Education" means education that is creditable toward the education requirements for initial licensure or certification under one or more of the three real estate appraiser classifications.

(29) "Real estate appraisal activity" has the meaning defined in ORS 674.100.

(30) "Real Estate" or "Real Property" means an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops,

ADMINISTRATIVE RULES

water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(31) "State Certified General Appraiser or "SCGA" means an individual who has been certified as a state certified general appraiser by the Board.

(32) "State Certified Residential Appraiser or "SCRA" means an individual who has been certified as a state certified residential appraiser by the Board.

(33) "State Licensed Appraiser or "SLA" means an individual who has been licensed as a state licensed appraiser by the Board.

(34) "Transaction Value" means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases and investments in or exchange of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interest in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(d) For determinations of the transaction value of real property or interests in real property in circumstances other than described in the preceding (a) to (c) of this section, the market value of the real property interest involved.

(e) In condemnation or partial taking actions, the transaction value is deemed to be the value of the larger parcel before the taking.

(35) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2005.

(36) "Workfile" means "workfile" as defined in USPAP.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-003-0020

Fees

The Board shall charge and collect the following fees:

(1) Examination Fee — \$125;

(2) Application Fee — \$75;

(3) Fee for Certificate or License Issued (two years) — \$450;

(4) Fee for Certificate or License Renewed (two years) — \$400;

(5) Fee for Duplicate Certificate/License — \$10;

(6) Fee for Inactive Certificate or License (two years) — \$100;

(7) Fee for Renewal of Inactive Certificate or License (two years) — \$100;

(8) Fee for Reactivation of Inactive Certificate or License — \$60;

(9) Fee for Late License/Certificate Renewal (in addition to renewal fee) — \$50;

(10) Fee for Temporary Registration — \$100;

(11) Annual Federal Registry Fee (set by the ASC of the FFIEC) —

Actual Fee;

(12) Appraiser Assistant Registration Application — \$75;

(13) Appraiser Assistant Annual Registration Renewal — \$75;

(14) FBI Criminal Background Check — \$35;

(15) Fee for a certified copy of a certificate-of-good-standing — \$20;

(16) Application Fee for Qualifying Education Course — \$100;

(17) Application Fee for Continuing Education Course — \$50.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-001-0020; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05

161-006-0025

Budget

The Board hereby adopts by reference the Board's 2005–2007 Biennium Budget of \$1,081,030 covering the period from July 1, 2005 through June 30, 2007. The Board will amend budgeted accounts as necessary within the approved budget of \$1,081,030 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; ACLB 4-2005, f. & cert. ef. 11-2-05

161-010-0080

Appraiser Assistant Registration — Application and Renewal Requirements

(1) A person desiring to participate in an appraiser training program must register with the Board and work under the direct supervision of one or more licensees who have been licensed or certified with the Board for a minimum of 24 months, are in good standing with the Board. Experience gained prior to registration will be not accepted.

(2) Prior to registering with the Board, an Appraiser Assistant applicant must:

(a) Complete 75 hours of qualifying education in the following categories and successfully pass the applicable final examinations:

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

(B) 60 hours of other qualifying education as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five-year requirement does not apply to licensees that register as an Appraiser Assistant to upgrade their license or certificate.

(b) Make arrangements with one or more licensees who agree to directly supervise their real estate appraisal activities.

(3) The applicant must submit an Appraiser Assistant Registration Application that meets the requirements of OAR 161-015-0010(1) through (5) and includes a non-refundable application fee as described on the application form.

(4) The Appraiser Assistant Registration must be renewed on an annual basis. The renewal application must be submitted on the prescribed form and include the following:

(a) Verification of successful completion of the Appraisal Foundation's National USPAP Update course or its equivalent, if applicable (required on first renewal and every other year thereafter);

(b) For applicants who have been registered two years or more, verification of successful completion of no less than fourteen hours of qualifying or continuing education. The fourteen education hours may include the USPAP Update course and must be obtained after the date their last registration was issued.

(5) During the period beginning on the day following the expiration date of the registration, and ending on the date of the renewal of the registration, an Appraiser Assistant may not receive experience credit for any experience accrued during the lapse in registration. If the Appraiser Assistant fails to renew the registration within one year from the expiration date, the registration is terminated and a new application must be submitted pursuant to ORS 161-010-0080.

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

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 4-2005, f. & cert. ef. 11-2-05

161-015-0030

Submission of License or Certificate Application

(1) Each application must be accompanied by a non-refundable application fee.

(2) An application that is not properly completed, does not contain all the required information, or is not accompanied by the required fee will be deferred. An application will also be considered incomplete if the check for payment of the required fees is dishonored;

(3) The application will be reviewed to determine whether the applicant has sufficient education and experience and is otherwise qualified to sit for the examination;

(4) Upon application approval, the applicant is notified that they are approved to sit for the examination. Upon successful completion of the examination, the Board will notify the appraiser and within one year of the notification, the applicant must submit the ACLB Certificate or License Request form with the appropriate licensing/certification and national registry fees, requesting that their license/certificate be issued. The

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Administrator issues the certificate or license to the applicant. The appraiser's name is submitted to the FFIEC Appraisal Subcommittee for inclusion on the Federal Registry.

(5) Upon issuance of a license or certificate, consistent with the scope of practice as provided in OAR 161-025-0000, 161-025-0005 and 161-025-0010, the appraiser is authorized to conduct real estate appraisal activity between the date of the issuance of the license or certificate, and the renewal date of the license or certificate, unless sooner revoked or suspended. No more than one license or certificate shall be issued and outstanding to, or in favor of, any appraiser at one time.

(6) An applicant who is not a resident of the State of Oregon must submit with the application, an irrevocable consent to service form appointing the Administrator of the Board as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(7) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(8) An applicant who has been licensed or certified in other states must have successfully passed an examination approved by the AQB and the Appraisal Subcommittee or they will be required to take the approved Board examination. The examination must be at a level consistent with the appraiser category applied for in the State of Oregon. The examination results must be sent directly from the testing service to the Board office.

(9) Applicants for licensure, certification, or registration must have a license history submitted directly to the Board office from each state in which he or she has ever been licensed, certified, or registered as an appraiser or appraiser assistant, or the Board may obtain a National Registry Appraiser License History report. Applicants must be in good standing in all states in which they are licensed, certified, or registered or the application will be denied.

(10) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the board.

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

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-1999, f. & cert. ef. 4-20-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 4-2005, f. & cert. ef. 11-2-05

161-020-0035

Application for Course Approval

Course owners seeking initial Board approval shall make application on a form prescribed by the Administrator, and submit all information required by the application form along with a non-refundable application fee. An application must be complete before it will be assigned for review by course reviewers.

(1) The Board shall exercise its best efforts, in accordance with applicable law, to protect the confidentiality of course examinations or other proprietary material submitted by applicants as part of their course materials.

(2) Course providers shall not misrepresent Board approval status of their course in advertising. If an applicant violates this provision, the Administrator may suspend the review of the course in question.

(3) State or Federal agencies or commissions are approved providers.

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0000

State Certified General Appraiser

A State Certified General Appraiser (SCGA) is authorized to perform appraisals for all types of real property.

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0005

State Certified Residential Appraiser

(1) A state certified residential appraiser (SCRA) is authorized to appraise:

(a) All types of one-to-four family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one-to-four family residential

purposes, and where the highest and best use is for one-to-four family residential purposes;

(b) All other types of real property having a transaction value of less than \$250,000.

(2) The certified residential classification does not include the appraisal of subdivisions wherein a development analysis and/or appraisal is necessary and utilized.

(3) A state certified residential appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties;

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(4) A state certified residential appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value;

(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(5) The state certified residential appraiser may appraise properties involving partial taking or condemnation actions where the value of the larger parcel is within the scope of practice for the state certified residential appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state certified residential appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's practice. In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(a) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(b) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(c) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0010

State Licensed Appraiser

(1) A state licensed appraiser (SLA) is authorized to appraise:

(a) Non-complex, one-to-four family residential units having a transaction value of less than \$1,000,000;

(b) Complex one-to-four family residential units having a transaction value of less than \$250,000; and

(c) All other types of real property having a transaction value of less than \$250,000.

(2) If, during the course of an appraisal assignment of a one-to-four family residential property, the state licensed appraiser identifies factors that would result in the property, market conditions, property characteristics, or form of ownership, to be a complex one-to-four family residential property appraisal having a transaction value of \$250,000 or more, they must inform the client that the assignment is outside the scope of their license, decline the assignment, and advise the client that a state certified residential or certified general appraiser must complete the assignment. The same is true for all other types of real property found to have a transaction value of \$250,000 or more.

(3) A state licensed appraiser may appraise rural properties with one or more of the following:

(a) One to four unit single family residential properties;

(b) Other rural properties primarily used for recreation or other non-income producing purposes.

(4) A state licensed appraiser may not appraise rural properties with one or more of the following:

(a) Primary use for production of agricultural income which is included in the value;

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(b) Commercially valuable timber and/or mineral interests which is included in the value;

(c) Development potential for commercial or industrial improvements;

(d) Commercial/industrial improvements;

(e) Land or properties with environmental hazards.

(5) The state licensed appraiser classification does not include the appraisal of subdivisions wherein a development analysis and/or appraisal is necessary and utilized.

(6) The state licensed appraiser may appraise properties involving partial taking or condemnation actions where the value of the larger parcel is within the scope of practice for the state licensed appraiser. If, during the course of a condemnation or partial taking appraisal assignment, the appraiser could reasonably expect the before value of the larger parcel to exceed the allowable transaction value for the state licensed appraiser, the appraiser shall inform the client for whom the appraisal is being performed that the assignment exceeds the scope of their appraiser's license. In condemnation, "larger parcel" is defined as that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance. Condemnation means:

(a) The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain;

(b) The act of a federal, state, county, or city government or district or public utility corporation vested with the right of eminent domain to take private property for public use when a public necessity exists;

(c) Upon payment of just compensation, the act of a sovereign in substituting itself in the place of the owner and taking all or part of the rights of the owner.

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1995, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0025

Supervising Appraiser (SA)

(1) Only a licensee who has been actively licensed or certified for at least 24 months, is in good standing with the Board may directly supervise Appraiser Assistants.

(2) A State Licensed Appraiser may have no more than one registered appraiser assistant at a time. However, a State Licensed Appraiser supervising more than one appraiser assistant as of June 1, 2004, may continue to supervise the same appraiser assistants until June 1, 2006, but may not supervise any additional or alternative appraiser assistants unless those currently registered with the SLA do not renew their appraiser assistant registrations.

(3) A State Licensed Appraiser who, as of June 1, 2004, has not been actively licensed for at least 24 months and who is supervising any appraiser assistants may continue to supervise the same appraiser assistants but may not supervise any additional or alternative appraiser assistants until the State Licensed Appraiser has been actively licensed for at least 24 months.

(4) The supervising appraiser must directly supervise the registered appraiser assistant in each assignment to ensure that the results of each assignment comply with USPAP and all applicable appraisal laws and rules. To do so, the supervising appraiser must:

(a) Ensure that the appraiser assistant gains sufficient knowledge, skills and abilities that will enable them to do all of the following:

(A) Define the appraisal problem.

(i) Identify and locate the real estate;

(ii) Identify the property rights to be valued;

(iii) Identify the use of the appraisal;

(iv) Define value(s) to be estimated;

(v) Establish date(s) of value estimate(s);

(vi) Identify and describe the scope of the appraisal; and

(vii) Identify and describe limiting conditions or limitations.

(B) Conduct preliminary analysis, select and collect applicable data.

(i) Identify general data (regional, city and neighborhood) — social, economic, governmental and environmental factors;

(ii) Identify specific data (subject and comparables) — site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and

(iii) Identify competitive supply and demand (the subject market) — inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies.

(C) Conduct an analysis of the subject property which includes:

(i) Site/improvements;

(ii) Size;

(iii) Costs;

(iv) Elements of comparison; and

(v) Units of comparison.

(D) Conduct highest and best use analysis (specified in terms of use, time and market participants).

(i) Land as if vacant and available; and

(ii) Property as improved (existing or proposed).

(E) Estimate land value, including on-site improvements.

(F) Estimate value of the property using each of the three approaches to value — cost, sales comparison and income capitalization.

(G) Reconcile each value indication and reconcile the final value estimate.

(H) Report estimate(s) of value(s) as defined.

(b) Review each appraisal report the appraiser assistant prepares to ensure accuracy and reliability;

(c) Ensure that the appraisal report includes proper disclosure regarding the inspection of the subject and the comparable sales as required by OAR 161-025-0060(3).

(d) Make a clear and prominent disclosure of real estate appraisal assistance in each appraisal report by identifying each individual category of experience that the appraiser assistant provided as outlined in OAR 161-025-0025(3)(a)(A)–(H); and

(e) Accept responsibility for the appraisal report by signing and certifying that the report has been prepared in compliance with USPAP.

(f) Ensure that the appraiser assistant will be granted experience credit by doing the following:

(A) Verifying that the appraiser assistant is currently registered with the Board. Experience gained prior to registration or after a registration has lapsed will not be credited toward the experience hours required to become licensed/certified.

(B) Verifying that all appraisal experience is properly documented on the Appraiser Assistant Experience Log on an ongoing basis.

(i) Make entries when each assignment is completed to ensure that the log is complete and accurate.

(ii) Maintain a separate experience log for each supervising appraiser.

(C) Reviewing documentation on a monthly basis — reviewing the log, approve all entries or edit as required, sign the log, have the appraiser assistant sign the log, and have the appraiser assistant maintain the ongoing log for any future application.

(D) Allowing the appraiser assistant to obtain copies of any appraisal reports on which they provided assistance.

(5) Any licensee who has been disciplined by the Board for violation(s) of ORS Chapter 674 and/or OAR chapter 161 pursuant to a final order of the Board issued after June 1, 2004, may not supervise appraiser assistants as provided by the following presumptive guidelines unless substantial and compelling reasons exist to depart from these guidelines as determined by the Administrator or the Board:

(a) First Board Action: No restriction unless the first board action results in suspension or revocation or the final order in the action otherwise restricts the licensee's eligibility to act as a supervising appraiser.

(b) Second Board Action: Restricted from acting as a supervising appraiser for 24 months immediately following the date of the final order except as otherwise provided in the order.

(c) Third Board Action or any Board action resulting in suspension or revocation: Permanently restricted from acting as a supervising appraiser immediately following the date of the final order except as otherwise provided in the order.

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

Stats. Implemented: ORS 674

Hist.: ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0030

Appraiser Assistant

The appraiser assistant must register with the Board in order to receive experience credit towards obtaining a real estate appraiser license or certificate.

(1) An appraiser assistant applicant must be at least 18 years of age, and work under the direct supervision of an Oregon licensee.

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(2) The appraiser assistant, before performing an assignment for a supervising appraiser, must have the knowledge and experience to complete the assignment competently.

(3) All appraisal work completed by an appraiser assistant shall be prepared in compliance with USPAP and these administrative rules.

(4) An appraiser assistant may assist in the preparation of any and all components of the appraisal.

(5) An appraiser assistant must not sign, co-sign or issue an appraisal report.

(6) Any appraiser assistant who has provided professional assistance to a supervising appraiser who is signing and issuing the appraisal report must be identified in the report and the extent of the assistance provided must be disclosed in the report as described in OAR 161-025-0025.

(7) An appraiser assistant must not represent, nor advertise in any manner which may mislead the public into believing, that they are a licensee or that they are authorized to perform the functions of a licensee.

(8) When inspecting a property, the appraiser assistant must not misrepresent their status and at all times clearly identify themselves as a registered appraiser assistant.

(9) The scope of practice for the appraiser assistant is the appraisal of those properties which the supervising appraiser is permitted to appraise.

(10) An appraiser assistant will only be granted experience credit if they have demonstrated that they have provided substantial professional real estate appraisal assistance in all categories of experience as outlined in OAR 161-025-0025(4)(a)-(H).

(11) The appraiser assistant is entitled to obtain copies of any appraisal reports on which they provided professional real estate appraisal assistance.

(12) The appraiser assistant may have more than one supervising appraiser, each of whom must sign the Appraiser Assistant Registration Application. If the appraiser assistant subsequently adds or changes a supervising appraiser, the appraiser assistant must submit a Change or Adding Supervising Appraiser form, signed by the new supervising appraiser(s). Any experience gained with a new supervising appraiser prior to confirmation from the Board that the registration has been amended to include the new supervising appraiser(s) will not count as experience credit towards obtaining a real estate appraiser license or certificate.

(13) Appraiser Assistance Logs must be prepared and maintained as described in OAR 161-025-0025(4)(f). Separate appraisal logs must be maintained for each supervising appraiser.

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-025-0060

Appraisal Standards and USPAP

(1) All licensees must develop and communicate each appraisal assignment in compliance with these administrative rules and USPAP.

(2) A licensee employed by a group or organization that conducts itself in a manner that does not conform to USPAP Standards must take steps that are appropriate under the circumstances to ensure compliance with the Standards.

(3) All licensees must certify to what extent they personally inspected the property that is the subject of the appraisal assignment. Each report must clearly state that the subject property was: inspected both inside and out; inspected from the exterior only; or was not personally inspected by the licensee.

(4) In addition to certifying as to the extent of the subject's inspection, all licensees must also certify to what extent each of the comparable sales relied upon in the appraisal were personally inspected.

(5) All licensees testifying or presenting evidence in an administrative or judicial proceeding, must base their testimony or evidence only upon a written report on the appraisal or on an appraisal report that was prepared and documented in compliance with USPAP and ORS 674.410.

(6) The "Uniform Standards of Professional Appraisal Practice," 2005 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2005, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

(7) All licensees must list their certificate or license number in each appraisal report.

(8) All licensees must comply with USPAP in all valuation work as provided in ORS 674.100(2), (3).

(9) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

(a) Board member;

(b) Employee; or

(c) Volunteer serving at the request of the Board.

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

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05

161-050-0000

Temporary Non-Resident Registration of Out-of-State Appraisers

(1) The Board will recognize temporarily the certificate or license of an appraiser issued by another state if:

(a) the appraiser's business is of a temporary nature; and

(b) the appraiser registers with the Board.

(2) Any out-of-state appraiser desiring to conduct real estate appraisal activity within the State of Oregon, must submit an application for temporary registration on a form prescribed by the Board. The application must include:

(a) The required registration fee; and

(b) An irrevocable consent to service form appointing the Board Administrator as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(3) The applicant must also request a license history from the applicant's resident state indicating applicant is currently in good standing. This verification must be submitted directly to the Board office by the applicant's resident state licensing authority. Alternatively, the Board may obtain a National Registry Appraiser License History Report.

(4) The non-resident registration is only valid for a single appraisal assignment within the state. In the case of appraisers working as salaried employees of a financial institution, a temporary registration may be awarded for a 90-day period and renewed one time within the twelve (12) month period following the original date of temporary registration issuance.

(5) A single appraisal assignment may include one or more properties under one contract for a single client.

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05

161-050-0040

Changes in Application/Renewal Information

Every licensee, registered appraiser assistant or applicant must notify the Board, in writing or by e-mail, of a change in any of the following information within ten business days of the change:

(1) Name;

(2) Business or Employer address (physical);

(3) Mailing address;

(4) Work telephone;

(5) Facsimile;

(6) Social Security Number; or

(7) E-mail address.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 4-2005, f. & cert. ef. 11-2-05

ADMINISTRATIVE RULES

Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 7-2005

Filed with Sec. of State: 10-27-2005

Certified to be Effective: 10-27-05

Notice Publication Date: 10-1-05

Rules Adopted: 850-050-0010

Subject: Clarifies sanctions and discipline of the Board.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-050-0010

Sanctions for Violations

The following lists the Board's disciplinary practices with respect to most common violations of law. Other less common violations may also result in discipline. The Board will determine the severity of each violation and decide the discipline to impose accordingly.

(1) General violations.

(a) The Board will attempt to resolve by non-disciplinary means, allegations of the following kinds of violations, in the absence of aggravating circumstances and if the licensee has not been the subject of a final order which finds the licensee committed a violation of a similar nature:

- (A) Practicing outside the scope of practice;
- (B) Inadequate charting;
- (C) Failure to report a change of address;
- (D) Prescribing off the formulary;
- (E) False or misleading advertising; or
- (F) Failure to refer upon termination.

(b) Instead of discipline in the violations listed in (1)(a), the Board may issue a letter of caution or a letter of warning. If Licensee disregards the Board's recommendation in the letter of caution or the letter of warning, the Board may initiate disciplinary action.

(c) The Board generally will take formal disciplinary action for allegations of the following kinds of violations, in the absence of major mitigating circumstances:

- (A) Negligent prescribing;
- (B) Negligent treatment;
- (C) Conduct contrary to the standard of ethics;
- (D) Failure to refer when referral is appropriate;
- (E) Untimely response to Board investigation;
- (F) Aiding or abetting unlawful practice by an unlicensed person;
- (G) Sexual impropriety with a patient; or
- (H) Conviction of a crime involving moral turpitude.

(d) Discipline for violations listed in (1)(c) may include a letter of reprimand, a civil penalty, probation, license suspension, license limitations, and license revocation.

(e) For violations which are not listed in subsections (1)(a) and (b) of this rule, the Board will determine the appropriate discipline.

(f) If a violation is listed in subsection (1)(a) of this rule and the licensee has already received a letter of caution or a letter of warning for a violation of a similar nature, the Board may proceed with formal discipline.

(2) Aggravating and Mitigating Factors or Circumstances. Discipline proposed by the Board may increase in severity, possibly up to license revocation, if there are aggravating circumstances. Discipline may decrease in severity if there are mitigating circumstances.

(a) Aggravating circumstances include, but are not limited to, the following:

- (A) The same or similar violation has occurred more than once;
- (B) The violation occurred or was repeated over a significant length of time;
- (C) The licensee has previously been disciplined by the Board or in another jurisdiction;
- (D) The violation was deliberate or grossly negligent;
- (E) The licensee received some benefit from committing the violation;
- (F) The violation involved a significant chance for causing harm to the patient or the public.

(b) Mitigating circumstances include, but are not limited to, the following:

- (A) The licensee accepted responsibility for the violation;
- (B) The licensee practiced a significant period of time without complaints or disciplinary action taken by the Board or any other jurisdiction.

(3) Probation. Probation may be added where the circumstances indicate that future monitoring, training, or other follow-up is necessary or appropriate. Probation may include completion of an approved treatment

program when a licensee is alleged to engage in habitual or excessive use of drugs or alcohol.

(4) Practice Restriction. Practice restriction or practice limitation may be added where the circumstances warrant more than a civil penalty but less than a license suspension.

(5) Education. Education may be required when the circumstances indicate that further education is merited to prevent a recurrence of the violation.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.110

Hist.: BNE 7-2005, f. & cert. ef. 10-27-05

Adm. Order No.: BNE 8-2005

Filed with Sec. of State: 10-27-2005

Certified to be Effective: 10-27-05

Notice Publication Date: 10-1-05

Rules Renumbered: 850-010-0175 to 850-005-0175, 850-010-0185 to 850-005-0185, 850-010-0010 to 850-030-0010, 850-010-0030 to 850-030-0030, 850-010-0035 to 850-030-0035, 850-010-0040 to 850-030-0040, 850-010-0055 to 850-030-0055, 850-010-0060 to 850-030-0060, 850-010-0070 to 850-030-0070, 850-010-0080 to 850-030-0080, 850-010-0090 to 850-030-0090, 850-010-0110 to 850-030-0110, 850-010-0195 to 850-030-0195, 850-010-0230 to 850-035-0230, 850-010-0210 to 850-040-0210, 850-010-0120 to 850-050-0120, 850-010-0130 to 850-050-0130, 850-010-0140 to 850-050-0140, 850-010-0150 to 850-050-0150, 850-010-0190 to 850-050-0190, 850-010-0212 to 850-060-0212, 850-010-0215 to 850-060-0215, 850-010-0220 to 850-060-0220, 850-010-0225 to 850-060-0225, 850-010-0226 to 850-060-0226

Subject: Renumber existing rules.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-005-0175

Board Terms

The term for each member of the Board will be three years, with no more than three Board member terms expiring in the same year.

Stat. Auth.: 685.125

Stats. Implemented: 685.160

Hist.: BNE 7-2004, f. & cert. ef. 9-10-04; Renumbered from 850-010-0175, BNE 8-2005, f. & cert. ef. 10-27-05

850-005-0185

Peer Review

(1) If the Board directs, peer review will occur upon submission of a request for review by a patient, his/her representative, insurer or health care provider, an agency, or the Board itself. This request must be made in writing and submitted with all available information and documentation. The Board shall establish criteria for screening requests for peer review. The Board shall have the authority to establish a fee to assist in defraying administrative costs of performing the review.

(2) The Peer Review Investigatory Committee may request an informal interview with the doctor(s) being reviewed and, when appropriate, may request the opinion of other health care providers for reviews involving particular area of practice. When required to travel, the members shall be paid mileage and per diem at the state rate.

(3) Any member(s) of the Peer Review Committee shall disqualify him/herself from participation in a case investigation for close personal and/or professional involvement or association with the involved doctor(s), patient, patient's representative and the insurer or professional competition in the community with the involved doctor(s). Members shall also be disqualified for lack of impartiality. The doctor(s) being reviewed may protest being reviewed by a specific peer review member, request the presence of a Board member(s) or be given the opportunity to be accompanied by legal counsel.

(4) The Peer Review Investigatory Committee shall consider all files and records submitted to it by the Board. These records shall be compiled in their completeness before submission to each Peer Review member. The Committee shall also consider any written and/or oral comments by doctor(s) being reviewed and the involved patient. The Committee shall meet, complete the review and submit a written report to the Board within 60 days of the submission of the case to the Peer Review Committee. This report should be made in the presence of the full committee, or copies shall be sent to the absent members for their written approval prior to submission to the Board. The report shall include, but not be limited to, a brief statement of the facts of the case, any violation of ORS Chapter 685, the neces-

ADMINISTRATIVE RULES

sity, efficacy and/or appropriateness of any part of the care provided and any comments which may assist the Board in taking appropriate action. An annual summary of the findings of the Peer Review Investigatory Committee shall be prepared and submitted to the Board.

(5) The peer review process shall be governed by ORS Chapter 183 and 685.205. The evaluations and recommendations of the Committee shall be submitted and placed in the files of the Board and shall not be subject to the public disclosure or admissible as evidence in any judicial proceeding. Only in the case where the Board finds any violation of ORS Chapter 685, and following a formal hearing, shall the party who submitted the request be notified of the Board's specific findings. The doctor(s) being reviewed must receive a certified copy of the Peer Review Investigatory Committee's findings. The Board shall dismiss immediately any Peer Review member found to have violated ORS Chapter 685.

(6) To provide active supervision over the conduct of the peer review committee a board member shall serve as a member of the peer review committee.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.205

Hist.: NE 1-1990, f. & cert. ef. 4-13-90; BNE 3-2002(Temp), f. & cert. ef. 6-11-02 thru 12-8-02; BNE 5-2002, f. & cert. ef. 10-10-02; Renumbered from 850-010-0185, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0010

Requirements for Application

(1) Any applicant for the basic science examination must be enrolled and entering at least the third year of an approved naturopathic college. Any applicant for the clinical sciences examination shall be a graduate of an approved naturopathic college that offers a resident four-year course of at least 4,000 hours.

(2) Each applicant shall submit satisfactory evidence of having had, prior to matriculation into a naturopathic college, at least two years Liberal Arts or Science study in a college or university accredited by either the Northwest Association of Secondary Schools and Colleges or a like regional association or in a college or university in Oregon approved for granting degrees by the Educational Coordinating Commission.

Stat. Auth.: ORS 183 & 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 3-1990(Temp), f. 11-27-90, cert. ef. 12-1-90; Renumbered from 850-010-0010, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0030

Application for Examination; Application for License

(1) Any application for examination by the Board shall be filled out, without alterations, on an application furnished by the Board.

(a) The application shall be filed with the Board prior to the date of the examination.

(b) A copy of the applicant's naturopathic physician's diploma and transcripts shall be attached to the examination application.

(2) Application for licensure may be made after passing national and state examinations.

(a) Payment of license fee must be made within one year of passing examinations. If payment is not received within one year of passing the examinations, state examinations will need to be retaken.

(b) Application for initial license must be made within two years of passing state examinations if licensed in another licensing jurisdiction. If not completed within two years of initial application, state jurisprudence and formulary examinations will need to be retaken.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.070

Hist.: NE 2, f. 6-7-59; NE 2-1984, f. & ef. 2-28-84; BNE 6-2001, f. 10-9-01, cert. ef. 1-1-02; Renumbered from 850-010-0030, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0035

Fees for Licensure, Examination and Registration

(1) The fee to apply to take the jurisprudence and formulary examinations to be eligible for licensure shall be \$150.

(2) The fee for an initial license to practice naturopathic medicine (including reciprocity) shall be \$150.

(3) The fee for an initial certificate of special competency in natural childbirth shall be \$60.

(4) The biennial license renewal fee for an active Naturopathic license shall be \$550.

(5) The annual license renewal fee for an inactive license shall be \$125.

(6) The annual renewal fee for a retired license shall be \$15.

(7) The annual renewal fee for a certificate of special competency in natural childbirth shall be \$60.

(8) A late fee of \$75 will be charged for any renewal that does not meet the December 15 deadline per OAR 850-010-0195.

(9) The fee to reinstate an expired license to active status shall be \$275 for each year the license was expired, plus a restoration fee of \$150.

Stat. Auth.: ORS 685.100(6)(b) & 685.100(6)(c)

Stats. Implemented: ORS 685.100 & 685.102

Hist.: NE 1-1987(Temp), f. 9-17-87, ef. 10-1-87; NE 1-1988, f. & cert. ef. 3-15-88; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 1-1998(Temp), f. 7-15-98, cert. ef. 8-3-98 thru 1-30-99; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 2-1999, f. & cert. ef. 9-24-99; BNE 5-2000, f. & cert. ef. 12-6-00; BNE 4-2003, f. & cert. ef. 10-9-03; Renumbered from 850-010-0035, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0040

Examination Dates

State Jurisprudence and Formulary examinations are customarily offered two times each year. Examinations for natural childbirth certification are customarily offered once a year.

Stat. Auth.: ORS 183 & 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; NE 1-1986, f. & ef. 4-10-86; BNE 3-2001, f. & cert. ef. 2-7-01; Renumbered from 850-010-0040, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0055

Practice in Oregon by Out-of-State Naturopathic Physicians in the Event of an Emergency

(1) In the event of a disaster emergency declared by the Governor of Oregon, the Board of Naturopathic Examiners shall allow naturopathic physicians licensed in another state to provide medical care in Oregon under special provisions during the period of the declared disaster emergency, subject to such limitations and conditions as the Governor may prescribe.

(2) The out-of-state physician shall submit to the Board the following information:

(a) Verification of a permanent, current, and unrestricted license to practice naturopathic medicine in another state which is not the subject of a pending investigation by a state medical board, or another state or federal agency; and

(b) Current federal or state photo identification, i.e., driver license or passport.

(3) The requirement for completing and submitting the information to the Board is waived if the physician is a member of the National Disaster Medical System (NDMS) under the Office of Emergency Preparedness, U.S. Department of Health and Human Services, and submits to the Board a copy of his/her NDMS photo identification.

(4) The physician shall provide the Board documentation demonstrating a request to provide medical care from a hospital, clinic or private medical practice, public health organization, EMS agency, or federal medical facility, or has otherwise made arrangements to provide medical care in Oregon as the result of the declaration of a disaster emergency.

(5) The physician shall not practice in Oregon under the special disaster emergency provisions beyond the termination date of the emergency. Practice in Oregon beyond the termination date of the declared disaster emergency requires licensure through the Board of Naturopathic Examiners.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.160

Hist.: BNE 6-2002(Temp), f. & cert. ef. 12-6-02 thru 6-3-03; BNE 2-2003, f. & cert. ef. 4-11-03; Renumbered from 850-010-0055, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0060

Temporary Permits

Temporary permits for the practice of naturopathy shall not be issued by the Board.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; Renumbered from 850-010-0060, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0070

Reciprocity

The Board on an individual basis can consider reciprocity for applicants who hold an active license of good standing in Naturopathic medicine, in another state or territory of the United States, the District of Columbia or Canada. Applicants for license by reciprocity must possess qualifications equal to those required of persons eligible for licensure under ORS 685. An application for license by reciprocity will be denied if applicant does not meet all those qualifications. If an application for license by reciprocity is not completed within one year of receipt of application, the applicant will need to reapply.

Stat. Auth.: ORS 685

Stats. Implemented:

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Hist.: NE 2, f. 6-7-59; NE 2-1984, f. & ef. 2-28-84; BNE 7-2001, f. 10-9-01, cert. ef. 1-1-02; Renumbered from 850-010-0070, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0080

Display of License

Each licentiate of the Board shall display in their office, in a conspicuous place, their license and yearly renewal validation.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; NE 2-1984, f. & ef. 2-28-84; Renumbered from 850-010-0080, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0090

Expiration and Renewal of Licenses

(1) Unless renewed to the Executive Secretary of the Board on a form provided by the Board, all licenses to practice naturopathy in Oregon automatically expire on the date specified on each license.

(2) The renewal notice shall be accompanied by a specified biennial fee determined by the Board, the practitioner's address, and original license number. Assessment of fees shall be set on the following biennial schedule; licensees with last names beginning with letters "A" through "L" shall submit the biennial fee in odd numbered years and those licensees with last names beginning with letters "M" through "Z" shall submit the biennial fee in even numbered years.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.100

Hist.: NE 2, f. 6-7-59; NE 2-1980, f. & ef. 9-11-80; NE 1-1984, f. & ef. 1-3-84; NE 1-1987(Temp), f. 9-17-87, ef. 10-1-87; NE 1-1988, f. & cert. ef. 3-15-88; NE 1-1996, f. & cert. ef. 10-18-96; BNE 3-1999, f. & cert. ef. 11-1-99; Renumbered from 850-010-0090, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0110

Use of Unauthorized Material and Misrepresentations in Obtaining License

(1) Any applicant for a license detected in the act of offering or accepting unauthorized assistance or using unauthorized material while the examinations are in progress shall be excluded from further examination and his or her papers rejected in total.

(2) The Board may refuse to grant a license to any applicant indulging in misrepresentation, fraud, or deception, or to revoke the license granted as a result of these.

(3) The Board shall carefully and rigidly investigate applicants who attempt to obtain naturopathic license by false statements or representations in their applications or otherwise violate these rules.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; Renumbered from 850-010-0110, BNE 8-2005, f. & cert. ef. 10-27-05

850-030-0195

License Renewal Requirements

All Naturopathic physicians licensed under ORS Chapter 685, whether active or inactive or retired must complete an annual renewal form furnished by the Board. Specific requirements for each license status, renewal procedures and requirements are as follows:

(1) A Naturopathic physician holding an initial license:

(a) Must complete the renewal form furnished by the Board; and

(b) Pay the biennial renewal fee according to OAR 850-010-0090 and 850-010-0035; and

(c) Is exempt from completing CE in the initial year of licensure.

(2) A licensee doing an accredited residency for at least six (6) months in the calendar year must:

(a) Complete the annual renewal form furnished by the Board; and

(b) Pay the biennial renewal fee according to OAR 850-010-0090 and 850-010-0035; and

(c) Provide proof of an accredited residency to meet the CE requirement for an active license.

(3) A Naturopathic physician holding a certificate to practice natural childbirth must complete at least 15 hours of CE each year in obstetrics and sign an affidavit furnished by the Board confirming these hours. Seven of the 15 hours in obstetrics may be used to satisfy the requirement of an active license in 850-010-0195(4). The licensee must provide proof of current certification in neonatal resuscitation annually with the renewal.

(4) To maintain an active license, a licensee must:

(a) Complete the annual renewal form furnished by the Board; and

(b) Pay the biennial renewal fee according to OAR 850-010-0090 and 850-010-0035; and

(c) Complete at least 25 hours of Board approved CE per OAR 850-010-0210 each year and submit a signed affidavit furnished by the Board

confirming this. At least five of the required 25 CE hours must be in the pharmacology of legend drugs.

(5) A Naturopathic physician holding an inactive license must:

(a) Complete the renewal form furnished by the Board; and

(b) Pay the annual renewal fee per OAR 850-010-0035; and

(c) Complete at least 10 hours of Board approved CE each year and submit a signed affidavit furnished by the Board confirming these hours.

(6) A retired status Naturopathic license, upon completing the renewal form furnished by the Board and paying the annual renewal fee for a retired license is not required to complete CE for renewal.

(7) By November 1, the Board will send to all licensees an annual renewal form to the last mailing address on record. For a renewal to be timely, a licensee must submit to the Board a completed renewal application postmarked no later than December 15 each year. A completed renewal application consists of the completed renewal form, the biennial license fee if due, and the late fee, if appropriate, and the completed affidavit confirming completion of continuing education as required under sections (1) through (6) of this rule. Failure to meet the December 15 deadline shall result in a late fee of \$75, which must be submitted with the renewal application form. Any licensee who does not receive the renewal form by November 15 should notify the Board. It is the licensee's duty to obtain and submit the renewal form in a timely manner.

(8) The license of any licensee who fails to submit a completed renewal application by December 31 shall lapse, effective at midnight, December 31.

(9) Licensees must maintain for a period of at least five years, full and accurate records including verification of attendance to support hours reported on the signed affidavit.

(10) Each year the Board will audit a number of license renewals. These licensees will be asked to provide their CE documents to verify the signed affidavit. Licensee must provide CE records and verifications that will document compliance with the renewal requirements.

(11) After January 1, the Board may reinstate a license that has been expired for one year or less, upon submission of the affidavit of continuing education as required for an active license, completion of the renewal form furnished by the Board and paying the appropriate fees per ORS 685.100 and OAR 850-010-0035.

(12) To apply for reinstatement of a license from inactive to active status a licensee must:

(a) Complete the reinstatement form furnished by the Board; and

(b) Pay the appropriate fees per ORS 685.100 and OAR 850-010-0035, and

(c) Submit an affidavit confirming completion of continuing education as follows:

(A) If the license is inactive for 12 months or less, the licensee must demonstrate completion of 25 hours of approved continuing education during the past 12 months, with five of these hours in pharmacology; and

(B) If the license is inactive for more than one year, licensee must provide an additional five hours of approved continuing education for each subsequent year or partial year that the license was inactive, in addition to the 10 hours of CE required by OAR 850-010-0195(5).

(d) If license is inactive for more than five years, licensee must take and pass the state jurisprudence and formulary examinations furnished by the Board.

(13) Upon written application for reinstatement to an active license from an expired status, the applicant must submit an affidavit furnished by the Board, confirming completion of the continuing education requirements for an active license for each year that the license was expired, and meet the fee requirements per ORS 685.100 and OAR 850-010-0035 for an active license; or

(a) Retake the Naturopathic Physicians Licensing Examinations (NPLEX) and State Jurisprudence and Formulary examinations, as recognized by the Board; or

(b) If holding an active naturopathic license in good standing in another licensing jurisdiction, may apply for a reciprocal license per ORS 685.085.

(14) The Board may exempt any licensee from the requirements of ORS 685.102(1) upon providing evidence satisfactory to the Board of inability to comply with the CE requirement. No licensee shall be exempted from the CE requirement more than once in any five-year period.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100

Hist.: BNE 1-2003, f. & cert. ef. 2-14-03; Renumbered from 850-010-0195, BNE 8-2005, f. & cert. ef. 10-27-05

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850-035-0230

Requirements for Certification to Practice Natural Childbirth

A naturopathic physician licensed in Oregon, who wishes to practice natural childbirth must apply to and receive from the board a certificate of special competency in natural childbirth. To receive and maintain a certificate, the licensee must fulfill the following requirements:

(1) Complete at least 200 hours of course work at an approved naturopathic college or hospital in obstetrics and furnish a signed log showing evidence that (a) and (b) and (c) of this subsection have been completed under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth:

(a) Licensee must have taken part in the care of 50 cases each in prenatal and postnatal care; one case may qualify for both areas of care; and

(b) Licensee must have observed and assisted in the intrapartum care and delivery of 50 natural childbirths in a hospital or alternative birth setting. A minimum of 26 of these births must be under the supervision of a naturopathic doctor. No more than 10 of the 50 births may be under the supervision of a medical doctor. No more than 10 of the births may be observation only. A labor and delivery that starts under the care of a naturopathic doctor and includes hospitalization shall count as a birth; and

(c) Licensee must hold a current neonatal resuscitation certificate.

(2) Licensee must pass a specialty exam in obstetrics given by or approved by the Board, after first completing the 200 hours of coursework as required above, and participating in the care of at least 15 cases each in prenatal, intrapartum, and postnatal care; one case may qualify for all these areas of care.

(3) An application for a certificate of special competency in natural childbirth must be submitted, with appropriate fees, after meeting the requirements in 850-010-0230, within three years of passing the specialty examination.

(4) Licensee holding a natural childbirth certification must annually, including initial year of certification, submit 15 hours of Board approved continuing education in obstetrics. Seven of the 15 hours in obstetrics may be used to satisfy ORS 685.102. Licensee must submit proof of current certification in neonatal resuscitation annually.

(5) Licensing action by the Board under ORS 685.100 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action. When the subject of a disciplinary proceeding under ORS 685.100 relates specifically to the practice of natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of effecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under a certificate of special competency.

Stat. Auth.: ORS 183 & 685

Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160

Hist.: NE 3-1985(Temp), f. & ef. 9-23-85; NE 1-1986, f. & ef. 4-10-86; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; administrative correction 8-9-99; BNE 1-2001, f. & cert. ef. 2-7-0; Renumbered from 850-010-0230, BNE 8-2005, f. & cert. ef. 10-27-05

850-040-0210

Continuing Education

(1) Continuing education (CE) is meant to assist licensed naturopathic physicians maintain the competency and skills necessary to assure the Oregon public a continued high standard of health care.

(a) It is recommended that physicians request CE approval at least four weeks in advance, and program providers and sponsors make requests at least eight weeks before approval is needed.

(b) The Board reserves the right to decline for approval programs that are not submitted with adequate documentation.

(c) Programs of CE submitted more than 30 days after the presentation may not be considered by the Board for approval.

(2) Programs of continuing education for naturopathic physicians must meet the following criteria for approval:

(a) They must not misrepresent or mislead;

(b) They must be presented by qualified professionals including naturopathic physicians or other professionally recognized health care providers or educators;

(c) They must exclude the selling or promotion of commercial products or practice building;

(d) The material covered must pertain to the improvement of the competency and skills of the Naturopathic physician; and

(e) Programs must consist of education covering review, new, experimental, research or specialty subjects relevant to the practice of naturopathic medicine.

(3) Each licensee with an active license must obtain at least 25 hours of CE every year; each licensee holding an inactive license must obtain at least 10 hours of CE every year; a natural childbirth certificate requires 15 hours in obstetrics every year; and new licensees are not required to obtain any CE in the initial year of licensure per OAR 850-010-0195.

(a) No more than 15 hours of credit will be given in one subject area. CE, up to 15 hours in one subject area, obtained after December 15 not used in the year they were obtained, may be used in the following year for CE credit.

(b) CE credit will be rounded to the nearest quarter hour.

(c) At least ten (10) hours of CE must be obtained through participation by attendance at approved seminars, conferences, grand rounds or other in person activities.

(d) A Naturopathic physician holding an active license must obtain at least five hours of Board approved CE annually in the pharmacology of legend drugs. Pharmacy credit will be considered for programs when the presentation is specifically directed to the relevant use of pharmacological substances in naturopathic medicine. The following are examples of approved programs:

(A) Drugs listed on the formulary compendium OAR 850-010-0210;

or

(B) Non-formulary drugs relevant to patient care; or

(C) Optimal use of drugs in patient care; or

(D) Drug interactions or contraindications; or

(E) Research of drugs in conjunction with naturopathic medical care.

(e) A Naturopathic physician must show evidence of Board approved pain management education according to Oregon Law 2001, Chapter 987, effective January 2, 2006.

(f) A Naturopathic physician must obtain at least 3 hours of medical ethics education every three years, which may be part of the annual CE requirement.

(4) Any licensed naturopath using intramuscular (IM) or subcutaneous (SC) or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, SC, or IV) must have qualifying education per OAR 850-010-0212.

(5) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-010-0210(6)(1);

(b) Community service seminars and activities;

(c) Self-growth/self-help activities;

(d) Practice building activities;

(e) Medical/insurance billing presentations;

(f) Nonprofessional health related activities presented by or directed to the lay public;

(g) Proprietary programs, which promote exclusive services and/or products.

(h) Information not within or directly related to the scope of practice of naturopathic medicine.

(6) CE credit may be given by the Board for courses or activities, which are defined as follows:

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals, or institutions, programs accredited by the Accreditation Council for Continuing Medical Education (ACCME), the American Council on Pharmaceutical Education (ACPE), or approved by the Board. A verification of attendance for all CE courses or activities showing hours claimed or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars. Video or audio taped presentation credit must be documented by a thorough original outline of the presentation with a discussion of the importance of the information to the doctor's practice as well as the name and qualifications of the presenter and the exact date, time, length of taped course or seminar and sponsor of the presentation;

(c) Reading journal articles. A copy of the journal article with the date, publication and author included, must be kept along with a thorough original outline of the article, with a discussion on the importance of the information to the doctor's practice. Credit is determined by length of article and complexity of the topic;

(d) Internet activities in accordance with the standards of the ACCME or ACPE including documentation of completion;

(e) Being an original author of an article or book related to health care. Credit for such activities will be credited in the year the project is completed; no more than 15 hours will be credited for each original publication.

(f) CPR course, with proof of current certification;

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(g) Preceptorships for purposes of advancing education in treatment protocols. Documentation for preceptorship credit must indicate the date and hours of preceptorship, name of preceptor and qualifications for teaching the subject covered. Documentation must include a thorough original outline of the information studied, a discussion of the importance of the information to the doctor's practice and a written evaluation of the applicant's understanding of the subject by the preceptor;

(h) Participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. A written record of hours of development and research, including the names and addresses of the institutions involved, name of supervisors, and their signatures verifying hours;

(i) Participation in research related to naturopathic medicine directed by an educational or other qualified naturopathic organization. Licensee must document dates of participation, name of research program and a summary of the purpose and outcome of the research;

(j) Participation in accredited graduate level health related programs;

(k) Other courses or activities specifically authorized by the Board;

(l) Actual presentation hours for an initial course offering and up to three hours for preparation, when subject is specific to higher education in the practice of Naturopathic medicine,

(7) Up to a total of 10 hours of credit may be granted for CE obtained by participation on the Naturopathic Physicians Licensing Examinations (NPLEX) committee in the development and writing of the NPLEX examinations.

(8) Up to three hours of credit may be obtained by activities specific to patient charting and record keeping.

(9) Licensees maintaining an active license in Oregon but not living and practicing in Oregon may obtain up to 20 hours of CE by nonattendance activities that satisfy the program qualifications in OAR 850-010-0210.

(10) A full-time sanctioned residency, which is CNME or Board approved, requiring at least 6 months of participation in the calendar year, will suffice for all 25 hours of CE required.

(11) A fellowship with a Board recognized professional organization, requiring at least six months of active participation in the calendar year, will suffice for all 25 hours of CE.

(12) A CE provider who wishes to present the same program(s) more than once in a two-year period, may apply for approval as a Program Provider (PP). The applicant must make submission for approval at least eight weeks prior to the initial presentation.

(a) CE provider must submit an application provided by the Board for approval along with:

(A) An initial course program;

(B) Title and syllabus or course outline for all offerings in the initial course program;

(C) Date(s), time(s), and location(s) of programs;

(D) A copy of the curriculum vitae of instructors showing qualifications to present such programs;

(E) Names, addresses, and phone number for all corporate sponsors and responsible persons;

(F) A signed letter of agreement as provided by the Board, stating the purpose of the program with a disclosure on the financial relationship of presenter to sponsor;

(G) A list of products for sale or promotion being offered during or in conjunction with the CE program;

(H) A copy of verification that will be provided to attendees; and

(I) Any substantial changes to PP offerings throughout the year.

(b) A Program Provider is responsible for maintaining attendance records for all approved presentations for at least five years.

(c) A Program Provider must make a new application on a biennial basis from the date of original approval.

(13) A CE provider that has presented the Board with inaccurate or misleading information may lose CE approval for up to five years.

(a) If any CE provider fails to follow the provisions of this rule, the Board may revoke, deny or limit the approval.

(b) If a program has been denied approval, the provider may request a review by the full Board.

(14) At its discretion, the Board may appoint a member of the Board or other designee to audit by attendance the subject matter of any program in order to verify content. This audit will be free of charge or subject to reimbursement by the CE provider to the appointed attendee. Denial of an audit is grounds for disapproval.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100 & ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0210, BNE 8-2005, f. & cert. ef. 10-27-05

850-050-0120

Illegal Practice; Duty to Report

(1) Any applicant for examination shall be prohibited from and prosecuted for any practice of naturopathy while awaiting examination.

(2) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(3) It shall be the duty of all licentiates of the Board, in the interests of both the public and the profession, to inform the Board, in writing, fully signed, of anyone practicing naturopathy in Oregon without a license or otherwise in violations of the law.

(4) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy within the meaning of ORS 685.010(4) even though practicing in the office of a licentiate of the Board.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0120, BNE 8-2005, f. & cert. ef. 10-27-05

850-050-0130

Change of Address

Each licensee of the Board shall notify the Board in writing within 30 days of any change of residence address, practice location, or mailing address.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.100, 685.110

Hist.: NE 2, f. 6-7-59; BNE 1-2004, f. & cert. ef. 2-11-04; Renumbered from 850-010-0130, BNE 8-2005, f. & cert. ef. 10-27-05

850-050-0140

Advertising

While constructive educational publicity shall be encouraged, licentiates of the Board shall refrain from using or causing to be used advertising matter which contains misstatements, falsehoods, misrepresentations, distorted, or fabulous statements as to cures.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; Renumbered from 850-010-0140, BNE 8-2005, f. & cert. ef. 10-27-05

850-050-0150

Public Health Laws

Naturopathic physicians shall be subject to all state, county, and municipal laws and rules relating to public health concerning the diagnosis and reporting of contagious and infectious diseases, as may be required, to the proper health authorities in the respective counties.

Stat. Auth.: ORS 685

Stats. Implemented:

Hist.: NE 2, f. 6-7-59; Renumbered from 850-010-0150, BNE 8-2005, f. & cert. ef. 10-27-05

850-050-0190

Discipline or Denial of License

The Board may refuse to grant a license to practice Naturopathic medicine in the State of Oregon, or may discipline a license, for any of the following reasons:

(1) Commitment to a mental health institution. A copy of the record of commitment, certified to by the clerk of the court entering the commitment, is conclusive evidence of the commitment.

(2) Habitual use of ardent spirits, narcotics, or other intoxicants to such an extent as to incapacitate him/her from the performance of his/her professional duties.

(3) Unprofessional or dishonorable conduct which includes but is not limited to:

(a) Any conduct or practice contrary to recognized standards of ethics of the naturopathic profession or

(b) Any of the following:

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

(B) Engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, whether initiated by the patient or not;

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(C) Any behavior, gesture, or expression that is sexually seductive or sexually demeaning to a patient, or any action that shows a lack of respect for the patient's privacy;

(D) Entering into an intimate sexual relationship with a patient or with a former patient if within six months after the doctor-patient relationship is terminated, unless a prior sexual relationship existed.

(4) Fraud or misrepresentation related to naturopathic medicine.

(5) A breach of confidentiality.

(6) The use of any advertising in which untruthful, improper, misleading, or deceptive statements are made.

(7) Claiming superiority to or a greater skill than that possessed by fellow naturopathic physicians.

(8) Aiding or abetting the unlawful practice of any of the healing arts by an unlicensed person.

(9) The advertising or holding oneself out to diagnose or treat a patient by any secret formula method, treatment, or procedure.

(10) The guaranteeing of a cure or "results" from any treatment.

(11) Failure to refer the patient to an appropriate care provider upon termination of treatment where referral is called for, unless termination was the decision of the patient and the licensee had no opportunity to refer the patient.

(12) Prescribing or dispensing a substance that is not listed on the formulary compendium.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.225

Hist.: NE 1, f. 11-12-57; NE 3-1980, f. & ef. 9-11-80; NE 3-1992, f. & cert. ef. 11-5-92; BNE 4-1998(Temp), f. & cert. ef. 8-26-98 thru 2-22-99; administrative correction 8-9-99; BNE 4-2005, f. & cert. ef. 4-13-05; Renumbered from 850-010-0190, BNE 8-2005, f. & cert. ef. 10-27-05

850-060-0212

Education Requirements for Injections/ IV Chelation Therapy

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

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

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

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

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

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

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

(a) Current/ historical research on IV chelation therapy;

(b) Indications/contraindications of IV chelation therapy;

(c) IV Chelation therapy side effects and toxicity;

(d) IV Chelation therapy and practical application;

(e) IV solutions;

(f) Initial evaluation and treatment monitoring requirements;

(g) Frequency of IV treatment and remineralization;

(h) Charting requirements, standards of care, office procedures, consent to treat, nutrition and lifestyle recommendations during treatment;

(i) Heavy metal toxicity and disease;

(j) Practical on mixing and administering IV Chelation solutions;

(k) Examination for certification (exam subject to Board approval).

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685

Hist.: BNE 6-2004, f. & cert. ef. 6-10-04; BNE 6-2005, f. & cert. ef. 8-15-05; Renumbered from 850-010-0212, BNE 8-2005, f. & cert. ef. 10-27-05

850-060-0215

Drug Enforcement Administration Registration

(1) Licensees may register with the United States Department of Justice for the issuance of a Drug Enforcement Administration (DEA) Number.

(2) Licensees with DEA registration have authority to prescribe from Schedules II, III, IIIN, IV and V, only those drugs as listed on the Formulary compendium, OAR 850-010-0225.

(3) Licensees shall not prescribe from Schedules II, III, IIIN, IV and V without a current DEA registration.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: NE 6-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; BNE 2-2004, f. & cert. ef. 4-14-04; Renumbered from 850-010-0215, BNE 8-2005, f. & cert. ef. 10-27-05

850-060-0220

Authority to Prescribe, Dispense, and Order

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

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

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

(b) All topical preparations.

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

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

(4) All homeopathic preparations.

(5) All laboratory and diagnostic procedures.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.030

Hist.: NE 2-1984, f. & ef. 2-28-84; BNE 2-2005, f. & cert. ef. 2-4-05; Renumbered from 850-010-0220, BNE 8-2005, f. & cert. ef. 10-27-05

850-060-0225

Naturopathic Formulary Compendium

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

(1) Abacavir;

(2) Acarbose;

(3) Acetic Acid;

(4) Acetylcysteine;

(5) Acitretin;

(6) Acyclovir;

(7) Adapalene;

(8) Adenosine Monophosphate;

(9) Albuterol Sulfate;

(10) Alendronate;

(11) Allopurinol;

(12) Alprostadil;

(13) Amino Acids;

(14) Amino Aspirins;

(15) Aminoglycosides;

(16) Aminolevulinic Acid;

(17) Aminophylline;

(18) Aminosalicilic Acid;

(19) Ammonium Chloride;

(20) Ammonium lactate lotion 12%;

(21) Amoxicillin;

(22) Amoxicillin & Clavulanate;

(23) Amphotericin B;

(24) Ampicillin;

(25) Ampicillin & Sulbactam;

(26) Anastrozole;

(27) Anthralin;

(28) Atorvastatin;

(29) Atropine;

(30) Atropine Sulfate;

(31) Auranofin;

(32) Azelaic Acid;

(33) Azithromycin;

(34) Bacampicillin;

(35) Bacitracin;

(36) Baclofen;

(37) Becaplermin;

ADMINISTRATIVE RULES

- (38) Belladonna;
- (39) Benzodiazepines;
- (40) Benzoic Acid;
- (41) Benzonatate;
- (42) Betaine;
- (43) Betamethasone;
- (44) Bethanechol Chloride;
- (45) Bichloroacetic Acid*;
- (46) Bimatoprost Ophthalmic Solution 0.03%;
- (47) Biologicals;
- (48) Biphosphonate;
- (49) Bromocriptine;
- (50) Budesonide;
- (51) Buprenorphine;
- (52) Butorphanol;
- (53) Cabergoline;
- (54) Calcipotriene;
- (55) Calcitonin;
- (56) Calcitriol;
- (57) Carbamide Peroxide;
- (58) Carbidopa;
- (59) Carbol-Fuchsin;
- (60) Captopril;
- (61) Cefaclor;
- (62) Cefdinir;
- (63) Cefibuten;
- (64) Cefadroxil;
- (65) Cefditoren;
- (66) Cefixime;
- (67) Cefonicid Sodium;
- (68) Cefpodoxime Proxetil;
- (69) Cefprozil;
- (70) Ceftibuten;
- (71) Cefuroxime;
- (72) Celecoxib;
- (73) Cellulose Sodium Phosphate;
- (74) Cenestin;
- (75) Cephalexin;
- (76) Cephradine;
- (77) Chirocaine*;
- (78) Chloramphenicol;
- (79) Chloroquine;
- (80) Citrate Salts;
- (81) Clarithromycin;
- (82) Clindamycin;
- (83) Clioquinol;
- (84) Clostridium botulinum toxin (ab);
- (85) Cloxacillin;
- (86) Codeine;
- (87) Colchicine;
- (88) Colistimethate;
- (89) Collagenase;
- (90) Condylox;
- (91) Cortisone;
- (92) Coumadin;
- (93) Cromolyn Sodium;
- (94) Cyanocobalamin;
- (95) Cycloserine;
- (96) Danazol;
- (97) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (98) Demeclocycline Hydrochloride;
- (99) Desmopressin;
- (100) Desoxyribonuclease;
- (101) Dexamethasone;
- (102) Dextran;
- (103) Dextromethorphan;
- (104) Dextrose;
- (105) Dextrothyroxine;
- (106) Dicloxacillin;
- (107) Dihydroergotamine Migranal;
- (108) Didanosine;
- (109) Dimethyl Sulfone (DMSO);
- (110) Digitalis;
- (111) Digitoxin;
- (112) Digoxin;
- (113) Dinoprostone;
- (114) Diphylline;
- (115) Dirithromycin;
- (116) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (117) DMSA;
- (118) Doxercalciferol;
- (119) Doxycycline;
- (120) Dronabinol;
- (121) Dyclonine;
- (122) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (123) Electrolyte Solutions;
- (124) Emtricitabine;
- (125) Ephedrine;
- (126) Epinephrine*;
- (127) Epinephrine (auto-inject);
- (128) Ergoloid Mesylates;
- (129) Ergonovine Maleate;
- (130) Ergotamine;
- (131) Erythromycins;
- (132) Erythropoietin;
- (133) Estradiol;
- (134) Estriol;
- (135) Estrogen-Progestin Combinations;
- (136) Estrogens, Conjugated;
- (137) Estrogen, Esterified;
- (138) Estrone;
- (139) Estropipate;
- (140) Ethyl Chloride;
- (141) Etidronate;
- (142) Fanciclovir;
- (143) Fentanyl;
- (144) Fibrinolytic;
- (145) Flavoxate;
- (146) Fluconazole;
- (147) Fludrocortisone Acetate;
- (148) Flunisolide;
- (149) Fluorides;
- (150) Fluoroquinolones;
- (151) Fluoroquinolones;
- (152) Fluorouracil;
- (153) Fluticasone propionate;
- (154) Fluvastatin;
- (155) Gaba Analogs;
- (156) Gabapentin;
- (157) Galantamine H. Br.;
- (158) Ganciclovir;
- (159) Gentamicin;
- (160) Gentian Violet;
- (161) Griseofulvin;
- (162) Guaifenesin;
- (163) Heparin — subcutaneous, sublingual and heparin locks;
- (164) Hexachlorophene;
- (165) Homatropine Hydrobromide*;
- (166) Human Growth Hormone;
- (167) Hyaluronic Acid;
- (168) Hyaluronidase;
- (169) Hydrocodone;
- (170) Hydrocortisone;
- (171) Hydrogen Peroxide;
- (172) Hydromorphone;
- (173) Hydroquinone;
- (174) Hydroxychloroquine;
- (175) Hydroxypolyethoxydodecane*;
- (176) Hyoscyamine;
- (177) Imiquimod Cream (5%);
- (178) Immune Globulins*;
- (179) Insulin;
- (180) Interferon Alpha b w/Ribavirin;
- (181) Iodine;
- (182) Iodoquinol;
- (183) Iron Preparations;
- (184) Isosorbide Dinitrate;

ADMINISTRATIVE RULES

- (185) Isotretinoin;
(186) Itraconazole;
(187) Kanamycin Sulfate;
(188) Ketoconazole;
(189) Lactulose;
(190) Lamivudine;
(191) Letrozole;
(192) Leucovorin Calcium;
(193) Levalbuteral;
(194) Levodopa;
(195) Levonorgestrel;
(196) Levorphanol;
(197) Levothyroxine;
(198) Lincomycin;
(199) Lindane;
(200) Liothyronine;
(201) Liotrix;
(202) Lisinopril;
(203) Lisuride;
(204) Lithium;
(205) Lovastatin;
(206) Mebendazole;
(207) Meclizine;
(208) Medroxyprogesterone;
(209) Medrysone;
(210) Mefloquine;
(211) Megestrol Acetate;
(212) Mercury, Ammoniated;
(213) Mesalamine;
(214) Metformin;
(215) Methadone;
(216) Methimazole;
(217) Methoxsalen;
(218) Methscopolamine;
(219) Methylegonovine;
(220) Methylprednisolone;
(221) Methylsulfonylmethane (MSM);
(222) Methyltestosterone;
(223) Methysergide;
(224) Metronidazole;
(225) Miglitol;
(226) Minerals (Oral & Injectable);
(227) Minocycline;
(228) Misoprostol;
(229) Monobenzene;
(230) Morphine;
(231) Mupirocin;
(232) Nafarelin acetate;
(233) Naloxone;
(234) Natamycin;
(235) Nateglinide;
(236) Nicotine;
(237) Nitroglycerin;
(238) Novobiocin;
(239) Nystatin;
(240) Olsalazine;
(241) Omeprazole;
(242) Opium;
(243) Over the Counter (OTC);
(244) Oxacillin;
(245) Oxamniquine;
(246) Oxaprozin;
(247) Oxtriphylline;
(248) Oxycodone;
(249) Oxygen;
(250) Oxymorphone;
(251) Oxytetracycline;
(252) Oxytocin*;
(253) Pancrelipase;
(254) Papain;
(255) Papavarine;
(256) Paramethasone;
(257) Paregoric;
(258) Penciclovir;
(259) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(260) Penicillin;
(261) Pentosan;
(262) Pentoxifylline;
(263) Pergolide;
(264) Permethrin;
(265) Phenazopyridine;
(266) Phenylephrine;
(267) Phenylephrine*;
(268) Physostigmine;
(269) Pilocarpine;
(270) Pimecrolimus Cream 1%;
(271) Podophyllum Resin;
(272) Polymyxin B Sulfate;
(273) Polysaccharide-Iron Complex;
(274) Potassium Iodide;
(275) Potassium Supplements;
(276) Pramoxine;
(277) Pravastatin;
(278) Prednisolone;
(279) Prednisone;
(280) Pregabalin;
(281) Progesterone;
(282) Progestins;
(283) Propionic Acids;
(284) Propylthiouracil;
(285) Prostaglandins;
(286) Proton Pump inhibitor;
(287) Pyrazinamide;
(288) Pyrethrins;
(289) Quinidine;
(290) Quinilones;
(291) Quinines;
(292) Quinolines;
(293) Quinine Sulfate;
(294) Rauwolfia Alkaloids;
(295) Rho(D);
(296) Rifabutin;
(297) Rifampin;
(298) Risendronate;
(299) Salicylamide;
(300) Salicylate Salts;
(301) Salicylic Acid;
(302) Salsalate;
(303) Scopolamine;
(304) Selenium Sulfide;
(305) Silver Nitrate;
(306) Simvastatin;
(307) Sodium Polystyrene Sulfonate;
(308) Sodium Thiosulfate;
(309) Spironolactone;
(310) Stavudine;
(311) Spectinomycin;
(312) Sucralfate;
(313) Sulfasalazine;
(314) Sulfonamide/Trimethoprim/Sulfones;
(315) Tazarotene topical gel;
(316) Tacrolimus;
(317) Tenofovir;
(318) Testosterone;
(319) Tetracycline;
(320) Theophylline;
(321) Thiabendazole;
(322) Thyroid;
(323) Thyroxine;
(324) Tiagabine;
(325) Tibolone;
(326) Tiludronate;
(327) Tinidazole;
(328) Tobramycin;
(329) Topical steroids;
(330) Tramadol;
(331) Trandolapril;
(332) Troleandomycin;

ADMINISTRATIVE RULES

- (333) Tretinoin;
 - (334) Triamcinolone;
 - (335) Triamterene;
 - (336) Trichloroacetic Acid*;
 - (337) Trioxsalen;
 - (338) Triptans;
 - (339) Troleandomycin;
 - (340) Undecylenic Acid;
 - (341) Urea;
 - (342) Urised;
 - (343) Ursodiol;
 - (344) Valacyclovir;
 - (345) Vancomycin;
 - (346) Verapamil;
 - (347) Vidarabine;
 - (348) Vitamins (Oral & Injectable);
 - (349) Yohimbine;
 - (350) Zalcitabine;
 - (351) Zidovudine;
 - (352) Zolpidem;
 - (353) Local Anesthetics:
 - (a) Benzocaine*;
 - (b) Bupivacaine*;
 - (c) Chloroprocaine*;
 - (d) Dyclonine*;
 - (e) Etidocaine*;
 - (f) Lidocaine*;
 - (g) Lidocaine (non-injectable dosage form);
 - (h) Mepivocaine*;
 - (i) Prilocaine*;
 - (j) Procaine*;
 - (k) Tetracaine*.
 - (354) Vaccines:
 - (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus Inactivated*;
 - (p) Poliovirus-Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;
 - (u) Tetanus Toxoid*;
 - (v) Typhoid*;
 - (w) Varicella*;
 - (x) Yellow Fever*;
 - (355) SkinTests:
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.
- Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 681.145
Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05

850-060-0226

Naturopathic Formulary Compendium by Classification

Classifications of the formulary compendium, which can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be purchased or otherwise obtained by Naturopathic Physicians in any dosage form for appropriate use, but may not be prescribed. Products

marked with a double asterisk (**) can only be purchased or otherwise obtained by a Naturopathic physician for office use of epithelial infections.

- (1) Amino Acids.
- (2) Aminoglycosides.
- (3) Analgesics (An):
 - (a) Aminosalicic Acid;
 - (b) Auranofin;
 - (c) Bromocriptine;
 - (d) Celecoxib;
 - (e) Colchicine;
 - (f) Colistimethate;
 - (g) Dihydroergotamine Migranal;
 - (h) Ergoloid Mesylates;
 - (i) Ergonovine Maleate;
 - (j) Ergotamine;
 - (k) Hyaluronic Acid;
 - (l) Methylergonovine;
 - (m) Methysergide;
 - (n) Opioids — examples include, but not limited to:
 - (A) Buprenorphine;
 - (B) Butorphanol;
 - (C) Codeine;
 - (D) Dextromethorphan;
 - (E) Fentanyl;
 - (F) Hydrocodone;
 - (G) Hydromorphone;
 - (H) Levorphanol;
 - (I) Methadone;
 - (J) Morphine;
 - (K) Naloxone;
 - (L) Opium;
 - (M) Oxycodone;
 - (N) Oxymorphone;
 - (O) Paregoric;
 - (o) Oxaprozin;
 - (p) Salsalate;
 - (q) Tramadol;
 - (r) Triptans.
- (4) Antibiotics (At):
 - (a) Amphotericin B;
 - (b) Anti-inflammatory:
 - (A) Amino Aspirins;
 - (B) Mesalamine;
 - (C) Olsalazine;
 - (D) Sulfasalazine;
 - (c) Antimicrobial:
 - (A) Ketoconazole;
 - (B) Itraconazole;
 - (C) Tinidazole;
 - (D) Fluconazole;
 - (E) Metronidazole;
 - (F) Omeprazole;
 - (G) Proton Pump Inhibitor;
 - (d) Anti-Parasitic:
 - (A) Thiabendazole;
 - (e) Antivirals:
 - (A) Interferon alpha 2b;
 - (B) Nucleoside/Nucleotide Analogs:
 - (i) Abacavir;
 - (ii) Acyclovir;
 - (iii) Didanosine;
 - (iv) Emtricitabine;
 - (v) Famciclovir;
 - (vi) Ganciclovir;
 - (vii) Lamivudine;
 - (viii) Stavudine;
 - (viv) Tenofovir;
 - (x) Valacyclovir;
 - (xi) Viarabine;
 - (xii) Zalcitabine;
 - (xiii) Zidovudine;
 - (C) Penciclovir;
 - (f) Bacitracin;
 - (g) Carbamide Peroxide;
 - (h) Cephalosporins;

ADMINISTRATIVE RULES

- (A) Cefaclor;
- (B) Cefdinir;
- (C) Cefibuten;
- (D) Cefadroxil;
- (E) Cefditoren;
- (F) Cefixime;
- (G) Cefonicid Sodium;
- (H) Cefpodoxime Proxetil;
- (I) Cefprozil;
- (J) Ceftributen;
- (K) Cefuroxime;
- (L) Cephalexin;
- (M) Cephadrine;
- (i) Chloramphenicol;
- (j) Clindamycin;
- (k) Cycloserine;
- (l) Gentamicin;
- (m) Griseofulvin;
- (n) Imiquimod Cream (5%);
- (o) Macrolides:
 - (A) Azithromycin;
 - (B) Clarithromycin;
 - (C) Dirithromycin;
 - (D) Erythromycins;
 - (E) Kanamycin Sulfate;
 - (F) Lincomycin;
 - (G) Novobiocin;
 - (H) Spectinomycin;
 - (I) Troleandomycin;
 - (J) Vancomycin;
 - (K) Natamycin;
 - (p) Nystatin;
 - (q) Penicillins:
 - (A) Amoxicillin;
 - (B) Amoxicillin and Clavulanate;
 - (C) Ampicillin;
 - (D) Ampicillin and Sulbactam;
 - (E) Bacampicillin;
 - (F) Cloxacillin;
 - (G) Dicloxacillin;
 - (H) Oxacillin;
 - (I) Penicillin;
 - (r) Polymyxin B Sulfate;
 - (s) Rifabutin;
 - (t) Rifampin;
 - (u) Sulfonamide/Trimethoprim/Sulfones;
 - (v) Tetracyclines:
 - (A) Demeclocycline Hydrochloride;
 - (B) Doxycycline;
 - (C) Minocycline;
 - (D) Oxytetracycline;
 - (E) Tetracycline;
 - (F) Tobramycin.
 - (5) Anticholinergics:
 - (a) Atropine;
 - (b) Atropine Sulfate;
 - (c) Belladonna;
 - (d) Homatropine Hydrobromide*;
 - (e) Hyoscyamine;
 - (f) Methscopolamine;
 - (g) Physostigmine;
 - (h) Pilocarpine;
 - (i) Scopolamine.
 - (6) Antihypertensive:
 - (a) ACE Inhibitors:
 - (A) Captopril;
 - (B) Lisinopril;
 - (C) Trandolapril;
 - (b) Calcium Channel Blockers:
 - (A) Phenyalkylamine;
 - (B) Verapamil.
 - (7) Benzodiazepines.
 - (8) Bisphosphonates:
 - (a) Alendronate;
 - (b) Etidronate;
 - (c) Risendronate;
 - (d) Tiludronate.
 - (9) Blood (B):
 - (a) Coumadin;
 - (b) Dextran;
 - (c) Dextrose;
 - (d) Heparin — subcutaneous, sublingual and heparin locks;
 - (e) Immune Globulins*;
 - (f) Rho(D) Immune Globulins*.
 - (10) Cardiovascular (Cv):
 - (a) Digitalis;
 - (b) Digitoxin;
 - (c) Digoxin;
 - (d) HMG CoA Reductase Inhibitors:
 - (A) Atorvastatin;
 - (B) Fluvastatin;
 - (C) Lovastatin;
 - (D) Pravastatin;
 - (E) Simvastatin;
 - (e) Nitrates:
 - (A) Isosorbide Dinitrate;
 - (B) Nitroglycerin;
 - (f) Papavarine;
 - (g) Quinidine;
 - (h) Rauwolfia Alkaloids;
 - (i) Spironolactone;
 - (j) Triamterene.
 - (11) Chelating Agents (Board approved certification required before therapeutic chelation is allowed):
 - (a) Deferoxamine/Desferroxamine;
 - (b) EDTA;
 - (c) Penicillamine.
 - (12) Enzymes:
 - (a) Collagenase;
 - (b) Desoxyribonuclease;
 - (c) Fibrinolysin;
 - (d) Hyaluronidase;
 - (e) Pancrelipase.
 - (13) Fluoroquinolones.
 - (14) Fluoroquinolones.
 - (15) Gastrointestinal:
 - (a) Citrate Salts;
 - (b) Lactulose;
 - (c) Sucralfate.
 - (16) Genito-urinary (GU):
 - (a) Bethanechol Chloride
 - (b) Cellulose Sodium Phosphate;
 - (c) Flavoxate;
 - (d) Pentosan;
 - (e) Phenazopyridine;
 - (f) Urised.
 - (17) Hormones (Ho):
 - (a) Betamethasone;
 - (b) Budesonide;
 - (c) Calcitonin;
 - (d) Cenestin;
 - (e) Cortisone;
 - (f) Danazol;
 - (g) Desmopressin;
 - (h) Dexamethasone;
 - (i) Dextrothyroxine;
 - (j) Dinoprostone;
 - (k) Erythropoietin;
 - (l) Estradiol;
 - (m) Estriol;
 - (n) Estrogen-Progestin Combinations;
 - (o) Estrogens, Conjugated;
 - (p) Estrogen, Esterified;
 - (q) Estrone;
 - (r) Estropipate;
 - (s) Fludrocortisone Acetate;
 - (t) Flunisolide;
 - (u) Fluticasone Propionate;
 - (v) Human Growth Hormone;
 - (w) Hydrocortisone;

ADMINISTRATIVE RULES

- (x) Insulin;
- (y) Levonorgestrel;
- (z) Levothyroxine;
- (aa) Liothyronine;
- (bb) Liotrix;
- (cc) Medroxyprogesterone;
- (dd) Medrysone;
- (ee) Megestrol Acetate;
- (ff) Methylprednisolone;
- (gg) Methyltestosterone;
- (hh) Nafarelin acetate;
- (ii) Oxytocin*;
- (jj) Prednisolone;
- (kk) Prednisone;
- (ll) Progesterone;
- (mm) Progestins;
- (nn) Prostaglandins:
- (A) Alprostadil;
- (B) Misoprostol;
- (oo) Testosterone;
- (pp) Thyroid;
- (qq) Thyroxine;
- (rr) Tibolone;
- (ss) Triamcinolone.
- (18) Hypoglycemics (Hy):
- (a) Acarbose;
- (b) Metformin;
- (c) Miglitol.
- (19) Local anesthetics (L):
- (a) Benzocaine*;
- (b) Betaine;
- (c) Bupivacaine*;
- (d) Chirocaine*;
- (e) Chloroprocaine*;
- (f) Dyclonine*;
- (g) Ethyl Chloride;
- (h) Etidocaine*;
- (i) Hydroxypolyetho-xydodecane*;
- (j) Lidocaine*;
- (k) Lidocaine(non-injectable dosage form);
- (l) Mepivocaine*;
- (m) Pramoxine;
- (n) Prilocaine*;
- (o) Procaine*;
- (p) Tetracaine*.
- (20) Minerals (M):
- (a) Ammonium Chloride;
- (b) Calcitriol;
- (c) Electrolyte Solutions;
- (d) Fluorides;
- (e) Iodine;
- (f) Iron Preparations;
- (g) Lithium;
- (h) Mercury, Ammoniated;
- (i) Minerals (Oral & Injectable);
- (j) Polysaccharide-Iron Complex;
- (k) Potassium Iodide;
- (l) Potassium Supplements;
- (m) Silver Nitrate.
- (21) Quinilones.
- (22) Quinolines.
- (23) Skin Care (S):
- (a) Acitretin;
- (b) Adapalene;
- (c) Ammonium lactate lotion 12%;
- (d) Anthralin;
- (e) Azelaic Acid;
- (f) Becaplermin;
- (g) Benzoic Acid;
- (h) Calcipotriene;
- (i) Carbol-Fuchsin;
- (j) Clioquinol;
- (k) Condylox;
- (l) Fluorouracil;
- (m) Gentian Violet;
- (n) Hexachlorophene;
- (o) hydroquinone;
- (p) Isotretinoin;
- (q) Lindane;
- (r) Methoxsalen;
- (s) Mupirocin;
- (t) Permethrin;
- (u) Pimecrolimus Cream 1%;
- (v) Podophyllum Resin;
- (w) Pyrazinamide;
- (x) Pyrethrins;
- (y) Salicylate Salts;
- (z) Salicylic Acid;
- (aa) Selenium Sulfide;
- (bb) Sodium Thiosulfate;
- (cc) Tacrolimus;
- (dd) Tazarotene topical gel;
- (ee) Topical steroids;
- (ff) Tretinoin;
- (gg) Trichloroacetic Acid*;
- (hh) Trioxsalen;
- (ii) Undecylenic Acid;
- (jj) Urea.
- (24) Skin Tests:
- (a) Diphtheria*;
- (b) Mumps*;
- (c) Tuberculin*.
- (25) Sympathomimetics:
- (a) Ephedrine;
- (b) Epinephrine*;
- (c) Epinephrine (auto-inject).
- (26) Upper Respiratory Tract (URT):
- (a) Acetylcysteine;
- (b) Albuterol Sulfate;
- (c) Aminophylline;
- (d) Benzonatate;
- (e) Cromolyn Sodium;
- (f) Guaifenesin;
- (g) Levalbuteral;
- (h) Xanthines:
- (A) Diphylline;
- (B) Oxtriphylline;
- (C) Pentoxifylline;
- (D) Theophylline.
- (27) Vaccines:
- (a) BCG*;
- (b) Cholera*;
- (c) Diphtheria*;
- (d) DPT*;
- (e) Haemophilus b Conjugate*;
- (f) Hepatitis A Virus*;
- (g) Hepatitis B*;
- (h) Influenza Virus*;
- (i) Japanese Encephalitis Virus*;
- (j) Measles Virus*;
- (k) Mumps Virus*;
- (l) Pertussis*;
- (m) Plague*;
- (n) Pneumococcal*;
- (o) Poliovirus — Inactivated*;
- (p) Poliovirus — Live Oral*;
- (q) Rabies*;
- (r) Rubella*;
- (s) Smallpox*;
- (t) Tetanus IG*;
- (u) Tetanus Toxoid*;
- (v) Typhoid*;
- (w) Varicella*;
- (x) Yellow Fever*.
- (28) Vitamins:
- (a) Cyanocobalamin;
- (b) Doxercalciferol;
- (c) Leucovorin Calcium;
- (d) Vitamins (Oral & Injectable).
- (29) Misc.:

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- (a) Acetic Acid;
 - (b) Adenosine Monophosphate;
 - (c) Bichloroacetic Acid;
 - (d) Bimatoprost Ophthalmic Solution (0.03%);
 - (e) Cabergoline;
 - (f) Carbidopa;
 - (g) Clostridium botulinum toxin (ab);
 - (h) Dronabinol;
 - (i) Gabapentin;
 - (j) Galantamine H. Br.;
 - (k) Hydrogen Peroxide;
 - (l) Iodoquinol;
 - (m) Levodopa;
 - (n) Lisuride;
 - (o) Meclizine;
 - (p) Monobenzene;
 - (q) Nicotine;
 - (r) Over the Counter (OTC) substances, not to exceed their current OTC dose or dosage form;
 - (s) Oxamniquine;
 - (t) Oxygen;
 - (u) Papain;
 - (v) Paramethasone;
 - (w) Pergolide;
 - (x) Quinine Sulfate;
 - (y) Salicylamide;
 - (z) Sodium Polystyrene Sulfonate;
 - (aa) Ursodiol;
 - (bb) Yohimbine;
 - (cc) Zolpidem.
- Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05

Bureau of Labor and Industries
Chapter 839

Adm. Order No.: BLI 20-2005
Filed with Sec. of State: 10-20-2005
Certified to be Effective: 10-21-05
Notice Publication Date: 12-1-04
Rules Amended: 839-003-0090

Subject: The amendment to 839-003-0090 adding new section (2) clarifies that for the purposes of assessing liability for hostile work environment complaints, behavior alleged to have occurred outside the one year statute of limitations may be considered, so long as any act contributing to a hostile environment occurred within the statutory period. The amendment conforms the administrative rule with *Morgan v. Amtrak*, USSC (2002).

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-003-0090

Remedy

- (1) In cases of employment discrimination remedy includes, but is not limited to:
- (a) Employment or reemployment;
 - (b) Wages or other benefits lost due to the practice;
 - (c) Out-of-pocket expenses attributable to the practice;
 - (d) Compensation for emotional distress and impaired personal dignity; and
 - (e) Interest.
- (2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.
- (3) In cases of housing discrimination or discrimination by places of public accommodation remedy includes, but is not limited to:
- (a) Rental, lease or sale of real property;
 - (b) Service lost;
 - (c) Expenses or lost benefits attributable to the practice;
 - (d) Compensation for emotional distress and for impaired personal dignity; and

- (e) Interest.
- (4) In order to recover damages for lost wages, the complainant will generally be required to mitigate damages by seeking employment.
- (a) Earned income from employment may be deducted from lost wage damages.
- (b) Unearned income such as unemployment or public assistance benefits need not be deducted from lost wage damages.
- (5) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.
- (6) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:
 - (a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;
 - (b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;
 - (c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.
- (7) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.
- (8) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885
Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 20-2005, f. 10-20-05, cert. ef. 10-21-05

Adm. Order No.: BLI 21-2005
Filed with Sec. of State: 10-20-2005
Certified to be Effective: 10-21-05
Notice Publication Date: 11-1-04
Rules Adopted: 839-006-0270, 839-006-0275, 839-006-0280, 839-006-0290, 839-006-0295
Subject: OAR 839-006-0270 to 839-006-0295 are adopted to implement ORS 659A.103 to ORS 659A.145, prohibiting discrimination against disabled persons by the State.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0270

Purpose and Scope

- (1) ORS 659A.103 provides that it is the policy of the State of Oregon to guarantee disabled persons the fullest possible participation in the social and economic life of the state, including participating in and receiving the benefits of the services, programs and activities of state government.
- (2) ORS 659A.142(4) provides that it is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual is a disabled person.
- (3) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(4) unless state government can demonstrate that making the modifications would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.
- (4) ORS 659A.142(4) and these rules are not intended to:
- (a) Create an independent entitlement to any service, program or activity of state government; or
 - (b) Require state government to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial or administrative burdens, as determined on a case-by-case basis.

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(5) In determining whether financial and administrative burdens are undue for purposes of ORS 659A.142(4) and these rules, all resources available for use in the funding and operation of the service, program, or activity will be considered.

(6) Nothing in ORS 659A.142(4) or these rules prohibits state government from providing benefits, services, or advantages to individuals with disabilities beyond those required by ORS 659A.142(4) or these rules.

(7) A person claiming a violation of ORS 659A.142(4) may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05

839-006-0275

Definitions – Disability

(1) For purposes of ORS 659A.142(4) and these rules, “disabled person” means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) “Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(3) “Substantially limits” means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(4) “Major life activity” includes, but is not limited to, self care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property. Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(5) “Has a record of such an impairment” means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. “Has been misclassified as having” means the individual has been or is the subject of an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(6) “Is regarded” as having impairment means that the individual:

(a) Has a physical or mental impairment that does not substantially limit major life activities but is treated by state government as having such an impairment;

(b) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(c) Has none of the impairments described in subparagraphs (a) or (b) of this paragraph, but is treated by state government as having a mental or physical impairment that substantially limits a major life activity.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05

839-006-0280

Definitions – State Government

(1) For purposes of ORS 659A.142(4) and these rules, “state government” has the meaning given to that term in ORS 174.111 and includes the executive, judicial and legislative departments of state government. Consistent with ORS 174.108(3), it does not include the Oregon Health and Science University, the Oregon State Bar, any intergovernmental entity formed by a public body with another state or with a political subdivision of another state, or any intergovernmental entity formed by a public body with an agency of the federal government.

(2) Pursuant to ORS 174.112, “executive department” means all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the executive department of government as described in Article III, Section 1 of the Oregon Constitution, and

that are not in the judicial department, legislative department, local governments or special government bodies. “Executive department” includes:

(a) An entity created by statute for the purpose of giving advice only to the executive department and that does not have members who are officers or employees of the judicial department or legislative department;

(b) An entity created by the executive department for the purpose of giving advice to the executive department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the executive department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the executive department.

(3) Pursuant to ORS 174.113, “judicial department” means the Oregon Supreme Court, the Oregon Court of Appeals, the Oregon Tax Court, the Oregon circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. “Judicial department” includes:

(a) An entity created by statute for the purpose of giving advice only to the judicial department and that does not have members who are officers or employees of the executive department or legislative department;

(b) An entity created by the judicial department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the judicial department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the judicial department.

(4) Pursuant to ORS 174.114, “legislative department” means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. “Legislative department” includes:

(a) An entity created by statute for the purpose of giving advice only to the legislative department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the legislative department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the legislative department by a document other than a statute and that is not an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the legislative department.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05

839-006-0290

Other Statutes, Regulations and Agencies Governing Access by or Discrimination Against Disabled Persons

(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141 §221 and 49 CFR §37.

(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC §12131. The U.S. Department of Justice regulates existing government facilities (28 CFR §35.150) and new construction and alterations to government facilities (28 CFR §35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in Oregon. See ORS 447.210 to 447.280 and administrative rules and standards adopted pursuant thereto.

(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal Executive agency or by the United States Postal Service. 29 USC §794.

(4) Discrimination against disabled persons in employment is subject to ORS 659A.100 to 139, 659A.142 and OAR 839-006-0200 to 0265.

(5) Discrimination against disabled persons with respect to goods and services offered in a commercial manner by places of public accommodation is subject to ORS 659A.142 and OAR 839-006-0300 to 0335.

(6) Discrimination against disabled persons in real property transac-

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tions is subject to ORS 659A.142, 659A.145 and OAR 839-006-0400 to 0425.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05

839-006-0295

Provision of Auxiliary Aids and Services

(1) Except as provided for in subsection (3) of this section, state government must provide auxiliary aids and services when necessary to ensure equal access to state government programs, services, and activities.

(2) Auxiliary aids and services may include:

(a) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, computer aided real time captioning (CART), or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, e-mail, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Acquisition or modification of equipment or devices; and

(d) Other similar services and actions.

(3) State government is not required to provide auxiliary aids or services that state government can demonstrate would result in a fundamental alteration in the nature of a service, program or activity of state government or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) State government may not place a surcharge on an individual with a disability to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual with the nondiscriminatory treatment required by ORS 659A.142(4).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05

Adm. Order No.: BLI 22-2005(Temp)

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 10-27-05 thru 4-24-06

Notice Publication Date:

Rules Amended: 839-006-0136

Subject: The amendment conforms the rule with ORS 659A.046, which provides that an injured worker's right to reemployment terminates if the worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0136

Loss of Reemployment Rights Under ORS 659A.046

An injured worker meeting the requirements for reemployment under ORS 659A.046 loses the right to reemployment to an available, suitable position when any of the following occurs:

(1) The worker's attending physician or a medical arbiter determines, after the worker is medically stationary, that the worker cannot return to reemployment at any position with the employer;

(2) The worker is eligible for and participates in vocational assistance under ORS 656.340;

(3) The worker accepts suitable employment with another employer after becoming medically stationary;

(4) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(5) The worker fails to make demand for reemployment to an available, suitable position within seven days of receiving certified mail notice from the insurer or self-insured employer that the worker's attending physician has released the worker for reemployment to an available, suitable position, as provided in OAR 839-006-0135(8)(d);

(6) Three years have elapsed from the date of injury;

(7) The worker is discharged for bona fide reasons not connected with the injury and for which others are or would be discharged; or

(8) The worker clearly and unequivocally abandons employment with the employer.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.046

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 22-2005(Temp), f. 10-26-05, cert. ef. 10-27-05 thru 4-24-06

Adm. Order No.: BLI 23-2005

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 10-28-05

Notice Publication Date:

Rules Amended: 839-025-0750

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

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0750

Residential Prevailing Wage Rate Determinations

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

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

(b) *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.

(c) *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.

(d) *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.

(e) *Special Prevailing Wage Rate Determination Extension for Residential Project, Madrone Street Affordable Housing, Project #2004-01*, dated April 22, 2004. Rate extension dated June 29, 2005 for the period of July 1, 2005 through December 31, 2005.

(f) *Special Prevailing Wage Rate Determination for Residential Project, Tri-Harbor Landing Apartments, Project #2005-06*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(g) *Special Prevailing Wage Rate Determination for Residential Project, Sunflower Park Apartments, Project #2005-07*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(h) *Amended Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated July 20, 2005, for the period of July 22, 2005 through June 30, 2006.

(i) *Special Prevailing Wage Rate Determination for Residential Project, Quail Run Apartments Project #2005-08*, dated for August 9, 2005, for the period of August 10, 2005 through June 30, 2006.

(j) *Special Prevailing Wage Rate Determination for Residential Project, Hazedel Seniors Limited Partnership, Project #2005-09*, dated for August 26, 2005 for the period of August 29, 2005 through June 30, 2006.

(k) *Special Prevailing Wage Rate Determination for Residential Project, Mt. Angel, Project #2005-10*, dated for October 26, 2005 for the period of October 28, 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; (971) 673-0839.

[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,

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f. 4-15-05, cert. ef. 4-18-05; BLI 10-2005, f. & cert. ef. 5-2-05; BLI 11-2005, f. 5-31-05, cert. ef. 6-1-05; BLI 12-2005, f. & cert. ef. 6-21-05; BLI 13-2005, f. 6-30-05, cert. ef. 7-1-05; BLI 14-2005, f. & cert. ef. 7-22-05; BLI 15-2005, f. 8-9-05, cert. ef. 8-10-05; BLI 17-2005, f. 8-26-05, cert. ef. 8-29-05; BLI 23-2005, f. 10-26-05, cert. ef. 10-28-05

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 24-2005, f. 11-15-06, cert. ef. 11-16-05

Adm. Order No.: BLI 24-2005

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 11-16-05

Notice Publication Date: 12-1-04

Rules Amended: 839-009-0260

Subject: The amendment to OAR 839-009-0260 removes an incorrect reference in the current rule and conforms the rules to ORS 659A.165.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-009-0260

Medical Verification and Scheduling of Treatment

(1) When an employee gives 30 days notice for OFLA leave, other than for parental leave, the employer may require the employee to provide medical verification of the need for OFLA leave before the leave starts. Consistent with ORS 659A.306, the employer must pay the cost of the medical verification not covered by insurance or other benefit plan.

(2) If an employee's need for OFLA leave precludes giving 30 days notice, the employee must provide medical verification within 15 days of the employer's request for verification.

(3) The employer must provide the employee with written notice of any requirement to provide medical verification of the need for leave and the consequences for failure to do so.

(4) An employer may not delay the taking of an OFLA leave in the event that medical verification is not received prior to the commencement of (a) leave taken for unforeseen circumstances. The employer may designate the leave as provisionally approved subject to medical verification.

(5) If an employee submits medical verification signed by the health care provider, the employer may not directly request additional information from the employee's health care provider. However, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical verification. If an employee is on OFLA or FMLA leave running concurrently with a worker's compensation absence, the employer may consult the worker's attending physician in a manner that is consistent with the worker's compensation regulations.

(6) An employer may not request subsequent medical verifications more often than every 30 days and only in connection with an absence by the employee except as stated in the FMLA regulations (see 29 CFR 825.308), including, for example, when:

(a) Circumstances described by the previous medical verification have changed significantly (e.g., the duration or frequency of absences, the severity of conditions, complications); or

(b) The employer receives information that casts doubt upon the employee's stated reason for the absence.

(7) If an employee requests OFLA leave because of the employee's own serious health condition, the employer may require the employee to obtain the opinion of a second health care provider, designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third provider is binding on both the employer and the employee. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present certification from the employee's health care provider that the employee is able to resume work. The employer may not require the employee to obtain a second opinion.

(8) If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may, at its discretion, require medical verification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the verification not covered by insurance or other benefit plan. The opinion of the health care provider is binding. The employer may not require the employee to obtain a second opinion.

(9) Where possible an employee must make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 11-2005

Filed with Sec. of State: 10-21-2005

Certified to be Effective: 10-21-05

Notice Publication Date: 10-1-05

Rules Adopted: 125-600-0005

Rules Repealed: 125-600-0005(T)

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

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

125-600-0005

Guidelines for Use of Electronic Signatures by State Agencies

(1) The purpose of this rule is to implement the electronic signature provisions of the Uniform Electronic Signatures Act (UETA). The rule is not intended to apply to the other provisions of the act.

(2) This rule applies prospectively to new software applications with electronic transactions requiring signatures that are implemented after the effective date of this rule.

(3) Agencies shall follow the Information Resources Management Division policy which adopts the federal E-authentication process. The IRMD policy requires that agencies using electronic signatures:

(a) Determine the level of assurance the agency needs that the party signing an electronic transaction is authentic.

(b) Use only those tools and software applications approved by NIST and the Department of Administrative Services, Information Resources Management Services Division to mitigate the risks identified and provide the level of authentication needed.

(4) Agencies may request an exemption from these rules from the Department of Administrative Services.

Stat. Auth.: ORS 184.305, 291.038, 84, 84.049, 84.052, 84.055 & 84.064

Stats. Implemented: Portions of 2001 HB 2112

Hist.: DAS 10-2005(Temp), f. 8-31-05, cert. ef. 9-21-05 thru 3-18-06; DAS 11-2005, f. & cert. ef. 10-21-05

Adm. Order No.: DAS 12-2005

Filed with Sec. of State: 10-21-2005

Certified to be Effective: 10-22-05

Notice Publication Date: 10-1-05

Rules Amended: 125-055-0100, 125-055-0105, 125-055-0115, 125-055-0120, 125-055-0125, 125-055-0130

Subject: The Health Insurance Portability and Accountability Act (HIPAA) Security Rules, 45 CFR 164.302 - 164.318, became effective on April 20, 2005. OAR 125-055-0100 through 125-055-0130 implement contract requirements for agencies that are "covered entities" that contract with a business associate, as defined under HIPAA. OAR 125-055-0100 through 125-055-0130 must be amended in order to incorporate the requirements imposed by the HIPAA Security Rules.

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

125-055-0100

Purpose — HIPAA Privacy and Security Rule Implementation

The purpose of these rules is to set forth the contract requirements to comply with the Business Associate provisions of HIPAA and the implementing Privacy Rule and Security Rule. The Privacy Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may disclose, use, or create Protected Health Information. The Security Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may create, receive, maintain, or transmit Protected Health Information transmitted by or maintained in Electronic Media on behalf of the Covered Entity. This Rule contains the written assurances that an Agency must include in its Contract with a Business Associate. Before applying this Rule, Agencies must determine if a Business Associate relationship exists between the Contractor and the Agency as defined in HIPAA

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and the Privacy Rule or Security Rule. The requirements contained in this Rule apply both to Contracts for trade services personal services, as defined in OAR 125-246-0110.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0105

Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule and the Security Rule.

(1) "Agency" means an agency of the State of Oregon subject to the procurement authority of DAS pursuant to ORS 279A.140 and that is a Covered Entity.

(2) "Business Associate" has the meaning defined in 45 CFR 160.103. A Business Associate performs or assists a Covered Entity in performing a function or activity that involves the use, disclosure, or creation of Protected Health Information The Workforce, as defined in 45 CFR 160.103, of the Covered Entity is not considered to be a Business Associate nor do their activities create a Business Associate relationship with their employer.

(3) "Contract" means the written agreement between an Agency and a Contractor setting forth the rights and obligations of the parties.

(4) "Covered Entity" means:

(a) A governmental or private Health Plan;

(b) A Health Care Provider that transmits any Health Information in electronic form to carry out financial or administrative activities in connection with a Transaction;

(c) A Health Care Clearinghouse; or

(d) A prescription drug card sponsor under Medicare Part D.

(5) "Electronic Media" means:

(a) Electronic storage media; and

(b) Transmission media used to exchange information already in electronic storage media.

(6) "Electronic Protected Health Information" means Protected Health Information that is transmitted by Electronic Media or maintained in Electronic Media.

(7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(8) "Health Care Provider" means the persons or entities that furnish, bill for or are paid for Health Care in the normal course of business, as more fully defined in ORS 192.519.

(9) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(10) "Protected Health Information" means Individually Identifiable Health Information that is maintained or transmitted in any Electronic Media or other form or medium by a Covered Entity.

(11) "Required by Law" has the meaning defined in 45 CFR section 164.103.

(12) "Rule" means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

(13) "Security Rule" means the security standards for Electronic Protected Health Information found at 45 CFR Parts 160, 162, and 164.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 192.519, 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0115

Business Associate Contract Provisions

(1) A Contract that is subject to the Business Associate requirements of the Privacy Rule shall contain the following provisions, effective on or after April 14, 2003:

(a) Obligations and Activities of Business Associate: Business Associate agrees to:

(A) Not use or disclose Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(B) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Rule and the Contract.

(C) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(D) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(E) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(F) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(G) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(H) Make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency's compliance with the Privacy Rule.

(I) Document such disclosures of Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(J) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subparagraph (I) of this section (a), to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(b) Permitted Uses and Disclosures by Business Associate:

(A) General Use and Disclosure Provision. Except as otherwise limited in this Rule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule if done by Agency or the minimum necessary policies and procedures of the Agency.

(B) Specific Use and Disclosure Provision.

(i) Except as otherwise limited in this Rule, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(ii) Except as otherwise limited in this Rule, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(iv) Business Associate may not aggregate or compile Agency's Protected Health Information with the Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency's Protected Health Information with Protected Health Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities

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provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

(c) **Obligations of Agency:**

(A) Agency shall notify Business Associate of any limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency's most current Notice of Privacy Practices.

(B) Agency shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(C) Agency shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) **Permissible Requests by Agency.** Agency shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Agency, except as permitted by section (1)(b)(B) above.

(e) **Termination of Contract:**

(A) **Termination for Cause.** Upon Agency's knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall either:

(i) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(ii) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(iii) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(iv) The rights and remedies provided herein are in addition to the rights and remedies provided in the Contract.

(B) **Effect of Termination.**

(i) Except as provided in paragraph (B) of this subsection (b), upon termination of the Contract, for any reason, Business Associate shall return or destroy all Protected Health Information received from Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(2) **Security Requirements:** Effective April 20, 2005, a Contract that is subject to the Security Rule's Business Associate requirements for Electronic Protected Health Information must comply with both the Privacy Rule and the Security Rule requirements applicable to a Business Associate. In addition to the Privacy Rule requirements set forth in subsection (1) of this rule, the Contract shall contain the following provisions: Obligations of Business Associate. Business Associate agrees to:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Agency;

(b) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(c) Report to the Agency any security incident of which it becomes aware.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0120

Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the Security Rule, or the provisions of the Contract and the Privacy Rule or the Security Rule, the Privacy Rule and the Security Rule shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to comply with the Privacy Rule and the Security Rule.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0125

Methods of Compliance

In addition to incorporating the Business Associate requirements contained in this Rule in its Contracts with Business Associates, Agency may comply with this Rule in either of the following ways:

(1) **Memorandum of Understanding.** If Agency and Business Associate are government entities, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule and the Security Rule.

(2) **Amendment.** Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract and that contains the contract provisions required by this Rule.

(3) **Required by Law.** If a Business Associate is Required by Law to perform a function or activity on behalf of an Agency or to provide a service described in the definition of Business Associate to an Agency, such Agency may disclose Protected Health Information to the Business Associate to the extent necessary to comply with the legal mandate without meeting the requirements of this Rule, provided that the Agency attempts in good faith to obtain satisfactory assurances required by OAR 125-055-0115, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

125-055-0130

Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule or the Security Rule.

(2) Agencies shall use the form contract provided by the State Procurement Office of the State Services Division of the Department of Administrative Services when entering into personal services contracts as defined in OAR 125-246-0110. An Agency may request the Division to approve a revised form Contract for a one time use or repeated use for a specific class or classes of transactions.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, PL 104-191, Sec. 262 & Sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05

Adm. Order No.: DAS 13-2005(Temp)

Filed with Sec. of State: 11-4-2005

Certified to be Effective: 11-4-05 thru 5-3-06

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Suspended: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105

Subject: Administrative Rules, OAR 125-145-0010 to 125-145-0105, are being suspended due to the October 14, 2005 ruling by Marion County Circuit Court Judge Mary Mertens James that Measure 37 violates the Oregon and U.S. constitutions. These rules implemented the provisions of Ballot Measure 37 which passed on November 2, 2004.

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

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0020

Definitions

The following definitions apply to this division:

(1) **Agency** means any state officer, board, commission, council, department or Division of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) **Claim** means a written demand for compensation under Measure 37.

(3) **Claimant** means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) **Department** means the Department of Administrative Services.

(5) **Land Use Regulation** has the meaning provided in ORS 197 (Measure 37, 2004).

(6) **Lot** means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(7) **Measure 37** means Oregon Laws 2005, Chapter 1.

(8) **Parcel** means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(9) **Property** means the Lot or Parcel that is or includes the private real property that is the subject of a Claim.

(10) **Reduction in Fair Market Value** means the difference in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(11) **Registry** means the database of information about Claims required by OAR 125-145-0060.

(12) **Regulating Entity** means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at:

1225 Ferry Street SE, U160
Salem, OR 97310-4292

Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under Section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the

Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0040

Contents of a Claim

A Claim should contain the information described in this rule. A Claim that does not contain this information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The name, mailing address and telephone number of every owner of the Property, including but not limited to:

(a) Every lessee and lessor of the Property;

(b) Every person or entity holding a lien against, or a security interest in, the Property;

(c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.

(3) A description of the interest in the Property held by each owner listed.

(4) The location, including a street address, if applicable, of the Property, including the city or county in which it is located, and the legal description of the Property, including reference to the township, range, section and tax lot number in which it is located.

(5) Evidence that the Claimant is an owner of the Property, including the date of acquisition by the Claimant, date of acquisition by any family member of the Claimant if the Claim is based on ownership by a family member and, if so, the chain of title from the family member to the Claimant, and the nature and scope of the Claimant's ownership.

(6) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions, and any other recorded or unrecorded interests applicable to the Property.

(7) Evidence or information describing any federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations.

(8) An explanation, including a citation to each Land Use Regulation on which the Claim is based and evidence or information that demonstrates the following:

(a) The manner in which each cited Land Use Regulation restricts the use of the Property, compared with how the owner, or family member, if applicable, was permitted to use the Property under Land Use Regulations in effect at the time the owner, or family member, if applicable, acquired the Property; and

(b) The amount by which the restriction in use imposed by each cited Land Use Regulation has caused a Reduction in the Fair Market Value of the Property.

(9) Written permission from the Claimant and all other owners with a right to restrict access, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it and to verify information in the Claim.

(10)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge. I understand it is a crime under ORS 162.085 to certify the truth of a statement when I know the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both."

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(11) Evidence and information that may be submitted to address the requirements of this section include, but are not limited, to the following: the most recent tax assessor's maps; title reports; appraisal reports by certified appraisers; deeds; Covenants, Conditions & Restrictions; and affidavits.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

ADMINISTRATIVE RULES

125-145-0045

Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0060

Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

(1) The name of the Claimant, and the name of the person submitting the Claim, if different;

(2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;

(3) The amount of Reduction in Fair Market Value alleged in the Claim;

(4) The date the Claim was filed;

(5) The date the Claim was entered into the Registry;

(6) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;

(7) Additional information deemed appropriate by the Department.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0080

Third Party Participation

(1) The Department shall mail written notice of a Claim to any person or organization that has requested notice, to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, any neighborhood, or community organization(s) whose boundaries include the site when the city or county in which the site is located provides to the Department or Regulating Entity, contact information for the organization(s).

(2) Any person or organization receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.

(3) Comments, evidence and information from third parties must be submitted within ten (10) days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the tenth (10) day or actually delivered to the Department by the close of business on the tenth (10) day.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0090

Department Review and Decision Process, Forwarding Claim to Regulating Entities

(1) When a Claim is wholly based on Land Use Regulation(s) for which there is no Regulating Entity, the Department shall be the Regulating Entity for purposes of carrying out the process described in OAR 125-145-0100.

(2) Upon receipt of a Claim that is based in whole or in part on Land Use Regulation(s) for which there is a Regulating Entity, the Department shall forward the Claim to the Regulating Entity. When a Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department may consult with one or more Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) with regard to its Land Use Regulation cited in the Claim.

(3) Upon review of the Claim, if the Department or the Regulating Entity determines that it lacks sufficient information to evaluate the Claim, the Department or Regulating Entity may notify in writing the person who submitted the Claim. The written notice shall specify the material or information that would enable the Department or Regulating Entity to evaluate the claim, and shall provide a time certain for Claimant, or the person who submitted the Claim on Claimant's behalf, to submit the material or information. Failure to submit the information requested by the Department or Regulating Entity within the time specified in the notice may result in denial of a Claim.

(4) The Department may issue the final order itself or jointly with the Regulating Entity, or it may authorize a Regulating Entity to issue a final order if, after consulting with the Regulating Entity as required by OAR 125-145-0100(6), the final order modifies, removes or does not apply the Land Use Regulation(s) on which the Claim is based.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0100

Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2). The staff report shall be mailed to the Claimant, person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

(a) Whether the Claim was timely filed under Section 5 of Measure 37;

(b) Whether the Claimant is an owner under Section 11(c) of Measure 37;

(c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under Section 11(A) of Measure 37;

(d) Whether any of the Land Use Regulations relied on in the Claim are exempt under Section 3 of Measure 37;

(e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;

(f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;

(g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and

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Department of Agriculture Chapter 603

(h) The Regulating Entity's conclusions and recommendation for just compensation or to modify, remove or not apply any of the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than ten (10) days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the tenth (10) day, or actually delivered to the Department by the close of business on the tenth (10) day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

- (1) The Claim;
- (2) The contents of the Registry as to the Claim;
- (3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;
- (4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;
- (5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties; and
- (6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & OL 2005, (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

Adm. Order No.: DAS 14-2005(Temp)

Filed with Sec. of State: 11-4-2005

Certified to be Effective: 11-4-05 thru 5-3-06

Notice Publication Date:

Rules Suspended: 125-055-0110

Subject: The Health Insurance Portability and Accountability Act (HIPAA) Security Rules, 45 CFR 164.302 - 164.318, became effective on April 20, 2005. OAR 125-055-0100 through 125-055-0130 implement contract requirements for agencies that are "covered entities" that contract with a business associate, as defined under HIPAA.

OAR 125-055-0110 is no longer needed to incorporate the requirements imposed by the HIPAA Security Rules. Notice will be given and a permanent rule filed to permanently repeal the rule.

Rules Coordinator: Kristin Keith—(503) 378-2349 x 325

125-055-0110

References to Privacy Rule

For purposes of this Rule, references to the Privacy Rule mean the final rule published on December 28, 2000 in 65 Fed. Reg. 82,462-82,829, as amended on May 31, 2002 in 67 Fed. Reg. 38,009-38,020 (Part 160) and as amended on August 14, 2002 in 67 Fed. Reg. 53,182-53,273 (Part 160 and 164).

Stat. Auth.: ORS 184.305, 184.340 & 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; Suspended by DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; Suspended by DAS 14-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06

Adm. Order No.: DOA 18-2005

Filed with Sec. of State: 10-28-2005

Certified to be Effective: 10-28-05

Notice Publication Date: 7-1-05

Rules Amended: 603-052-0850, 603-052-0860, 603-052-0870, 603-052-0880

Rules Repealed: 603-052-0890, 603-052-0900, 603-052-0905, 603-052-0910, 603-052-0915, 603-052-0920, 603-052-0930

Subject: The amendments will streamline the department's rule for production of rapeseed, including canola. The current, 12 districts are replaced by a general production area and four protected districts. Rapeseed/canola production in the general production area will be unregulated except for a requirement that seed be certified and treated and that rapeseed/canola not be grown in the same field more often than two years in every five. In protected districts rapeseed/canola for oil is prohibited except under special permit. Rapeseed/canola crops for seed, forage and covercrop are allowed under regulations mirroring current requirements including 2 to 3 mile isolation from related crops with which rapeseed/canola will cross-pollinate. The proposed protected districts are: all the counties in the Willamette Valley, 3 counties in Central Oregon, 3 counties in NE Oregon, and a 3-mile wide strip of Malheur Co. along the Idaho border. These rules will be reviewed in 2007.

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

603-052-0850

Rapeseed Control Areas

As provided in ORS 570.450, the department may establish control areas for the production of rapeseed.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05

603-052-0860

Definitions

For purposes of this rule, the following terms are defined as indicated:

- (1) "Brassica spp." means any plants in the genus Brassica.
- (2) "Cover crop" means any species of rapeseed that is grown as a cover crop and is not allowed to flower.
- (3) "Department" means the department of agriculture of the state of Oregon.
- (4) "Director" means the director of the department or his duly authorized representative.
- (5) "Forage" means any species of rapeseed that is grown for live-stock feed and is not allowed to flower.
- (6) "Person" means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(7) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.

(8) "Rapeseed" means plants of the species *Brassica napus*, *Brassica rapa* and *Brassica juncea*, including varieties commonly known as canola.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05

603-052-0870

General Production Area/Protected Districts

Growing rapeseed for oil, seed, forage or cover crop production requires particular attention to maintaining oilseed quality and purity. The protection of oil, seed, forage and cover crop quality and purity is in the public interest, as is the orderly production of such crops. Proper isolation between differing types of rapeseed or other crops susceptible to cross pollination and/or processing problems is required if the public interest in a food, industrial or seed market is to be developed and protected, and established commodity markets are to be preserved. Therefore, the seeding and

ADMINISTRATIVE RULES

growing of rapeseed by any person for any purpose in the state of Oregon shall be subject to the regulations of either the general production area or a protected district. Noncompliance with these regulations constitutes an unreasonable interference with the public's rights to use and enjoy rapeseed for oil, seed, forage or cover crops.

Stat. Auth.: ORS 561.190 & 570.450
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05

603-052-0880

General Production Area

(1) All lands in Oregon outside of protected districts are for the purposes of this rule, in the general production area. Rapeseed production in the General Production Area is subject to the following regulations.

(a) Growing *Brassica* spp. crops for any purpose including oil is allowed.

(b) All rapeseed seed stock which trades in commerce in General Production Areas must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria maculans*; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg disease, rapeseed may not be grown on the same plot of land more often than two years in every five;

(d) All unbagged loads of rapeseed transported through Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss.

Protected Districts

(2) Production of rapeseed for oil is incompatible with production of crops of related species grown for seed or vegetables. Therefore, protected districts are established where rapeseed production for oil is prohibited except under special permit. Production of rapeseed for seed, forage or cover crop in these protected production areas is subject to measures to minimize undesirable cross-pollination, disease and pest buildup, and volunteers. The following rules apply to all land in Protected Districts:

(a) Growing *Brassica* spp. crops for oil is prohibited, except under special permit as outlined in (5) below and in northeast Oregon. In northeast Oregon's protected district, special permits are not required for growing *Brassica* spp. crops for oil, but all other requirements, (b) to (h) below, do apply;

(b) All rapeseed seed stock which trades in commerce in Protected Districts must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria maculans*; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg disease, rapeseed may not be grown on the same plot of land more often than one year in every four years;

(d) To prevent cross-pollination problems, rapeseed must be isolated from other crops with which it will cross-pollinate, by a distance of not less than three miles. In Baker, Union and Wallowa counties the required isolation distance shall be not less than two miles;

(e) The location of all rapeseed fields, and experimental plots, must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting. In the Willamette Valley, the recording system used shall be that adopted by the Willamette Valley Specialty Seed Crops Association;

(f) Forage and cover crop rapeseed may be grown but shall not be allowed to flower;

(g) All unbagged loads of rapeseed transported within Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss;

(h) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Designation of Protected Districts

(3) The following areas are designated as Protected Districts:

(a) in the Willamette Valley, the entire counties of Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington and Yamhill;

(b) in Central Oregon, the entire counties of Crook, Deschutes and Jefferson;

(c) in Northeastern Oregon, the entire counties of Baker, Union and Wallowa, except the following part of Wallowa County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon;

(d) in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

Changes to Rapeseed Control Area Rules

(4) Interested persons may petition the department to amend or repeal these rules, including designation changes creating or removing protected district status, by following the procedures in the Administrative Procedures Act, ORS 183.390. The agency must either deny the petition or initiate rulemaking within 90 days of receiving the petition. In deciding whether to grant or deny a request to amend or repeal these rules, the agency must consider six criteria:

(a) The continued need for the existing rule;

(b) Any complaints and comments about the rule received from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state or federal rules and, to the extent feasible, with local government regulations;

(e) The degree to which circumstances have changed since the rule was adopted; and

(f) The legal basis for the rule.

Special Permits for Exemptions

(5) The department may issue special permits providing exemptions to the rapeseed control area rules if after careful review and consultation with an advisory committee, it determines that the proposed action would not harm the agricultural industries in the area. The Department shall invite all growers of *Brassica* spp. within a three-mile radius of the proposed growing site to serve on the advisory committee as well as recognized experts from Oregon State University, and the biofuels, specialty seed and vegetable industries. The Director of the Department of Agriculture retains the final authority to approve or deny special permit requests. Any action under a special permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the proposed action and its potential risk. Persons desiring an exemption to the rapeseed control area rules shall petition the department in writing.

Rule Review

(6) The effectiveness of these rapeseed control area rules will be reviewed by the department and other interested parties before December 31, 2007. This review will include changes to the economics of rapeseed production, experience with weediness of volunteer rapeseed, and new information on pest and disease pressure related to rapeseed production.

Violations

(7) The Director shall have the authority to require destruction prior to bloom of any rapeseed production that violates these rules. In the event that the person or producer of said production does not comply with the destruction order, the Director is authorized to have the production destroyed by a third party. The cost of such destruction is to be charged to the producer. In addition, persons violating these regulations are subject to the penalties provided by ORS 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05

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

Adm. Order No.: BCD 25-2005(Temp)

Filed with Sec. of State: 11-9-2005

Certified to be Effective: 11-9-05 thru 5-8-06

Notice Publication Date:

Rules Adopted: 918-008-0029

ADMINISTRATIVE RULES

Subject: This temporary rule enables the division to adopt supplemental code amendments to the Oregon Structural Specialty Code.
Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-008-0029

Special Interim Code Amendments

The division, with the approval of the appropriate advisory board as defined in ORS 455.010, may propose and adopt special interim code amendments to the state building code at any time within a three-year code cycle, as circumstances merit.

Stat. Auth.: ORS 183.335(5)
Stats. Implemented: ORS 455.030 & 455.110
Hist.: BCD 25-2005(Temp), f. & cert. ef. 11-9-05 thru 5-8-06

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

Adm. Order No.: DO 1-2005

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 9-1-05

Rules Amended: 440-045-0020, 440-045-0025

Subject: OAR Chapter 440-045-0020, 440-045-0025: Pursuant to ORS 656.612, the Director shall adopt by rule the assessment to be imposed and collected from insurers, self-insured employers and self-insured employer groups, based on workers' compensation direct earned premium, in amount sufficient to meet the expenses of the department in carrying out its duties under ORS Chapter 656, ORS Chapter 654 and the Insurance Code. The assessment rate is established annually. These rules establish the assessment rate for calendar year 2006.

Rules Coordinator: Myrna Curzon—(503) 947-7866

440-045-0020

Assessment Rate

The assessment to be levied against insurers, self-insured employers and self-insured employer groups for Calendar Year 2006 shall be 5.5 percent of direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers.

Stat. Auth.: ORS 705.135 & 656.612
Stats. Implemented: ORS 656.612 & 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06

440-045-0025

Adjustment Reserve Rate

In addition to the assessments established in OAR 440-045-0020, self-insured employer groups and self insured employers for the Calendar Year 2006 shall be assessed an additional 0.2 percent to fund the Self-Insured Employer Group Adjustment Reserve and the Self-Insured Employer Adjustment Reserve.

Stat. Auth.: ORS 705.135 & 656.612
Stats. Implemented: ORS 656.612 & 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00, cert. ef. 1-1-01; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06

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

Adm. Order No.: WCB 2-2005

Filed with Sec. of State: 11-3-2005

Certified to be Effective: 11-3-05

Notice Publication Date: 8-1-05

Rules Amended: 438-006-0095

Subject: Amends OAR 438-006-0095 by adding a provision that, when an Administrative Law Judge (ALJ) disqualifies himself or herself, the ALJ is not required to disclose the reason or reasons for the disqualification except as required by law.

Rules Coordinator: Vicky Scott—(503) 378-3308

438-006-0095

Change of Administrative Law Judge

(1) Except as provided in section (4) of this rule, an Administrative Law Judge shall disqualify himself or herself from a proceeding in which the Administrative Law Judge's impartiality reasonably may be questioned, including, but not limited to, instances when:

(a) The Administrative Law Judge has a bias or prejudice concerning a party, a representative, or any other participant in the proceeding before the Administrative Law Judge, or has knowledge, obtained from sources outside the proceeding, of disputed evidentiary facts concerning the proceeding;

(b) The Administrative Law Judge served as a lawyer in the matter in controversy, or a lawyer with whom the Administrative Law Judge previously was associated served during the period of association as a lawyer in the matter, or the Administrative Law Judge or the lawyer has been a material witness in the matter;

(c) The Administrative Law Judge knows that the Administrative Law Judge, individually or as a fiduciary, or the Administrative Law Judge's spouse, parent or child, wherever residing, or any other person residing in the Administrative Law Judge's household has a financial interest in the subject matter in controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding;

(d) The Administrative Law Judge, the Administrative Law Judge's spouse, parent or child, wherever residing, or any other person residing in the Administrative Law Judge's household:

(A) Is a party to the proceeding, or an officer, director, partner or trustee of a party;

(B) Is acting as a lawyer in the proceeding; or

(C) Is, to the Administrative Law Judge's knowledge, likely to be a material witness in the proceeding.

(2) When an Administrative Law Judge disqualifies himself or herself from a proceeding under this rule, the Administrative Law Judge is not required to disclose the reason or reasons for the disqualification except as required by law.

(3) For purposes of this rule:

(a) "Fiduciary" includes relationships such as personal representative, trustee, conservator and guardian;

(b) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(A) Ownership in a mutual or common investment fund that owns securities is not a "financial interest" unless the Administrative Law Judge participates in the management of the fund;

(B) Holding an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in property of the organization;

(C) The proprietary interest of a policy holder in a mutual insurance company, a depositor in mutual savings association, or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(D) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(4) An Administrative Law Judge who would be disqualified under this rule may, rather than disqualify himself or herself from the proceeding, disclose to the parties the basis of the disqualification. If, after such disclosure, any party wishes the Administrative Law Judge to disqualify himself or herself from the proceeding, the Administrative Law Judge shall do so. If, after such disclosure, the parties all agree in writing or on the record that the Administrative Law Judge's impartiality is not in question because of the information disclosed to the parties, the Administrative Law Judge may participate in the proceeding. Any writing signed by or on behalf of all parties shall be incorporated into the record of the proceeding, or, in the case of a mediation, made part of the Administrative Law Judge's mediation file.

(5) Immediately upon discovering the asserted basis, any party may request that an Administrative Law Judge disqualify himself or herself from a proceeding on any basis set forth in section (1) of this rule. If the Administrative Law Judge does not then disqualify himself or herself, any party may promptly file a request for disqualification of the Administrative Law Judge with the Presiding Administrative Law Judge. Such a request shall include an affidavit setting out, in detail, the basis for the requested disqualification.

(6) Following review of the request for disqualification and accompanying affidavit, the Presiding Administrative Law Judge will determine, in his/her discretion, whether a hearing on the allegations in the affidavit shall be held. Following such a hearing or following the Presiding Administrative Law Judge's determination that a hearing will not be held,

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the Presiding Administrative Law Judge shall issue a written decision concerning the disqualification request. If the Presiding Administrative Law Judge determines that the Administrative Law Judge should be disqualified, the Presiding Administrative Law Judge shall so state and explain the basis for his/her decision, and shall assign another Administrative Law Judge to the case. If the Presiding Administrative Law Judge determines that the Administrative Law Judge should not be disqualified, the Presiding Administrative Law Judge shall so state and explain the basis for his/her decision, and the case shall proceed with the Administrative Law Judge.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.726(5)
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 2-2005, f. & cert. ef. 11-13-05

Adm. Order No.: WCB 3-2005

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 438-005-0005, 438-005-0011, 438-005-0050, 438-005-0053, 438-005-0055, 438-012-0001, 438-012-0018, 438-012-0020, 438-012-0030, 438-012-0035, 438-012-0036, 438-012-0037, 438-012-0050, 438-012-0055, 438-012-0060

Rules Repealed: 438-012-0024, 438-012-0070, 438-012-0075, 438-012-0080, 438-012-0085, 438-012-0090, 438-012-0095, 438-012-0100

Subject: Repeal and amend Division 012 rules to implement House Bill 2294 (2005) (HB 2294), regarding the processing of "post-aggravation rights" new or omitted medical condition claims under ORS 656.267. Amends "Own Motion" claim processing for "worsened condition" and "post-aggravation rights" new or omitted medical condition claims, after disputed condition has "been determined to be compensable." Amends Division 005 rules by updating the period for timely issuance of responsibility denials under ORS 656.262, amending the Board's zip code in "notices," and amending references to renumbered statutes. Amends the "effective date" for both Division 005 and 012 rules to "January 1, 2006."

Rules Coordinator: Vicky Scott—(503) 378-3308

438-005-0005

Statutory Authority

These rules are adopted under the Board's general rulemaking authority of ORS 656.726(5) to provide rules of practice and procedure for hearing and review proceedings under ORS 656.001 to 656.990, for exercising its continuing authority under ORS 656.278 and providing for the payment of attorney fees in cases under the Workers' Compensation Law pursuant to ORS 656.388.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.726(5)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-005-0011

Effective Date; Applicability

These rules are effective January 1, 2006 and shall apply to all cases pending before the Hearings Division and the Board under the provisions of ORS Chapter 656 on and after that date. These rules are also applicable to cases pending before the Hearings Division and the Board arising under ORS Chapter 655.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.726(5)
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 9-1990(Temp), f. 8-24-90, cert. ef. 8-27-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1993, f. 5-19-93, cert. ef. 6-1-93; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-005-0050

Notice of Claim Acceptance and Hearing Rights under ORS 656.262(6)(d)

(1) Every notice of claim acceptance shall include all of the information prescribed by ORS 656.262(6)(b) and OAR chapter 436.

(2) In the event that the insurer or self-insured employer disagrees with all or any portion of a worker's objections to a notice of claim acceptance under ORS 656.262(6)(d), the insurer's or self-insured employer's written response shall specify the reasons for the disagreement, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU DISAGREE WITH THIS DECISION, YOU MAY FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE

150, SALEM, OREGON 97302-1280. YOUR LETTER SHOULD STATE THAT YOU WANT A HEARING, YOUR ADDRESS, THE DATE OF YOUR INJURY, AND YOUR CLAIM NUMBER.

"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 945-7585."

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(4)
Stats. Implemented: ORS 656.262(6)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-005-0053

Notice of Denial of Responsibility

(1) If a self-insured employer or insurer intends to deny responsibility for a claim on the basis of injury or exposure with another employer, the self-insured employer or insurer shall, within the period allowed under ORS 656.262 for processing the claim, so indicate in or as part of a denial otherwise meeting the requirements of ORS 656.262 and OAR 438-005-0055.

(2) The notice shall:

(a) Identify the condition(s) for which responsibility is being denied;

(b) State the factual and legal reasons for the denial; and

(c) Advise the claimant to file separate, timely claims against other potentially responsible insurers or self-insured employers, including other insurers for the same employer, in order to protect the claimant's rights to obtain benefits on the claim.

(3) The denial may:

(a) List the names and addresses of other insurers or self-insured employers who may be responsible for the claimant's condition; and

(b) State whether the self-insured employer or insurer has requested the appointment of a paying agent pursuant to ORS 656.307.

Stat. Auth.: ORS 656.726(4) & 654.025(2)
Stats. Implemented: ORS 656.308(2) & 656.262(6)
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-005-0055

Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(14), in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES.

IF YOU MAKE A TIMELY REQUEST FOR HEARING ON A DENIAL OF COMPENSABILITY OF YOUR CLAIM AS REQUIRED BY ORS 656.319(1)(a) THAT IS BASED ON ONE OR MORE REPORTS OF EXAMINATIONS CONDUCTED AT THE REQUEST OF THE INSURER OR SELF-INSURED EMPLOYER UNDER ORS 656.325(1)(a) AND YOUR ATTENDING PHYSICIAN DOES NOT CONCUR WITH THE REPORT OR REPORTS, YOU MAY REQUEST AN EXAMINATION TO BE CONDUCTED BY A PHYSICIAN SELECTED BY THE DIRECTOR. THE COST OF THE EXAMINATION AND THE EXAMINATION REPORT SHALL BE PAID BY THE INSURER OR SELF-INSURED EMPLOYER. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585."

(2) If an insurer or self-insured employer intends to deny a claim under ORS 656.262(14) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT AN EXPEDITED HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOU WILL RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS.

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AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE IN OREGON 1-800-452-0288 OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(6), 656.262(15) & 656.325

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0001

Definitions

(1) "Own Motion Board" and "Board" mean the Workers' Compensation Board acting under its authority pursuant to ORS 656.278 and these rules.

(2) "Own Motion Claim" means:

(a) A written request by or on behalf of a claimant for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired (i.e., a "post-aggravation rights" "worsened condition" claim);

(b) A new medical condition or an omitted medical condition that is related to an initially accepted claim that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired (i.e., a "post-aggravation rights" new medical condition or omitted medical condition claim); or

(c) A written request by or on behalf of a claimant for medical benefits for a compensable injury that occurred before January 1, 1966, unless the injury occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability.

(3) For a "post-aggravation rights" "worsened condition" claim, "determined to be compensable" means:

(a) The insurer does not dispute compensability of or responsibility for the claim or condition; i.e., the insurer has not issued a denial within the time period prescribed under ORS 656.262 or 656.308(2); or

(b) An order from an Administrative Law Judge, the Board, or the court has found the claim or condition compensable and the responsibility of the insurer.

(4) For a "post-aggravation rights" new medical condition or omitted medical condition claim, "determined to be compensable" means:

(a) The insurer has issued a notice of acceptance under ORS 656.262(7)(a); or

(b) The insurer's denial under ORS 656.262(7) or 656.308(2) or de facto denial has been set aside by an order from an Administrative Law Judge, the Board, or the court.

(5) "Own Motion Insurer," "Insurer" and "Paying Agent" mean a guaranty contract insurer or self-insured employer that is or may be responsible for payment of compensation under the provisions of ORS 656.278.

(6) "Own Motion Order" means an order of the Own Motion Board.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.267(1)(3), 656.278(1) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0018

Applicability of Rules; Effective Date

(1) These rules apply to claims in which a request for compensation under the Board's Own Motion jurisdiction is in existence or arose on or after the effective date of these rules.

(2) These rules in division 012 are effective January 1, 2006.

Stat. Auth.: ORS 656.278 & 656.726(5)

Stats. Implemented: ORS 656.278(1) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0020

Insurer to Process Own Motion Claim: Notice and Contents of Claim; Worsened Condition Claim; "Post-aggravation Rights" New Medical Condition or Omitted Medical Condition Claim; Pre-1966 Injury Claim

(1) All Own Motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, shall first be direct-

ed to and processed by the insurer. An Own Motion claim shall be legibly date-stamped on the date it is received by the insurer.

(2) An Own Motion claim shall contain sufficient information to identify the claimant and the claim.

(3) An insurer is deemed to have notice of an Own Motion claim for a "post-aggravation rights" worsened condition when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that was initiated after the rights under ORS 656.273 expired; or

(b) Any document submitted to the insurer after the expiration of aggravation rights regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) that reasonably notifies the insurer that the compensable injury results in the claimant's inability to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(4) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267 and that claim has been determined to be compensable as defined under OAR 438-012-0001(4).

(5) Except as provided in section (7) of this rule, an insurer is deemed to have notice of an Own Motion claim for medical benefits and/or temporary disability compensation relating to a compensable injury that occurred before January 1, 1966, when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for medical benefits relating to the compensable injury;

(b) Any document that reasonably notifies the insurer that the claimant is seeking medical benefits for the compensable injury;

(c) A written request for temporary disability compensation or claim reopening regarding a worsening of an injury occurring before January 1, 1966 that has been determined to be compensable as defined under OAR 438-012-0001(3); or

(d) Any document regarding a worsening of an injury occurring before January 1, 1966 that has been determined to be compensable as defined under OAR 438-012-0001(3) that reasonably notifies the insurer that the compensable injury results in the inability of the claimant to work and requires surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(6) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim related to a compensable injury that occurred before January 1, 1966, when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267 and that claim has been determined to be compensable as defined under OAR 438-012-0001(4).

(7) An Own Motion claim for medical benefits does not include a claim for medical benefits relating to a compensable injury that occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability. Such claims shall be processed as a claim for medical services under ORS 656.245.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(2) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0030

Insurer Recommendation of Reopening or Denial of Claim Voluntarily Reopening

(1) Except as provided in section (3) of this rule, for "worsened condition" claims that have been determined to be compensable as defined under OAR 438-012-0001(3) and "post-aggravation rights" new medical condition or omitted medical condition claims that have been determined to be compensable as defined under OAR 438-012-0001(4), the Own Motion insurer shall, within 30 days after the claimed condition has been determined to be compensable as defined under OAR 438-012-0001(3) or 438-012-0001(4), either:

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(a) Voluntarily reopen the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, under ORS 656.278(5) to provide benefits allowable under ORS 656.278; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim, including any “post-aggravation rights” new medical condition or omitted medical condition claim, should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The Own Motion insurer shall supply all information and evidence required by the form, which should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant’s attorney, if any.

(2) Except as provided in section (3) of this rule, for medical benefit claims under OAR 438-012-0001(2)(c), the Own Motion insurer shall, within 60 days after receiving the Own Motion claim, either:

(a) Voluntarily reopen the Own Motion claim under ORS 656.278(5) to provide benefits allowable under ORS 656.278 or to grant additional medical or hospital care to the claimant; or

(b) Submit to the Board a written recommendation as to whether the Own Motion claim should be reopened or not reopened, on a form prescribed by the Board, accompanied by the required evidence supporting the recommendation. The Own Motion insurer shall supply all information and evidence required by the form, which should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. Copies of the recommendation form and any supporting evidence shall be mailed to the claimant and the claimant’s attorney, if any.

(3) In extraordinary circumstances, the Board may grant the insurer an extension for submission of its recommendation.

(4) In all cases when the Own Motion insurer voluntarily reopens the claim under ORS 656.278(5), the insurer shall issue a 3501 Form to the claimant with copies to the claimant’s attorney, if any, and the Workers’ Compensation Division. The form shall be as prescribed by the Director.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), 656.278(5) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0035

Temporary Disability Compensation

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant’s condition becomes medically stationary in those cases where:

(a) The Own Motion claim for temporary disability compensation is filed after the aggravation rights under ORS 656.273 expired;

(b) There is a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and

(c) The claimant qualifies as a “worker” pursuant to ORS 656.005(30). “Worker” does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant’s condition becomes medically stationary in those cases where:

(a) A new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and was initiated after the aggravation rights under ORS 656.273 expired; and

(b) The claimant qualifies as a “worker” pursuant to ORS 656.005(30). “Worker” does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The insurer is deemed to be in the work force if:

(a) The claimant is engaged in regular employment;

(b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or

(c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

(a) The date of an order of the Board reopening the claim; or

(b) The date the insurer voluntarily reopened the claim.

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

(a) The claimant is medically stationary pursuant to ORS 656.005(17);

(b) The claim is closed pursuant to OAR 438-012-0055;

(c) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability compensation; or

(d) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

(6)(a) An Own Motion insurer may unilaterally suspend compensation under the circumstances provided in ORS 656.262(4)(e), (4)(h), and (4)(i). If the Own Motion insurer believes that temporary disability compensation should be suspended for any reason other than those provided in ORS 656.262(4)(e), (4)(h), and (4)(i), the insurer may make a written request to the Board for such suspension. This request shall:

(A) State the reasons the insurer is requesting that the Board suspend the claimant’s temporary disability compensation;

(B) Include copies of supporting documentation; and

(C) Be mailed to the claimant and the claimant’s attorney, if any, by certified or registered mail.

(b) Unless an extension is granted by the Board, claimant or claimant’s attorney shall have 14 days to respond to the Board in writing to the request.

(c) Unless an extension is granted by the Board, the insurer shall have 14 days to reply in writing to claimant’s response.

(d) The insurer shall not suspend compensation under this section without prior written authorization by the Board, except as provided in ORS 656.262(4)(e), (4)(h), and (4)(i).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.005(30), 656.262(4), 656.268(4), 656.278(1) & (2) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0036

Permanent Disability Compensation

(1) Where a new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and the claim was initiated after the aggravation rights under ORS 656.273 expired, the insurer may provide any permanent disability benefits to which the claimant is entitled under application of the Standards adopted by the Director under ORS 656.726 when the insurer closes the claim pursuant to OAR 438-012-0055.

(2) Pursuant to ORS 656.278(2)(d), an insurer may include permanent disability benefits for additional impairment to an injured body part that has previously been the basis of a permanent partial disability award, but only to the extent that the permanent partial disability rating exceeds the permanent partial disability rating by the prior award or awards.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), 656.278(2) & 656.726(5)

Hist.: WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0037

Payment of Medical Benefits

Except as otherwise provided in OAR 438-012-0020(7), for every condition resulting from a compensable injury occurring before January 1, 1966, the Own Motion insurer may pay for reasonable and necessary medical services when:

(1) Undertaken for curative purposes;

(2) Provided to a claimant who has been determined to have permanent total disability;

(3) Provided in the form of prescription medications;

(4) Necessary to administer prescription medication or to monitor administration of prescription medication;

(5) Provided in the form of prosthetic devices, braces and supports;

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- (6) Necessary to maintain and monitor the status, replacement or repair of a prosthetic device, brace or support;
- (7) Necessary to diagnose the claimant's condition;
- (8) Necessary to enable the claimant to continue current employment;
- (9) Provided in the form of life-preserving modalities similar to insulin therapy, dialysis and transfusions; or
- (10) The Board determines that special circumstances justify the provision of further medical services.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.278(1)(c), 656.278(2)(c) & 656.726(5)
Hist.: WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0050

Board Will Act Unless Claimant Has Not Exhausted Other Available Remedies

(1) The Board will act promptly upon a request for relief under the provisions of ORS 656.278 and these rules unless:

(a) The claimant has available administrative remedies under the provisions of ORS 656.273;

(b) The claimant's condition is the subject of a contested case under ORS 656.283 to 656.298, 656.307 or 656.308, or an arbitration or mediation proceeding under ORS 656.307; or

(c) The claimant's request for payment of temporary disability compensation is based on surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work that is the subject of either a managed care dispute resolution review process or a Director's medical review under ORS 656.245, 656.260 or 656.327.

(2) The Board may postpone its review of the merits of the claimant's request for relief if the available remedies set forth in section (1) of this rule could affect the Board's authority to award compensation under the provisions of ORS 656.278.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.278(1) & 656.726(5)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0055

Closure of Claims Reopened Under ORS 656.278

When a claim has been voluntarily reopened or ordered reopened by the Board and the medical reports indicate to the insurer that the claimant's condition has become medically stationary, the claim shall be closed by the insurer without the issuance of a Board order. In all such cases the insurer shall issue a Notice of Closure (Form 2066) to the claimant with copies to the claimant's attorney, if any, and the Workers' Compensation Division. The notice shall be on the form prescribed by the Director and shall inform the claimant of the amount and duration of temporary disability compensation, the amount of any permanent disability award determined under ORS 656.278(1)(b) and (2)(d), and the medically stationary date, and shall include the following notice in prominent or bold face type:

"IF YOU THINK THIS CLAIM CLOSURE IS WRONG, YOU MAY ASK THE WORKERS' COMPENSATION BOARD TO REVIEW IT AND DECIDE WHETHER YOU ARE ENTITLED TO MORE COMPENSATION. IF YOU DO NOT ASK FOR REVIEW WITHIN 60 DAYS OF THE DATE OF THIS NOTICE YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO CONTEST THIS NOTICE UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL RIGHTS WILL BE LOST. YOU MAY ASK FOR A REVIEW BY WRITING TO THE BOARD AT 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280. YOU MAY HAVE AN ATTORNEY OF YOUR CHOICE, WHOSE FEE WILL BE LIMITED TO A PERCENTAGE OF ANY MORE COMPENSATION YOU MAY BE AWARDED."

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.278(1), (2) & (6) & 656.726(5)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 3-1988(Temp), f. 10-20-88, ef. 11-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-012-0060

Board Review of Insurer Closure

(1) The request for Board review of the insurer's claim closure pursuant to OAR 438-012-0055 shall be in writing, signed by the claimant or the claimant's attorney, and shall include, but is not limited to, the following information:

(a) The claimant's name and mailing address;

(b) A statement that Board review is requested, and the reason(s) for the request for review; reasons for requesting review may include, but are not limited to:

(A) Disagreement with the medically stationary determination;

(B) Disagreement with the temporary disability compensation awarded, including rate of payment and/or dates awarded; and/or

(C) Disagreement with permanent disability compensation awarded, if the claim was reopened for a "post-aggravation rights" new medical condition claim and/or omitted medical condition claim. If the claimant disagrees with the impairment used in rating of the claimant's permanent disability for such a claim, the claimant may request appointment of a medical arbiter;

(c) The name of the insurer; and

(d) A copy of the Notice of Closure (Form 2066).

(2) To be considered, the request must be filed with the Board within 60 days after the mailing date of the notice of closure, or within 180 days after the mailing date if the claimant establishes good cause for the failure to file the request within 60 days after the mailing date. The Board shall notify all parties that review has been requested.

(3) Within 14 days after notification from the Board that a review has been requested, the insurer shall submit to the Board and to the claimant and the claimant's attorney, if any, legible copies of all evidence that pertains to the claimant's compensable condition at the time of closure, including any evidence relating to permanent disability. Such evidence should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. The insurer may also submit written arguments at this time, with copies to the claimant or the claimant's attorney, if any.

(4) The claimant may submit additional evidence and written argument to the Board, with copies to the insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the insurer mails the evidence pursuant to section (3) of this rule.

(5) No additional written argument may be submitted unless authorized by the Board.

(6) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

(7) The Board may refer a disagreement regarding the rating of the claimant's permanent disability for a "post-aggravation rights" new or omitted medical condition to the Workers' Compensation Division for an evaluation and recommendation based on the record presented to the Board.

(8) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division or the Workers' Compensation Division.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.278(1) & (6) & 656.726(5)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

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

Adm. Order No.: WCD 7-2005

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 1-2-06

Notice Publication Date: 9-1-05

Rules Adopted: 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

Rules Amended: 436-001-0003, 436-001-0004, 436-001-0030, 436-001-0170, 436-001-0225, 436-001-0240, 436-001-0265, 436-001-0300, 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008, 436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

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

Rules Ren. & Amended: 436-001-0000 to 436-001-0009, 436-001-0155 to 436-001-0019, 436-001-0275 to 436-001-0246

ADMINISTRATIVE RULES

Subject: The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0003

Applicability and Purpose

(1) This rule division establishes supplemental procedures governing rulemaking and hearings, and carries out the provisions of ORS Chapters 183 and 656.

(2) These rules apply to hearings on matters within the director's jurisdiction that are held on or after January 2, 2006. In general, the rules of the Workers' Compensation Board, in OAR chapter 438, apply to the conduct of hearings, unless these rules provide otherwise.

(3) These rules apply to all division rulemaking on or after January 2, 2006.

(4) Unless otherwise obligated by statute, the director may waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, 183 & OL 2005, Ch. 26

Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0004

Definitions

The following definitions apply to these rules, unless the context requires otherwise.

(1) "Administrative law judge" or "ALJ" means an administrative law judge appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.

(2) "Administrator" means the administrator of the Workers' Compensation Division or the administrator's designee.

(3) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(4) "Delivered" means physical delivery to the division's Salem office during regular business hours.

(5) "Department" means the Department of Consumer and Business Services.

(6) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(7) "Division" means the department's Workers' Compensation Division.

(8) "Filed" means mailed, faxed, e-mailed, or delivered to the division.

(9) "Final order" means a final, written action of the director.

(10) "Mailed" means correctly addressed, with sufficient postage and placed in the custody of the U. S. Postal Service.

(11) "Party" may include, but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, a medical provider, or the division.

(12) "Proposed and final order" means an order subject to revision by the director which becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.

(13) Matters within the director's jurisdiction are matters other than those concerning a claim, as defined by ORS 656.704.

(14) Other words and phrases have the same meaning as given in ORS 183.310, where applicable.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, 183 & OL 2005, Ch. 26

Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0009

Notice of Agency Action Concerning Rules

(1) Except when adopting a temporary rule, the division will give prior public notice of the proposed adoption, amendment, or repeal of any rule by:

(a) Publishing notice of the proposed action in the Secretary of State's Oregon Bulletin at least 21 days prior to the effective date of the action; and

(b) Notifying interested persons and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335.

(2) The division will add a person or organization to its notification list if the person or organization:

(a) Subscribes to the division's e-mail notification service, through the division's Web site at wcd.oregon.gov; or

(b) Requests in writing to receive hard-copy notification, and includes the person or organization's full name and mailing address.

Stat. Auth.: ORS 656.726 (4)

Stats. Implemented: ORS 183.335 & 84.022

Hist.: WCB 16-1975, f. & ef. 10-20-75; WCD 4-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 4-1978(Admin), f. & ef. 3-6-78; Renumbered from 436-090-0505, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0000, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0019

Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the administrator no later than the filing deadline. The date and time of receipt for electronic filings is determined under ORS 84.043. Filing deadlines will not be extended except as provided in section (6) of this rule. The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The identity, name, address, and phone number of the party making the request;

(b) The division's administrative order number;

(c) The worker's name, address, and phone number;

(d) The name, address, and phone number of the worker's attorney, if any;

(e) The date of injury;

(f) The insurer or self-insured employer claim number;

(g) The division's file number; and

(h) The reason for requesting a hearing.

(3) A request for hearing may be e-mailed to wcd.hearings@state.or.us, the division's hearing electronic mail address. If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2000®, (.doc, .txt, .rtf) or Adobe Reader®, (.pdf) can open. Image formats that can be viewed in Internet Explorer®, (.tif, .jpg) are also acceptable. The division will acknowledge receipt of the e-mail. A party filing a request for hearing by e-mail consents and agrees to conduct the request for hearing transaction electronically. The party's electronic mailing address qualifies as its electronic signature.

(4) A request for hearing may be faxed, provided the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(5) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(6) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the administrator. At the limited hearing, the administrative law judge may only consider whether:

(a) The denied request for hearing was filed timely; or

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(b) If good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Stat. Auth.: ORS 656.726(4) & 84.013
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0155, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0023

Other Filings and Submissions

(1) Except as provided in section (3) of this rule, any filing, motion, request, document, or correspondence filed or submitted in a matter within the director's jurisdiction must be filed or submitted:

(a) To the division before the dispute is referred to the board;

(b) To the administrative law judge after the dispute is referred to the board but before the ALJ issues a proposed and final order; and

(c) To the division after the ALJ issues a proposed and final order, unless it is a request for correction of errors in the proposed and final order under OAR 436-001-0246(6).

(2) A copy of any filing, motion, request, document, or correspondence must be sent to the other parties, or their legal representatives, at the same time it is filed or submitted to the division or administrative law judge.

(3) A party must notify the division and the other parties of any changes in the party's mailing address or legal representation.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0027

Timeliness; Calculation of Time

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:

(a) If a document is mailed, it will be considered filed on the date it is postmarked.

(b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.

(c) If a document is delivered, it must be delivered during regular business hours to be considered filed on that date.

(2) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0030

Role of the Workers' Compensation Division

(1) In any hearing, the director may request to:

(a) Receive notice of all matters;

(b) Receive copies of all documents; and

(c) Present evidence, testimony, and argument.

(2) The director may appear by providing the administrative law judge and parties with an entry of appearance in the hearing. The director may be represented by an agency representative, assistant attorney general, or special assistant attorney general as authorized by the Department of Justice. If the director enters an appearance, all notices and documents in the hearing must be provided to the director's representative.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 180.220(2), 180.235 & 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0170

Duties and Powers of the Administrative Law Judge

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or administrative rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) Notwithstanding section (2), an administrative law judge may issue a final order of dismissal when the requesting party withdraws the request for hearing and no cross-request for hearing has been filed.

(4) If the parties settle as provided in OAR 436-001-0296(3), the administrative law judge may issue a proposed and final order of dismissal. If the parties settle as provided in OAR 436-001-0296(1) or (2), the director will dismiss the request for hearing.

(5) Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.

(6) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(7) The administrative law judge may separate matters which will promote efficient disposition of the matters.

(8) Consolidation of matters under section (6) of this rule or under ORS 656.704(3)(c) (Oregon Laws 2005, chapter 26, section 15) is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

(9) On the motion of a party, the division, or the administrative law judge, the ALJ may continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(10) The administrative law judge may send the division a written question regarding which rules or statutes apply to the matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends such a question, the ALJ must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(11) The administrative law judge may conduct a hearing by telephone if all parties agree.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0225

Scope of Review/Limitations on the Record

(1) Except for the matters listed in sections (2) and (3), the administrative law judge reviews all matters within the director's jurisdiction de novo, unless otherwise provided by statute or administrative rule.

(2) In medical service and medical treatment disputes under ORS 656.245, 656.247(3)(a), and 656.327, and managed care disputes under ORS 656.260(16), the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. New medical evidence or issues may not be admitted or considered.

(3) In vocational assistance disputes under ORS 656.340, new evidence may be admitted and considered. Under ORS 656.283(2), the administrative law judge may modify the director's order only if it:

(a) Violates a statute or rule;

(b) Exceeds the director's statutory authority;

(c) Was made upon unlawful procedure; or

(d) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.245, 656.247, 656.260, 656.283, 656.327 & 656.704
Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0240

Exhibits and Evidence

(1) Within 21 days after referral of the request for hearing to the board, the division will provide the parties and the administrative law judge legible copies of all exhibits that were relied upon in the underlying action or order, together with an index.

(2) Not less than 28 days before the hearing, or within seven days of receipt of the division's document index and documents, whichever is later, the petitioner(s) must provide legible copies of any additional exhibits that they will offer at hearing to the other parties, the director's representative, and the administrative law judge. The additional exhibits must be marked and accompanied by a supplemental exhibit index, numbered to coincide in chronological order with the division's exhibits and exhibit list. For example, an exhibit which is chronologically between the division's exhibits 5 and 6 would be marked as "Exhibit 5a" or "Ex. 5a."

(3) Not less than 14 days before the hearing, the respondent(s)/cross-petitioner(s) must provide legible copies of any additional exhibits that they will offer at hearing to the other parties, the director's representative, and the administrative law judge. The exhibits must be marked and indexed in the same manner as provided in section (2).

(4) Unless withdrawn, all exhibits offered will be part of the record in the case, whether or not admitted into evidence.

ADMINISTRATIVE RULES

(5) At the discretion of the administrative law judge, an accurate description or photograph of an object or real evidence may be substituted for the object or real evidence. The party offering the evidence is responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0246 Proposed and Final Orders — Exceptions, Correction, Director Review

(1) Under ORS 656.704(2)(a) (Oregon Laws 2005, chapter 26, section 15), a party may seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions must be filed with the administrator within 30 days of the mailing date of the proposed and final order;

(b) A written response to the exceptions must be filed within 20 days of the date the exceptions were filed;

(c) A written reply to the response, if any, must be filed within 10 days of the date the response(s) was filed.

(3) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(4) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(5) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(6) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

(7) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the mailing date of the order.

(8) Any requests for review or requests for reconsideration of a proposed and final order filed with the administrative law judge or board within 30 days of the mailing date of the order will be forwarded to the director and treated as timely exceptions under this rule.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0275, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0252 Stay of Director and Administrative Review in Consolidated Matters

(1) If matters are consolidated under ORS 656.704(3)(c) (Oregon Laws 2005, chapter 26, section 15), and a party requests board review of the order for those matters concerning a claim, and a party files exceptions on the proposed and final order for matters other than those concerning a claim, the director may stay director review of the proposed and final order. If director review is stayed, the parties will be provided the opportunity to file a written response and reply as provided in OAR 436-001-0246, and director review will then be stayed until the board issues an order for those matters concerning a claim.

(2) If matters are consolidated under ORS 656.704(3)(c) (Oregon Laws 2005, chapter 26, section 15), and a party requests board review of the order for those matters concerning a claim, and the administrative law judge remands the matters other than those concerning a claim to the director for further administrative action, the director may stay further administrative action until the board issues an order for those matters concerning a claim.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0259 Ex Parte Communication

An ex parte communication is an oral or written communication to the administrator or administrator's designee during director review of the matter not made in the presence of all parties to the dispute, concerning a fact

in issue, but does not include communication from division staff or the Department of Justice about legal issues or facts in the record. Ex parte communications received during director review will be promptly disclosed to all parties, and the parties will be allowed a reasonable opportunity to respond.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0265 Attorney Fees

(1) In cases where the director or administrative law judge is required to assess an attorney fee under ORS 656.385(1):

(a) The fee must be based on the factors listed in ORS 656.385(1).

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed \$2,000 nor fall outside the ranges provided in the following matrix:

Estimated Benefit Achieved — Professional Hours Devoted
* * * * — 1-2 hours — 2.1-4 hours — 4.1-6 hours — 6.1-8 hours — Over 8 hours
\$1-\$2000 — \$100-400 — 200-700 — \$300-750 — \$600-1000 — 800-1250
\$2001-\$4000 — \$200-500 — \$400-800 — \$600-900 — \$800-1300 —
\$1050-1500
\$4001-\$6000 — \$300-700 — \$600-1000 — \$800-1250 — \$1000-1450 —
\$1300-1750
Over \$6000 — \$400-900 — \$800-1300 — \$1050-1600 — \$1350-1800 —
\$1550-2000

(c) Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) In cases under ORS 656.245, 656.247, 656.260, or 656.327, the factors listed in OAR 436-010-0008(13) may also be considered.

(e) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

(a) The complexity of the issue(s) involved;

(b) The quality of the legal representation;

(c) The value of the interest involved;

(d) The nature of the proceedings;

(e) The risk in a particular case that an attorney's efforts may go uncompensated;

(f) The assertion of frivolous issues or defenses;

(g) A statement of services, if submitted within seven days of the hearing date, unless the administrative law judge instructs otherwise; and

(h) Any other relevant consideration deemed appropriate by the administrative law judge or director.

(3) In cases under ORS 656.262(11) where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.

(4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0275.

Stat. Auth.: ORS 656.385(1) & 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388 & 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-001-0296 Settlements and Dismissals

(1) If, after a request for hearing is filed but before a proposed and final order is issued, an agreement under ORS 656.236 or 656.289(4) is approved that resolves all issues in the matter within the director's jurisdiction, the party that filed the request for hearing must notify the director in writing that the request for hearing may be dismissed by the director.

(2) If, after a request for hearing is filed but before a proposed and final order is issued, the parties reach agreement on all issues in the matter within the director's jurisdiction, and only those issues, the parties must submit a written settlement agreement, signed by the parties, to the director for approval.

(3) If the matter within the director's jurisdiction is consolidated with matters concerning a claim and the parties reach agreement on all issues in the matter within the director's jurisdiction prior to issuance of a proposed and final order, the administrative law judge may issue a proposed and final order approving the agreement and dismissing the request for hearing.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

ADMINISTRATIVE RULES

436-001-0300

Alternative Dispute Resolution

(1) The director may offer the parties to a matter within the director's jurisdiction alternative dispute resolution as a way to resolve the matter prior to a hearing.

(2) If the parties consent to attempt alternative dispute resolution before the director after referral of the matter to the board for hearing, the director will notify the administrative law judge that the parties have agreed to attempt resolution, and that the hearing should be deferred until the process is complete. If the parties do not settle, the director will notify the administrative law judge to proceed with the hearing.

(3) If the parties settle the matter within the director's jurisdiction through alternative dispute resolution before the director, the director will issue an order dismissing the request for hearing.

(4) Nothing in this rule prevents the parties from participating in the board's mediation program for those matters within the director's jurisdiction.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.502, 656.704 & OL 2005, Ch. 26

Hist.: WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-009-0008

Administrative Review

Administrative review before the director:

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical fees and non-payment of compensable medical bills. A party need not be represented to participate in the administrative review before the director.

(b) Any party may request the director provide voluntary mediation after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, a director's order shall be issued.

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of receipt of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) The director may, on the director's own motion, initiate a medical services review at any time.

(d) Under ORS 656.704(3)(c) (Oregon Laws 2005, chapter 26, section 15), when there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue may first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties must submit requests for administrative review to the director in the form and format prescribed by the director. When an insurer

or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may contact the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number.

(b) Specify the issues in dispute and the relief sought.

(c) Provide the specific dates of the unpaid disputed treatment or services.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original HCFA/CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that the involved parties have been provided a copy of the request for review and attached supporting documentation and, if known, whether there is an issue of causation or compensability of the underlying claim or condition.

(4) The division shall investigate the matter upon which review was requested.

(a) The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party shall have 14 days to respond.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement.

(5) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party may also request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed to the director before the administrative order becomes final.

(6) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(15).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (7) of this rule, pursuant to these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (6) of this rule.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.248, 656.704 & OL 2005, Ch. 26

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-89; (Former sections (3), (4), & (7) Renumbered to 436-010-0130); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert.

ADMINISTRATIVE RULES

ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0110; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-045-0008

Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing shall be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.236, 656.289, 656.625, 656.704, 656.726(8), 656.740, 656.745 & OL 2005, Ch. 26

Hist.: WCD 8-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1990 (Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 27-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 13-1997, f. 12-4-97, cert. ef. 1-1-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-070-0008

Administrative Review

(1) Contested case hearings regarding sanctions and civil penalties: Any employer as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Hearings regarding estimation actions and orders: Under ORS 656.704(2), any employer who disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.735 & 656.740

Stats. Implemented: ORS 656.704, 656.735, 656.740 & OL 2005, Ch. 26

Hist.: WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-075-0008

Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing will be

granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.740, 656.745 & 656.750

Stats. Implemented: ORS 656.704, 656.740, 656.745, 656.750 & OL 2005, Ch. 26

Hist.: WCD 4-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 10-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 23-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 14-1997, f. 12-4-97, cert. ef. 1-1-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-080-0070

Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers

(1) When an assigned claims agent pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the assigned claims agent shall report the payment to the department as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, costs incurred by the assigned claims agent for which reimbursement will be allowed include:

(a) All compensation paid claimant.

(b) All expenses incurred for medical services.

(c) Attorney fees paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262(11) and 656.382(1).

(d) A reasonable amount for administrative costs at a rate proposed by the assigned claims agent and approved by the director prior to June 30 of each year. Late requests for increase on the rate of reimbursement, if approved, shall be effective on the date the request was received by the director.

(2) The department will review the request and issue the reimbursement out of the Workers' Benefit Fund.

(3) The department will conduct an annual audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed pursuant to section (1) of this rule. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

(a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.

(4) Under ORS 656.054 and 656.704(2), the assigned claims agent may appeal any disapproval of reimbursement made by the department under this rule as provided in OAR 436-001.

(5) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employee of a noncomplying employer or the employee's beneficiaries, or by the assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.

(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).

(7) The Business Administration Division of the department is responsible for collecting from noncomplying employers those costs incurred by the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule. The Business Administration Division will inform each noncomplying employer of the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the assigned claims agent.

Stat. Auth.: ORS 656.054 & 656.726

Stats. Implemented: ORS 656.054, 656.704 & OL 2005, Ch. 26

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Hist.: WCB 10-1970, f. & ef. 7-24-70; WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0050, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 4-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-085-0008

Administrative Review

(1) Any insurer or self-insured employer aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any insurer or self-insured employer that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.612, 656.614, 656.726(4) & 656.740
Stats. Implemented: ORS 656.704, 656.735, 656.740, 656.745 & OL 2005, Ch. 26
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-140-0008

Administrative Review

(1) If the director determines that a proposed construction carve-out program is not eligible, the director will issue a notice to the employer or collective bargaining representative.

(a) Under ORS 656.704(2), if the employer or collective bargaining representative disagrees with the notice, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the notice.

(b) OAR 436-001 applies to the hearing.

(2) If the director determines that the acts or omissions of a construction carve-out program justify suspension, the director may issue a notice of intent to suspend eligibility pursuant to OAR 436-140-0090 and schedule a hearing on the matter of suspension. The notice must be served upon the employer or collective bargaining representative as provided in OAR 436-140-0130. At a hearing on a notice of intent to suspend, the employer or collective bargaining representative must show cause why eligibility should not be suspended.

(a) If the director determines that the acts or omissions of the employer or collective bargaining representative justify suspension, the director may issue an order suspending eligibility. If the director determines that the acts or omissions of the employer or collective bargaining representative do not justify suspension, the director shall issue an order withdrawing the notice.

(b) The order must be served upon the employer or collective bargaining representative as provided in OAR 436-140-0130.

(c) If the employer or collective bargaining representative disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(d) OAR 436-001 applies to the hearing.

(3) If the director determines that the acts or omissions of a construction carve-out program justify revocation, the director may issue a notice of intent to revoke eligibility pursuant to OAR 436-140-0090. The notice must be served upon the employer or collective bargaining representative as provided in OAR 436-140-0130.

(a) The revocation shall become effective within 10 days after service of notice, unless within such period of time the employer or collective bargaining representative correct(s) the grounds for revocation to the satisfaction of the director or files a written request for hearing with the director.

(A) If the employer or collective bargaining representative requests a hearing, the director will set a date and time, and give at least 10 days' notice of the hearing. At hearing, the employer or collective bargaining representative must show cause why eligibility should not be revoked.

(B) Within 30 days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the employer or collective bargaining representative as provided in OAR 436-140-0130.

(C) If the employer or collective bargaining representative disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(D) OAR 436-001 applies to the hearing.

(b) An emergency revocation issued pursuant to OAR 436-140-0090(5), is effective immediately. To contest the revocation, the employer or collective bargaining representative must file a request for hearing within 60 days of the mailing date of the order; the revocation shall remain in effect until the director orders otherwise. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.726(4) & 656.174
Stats. Implemented: ORS 656.170, 656.172, 656.174, 656.704 & OL 2005, Ch. 26
Hist.: WCD 10-2000, f. 12-11-00, cert. ef. 12-15-00; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

436-150-0008

Administrative Review

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1) of this rule, may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.445 & 656.726(4)
Stats. Implemented: ORS 656.445, 656.704, 656.740 & OL 2005, Ch. 26
Hist.: WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 122-2005(Temp)

Filed with Sec. of State: 10-18-2005

Certified to be Effective: 10-18-05 thru 11-30-05

Notice Publication Date:

Rules Amended: 635-006-0850

Rules Suspended: 635-006-0850(T)

Subject: Amend rule in order to close the commercial sardine fishery under developmental fisheries.

Rules Coordinator: Tina Edwards—(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;

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(C) Swordfish (*Xiphias gladius*) 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. 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;

(E) The Pacific sardine commercial fishery as described within this subsection (E) will close effective 11:59 p.m., October 18, 2005 through November 30, 2005. 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 *Zoarceidae*);

(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 (*Alloccentrotus 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*);

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- (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; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05

Adm. Order No.: DFW 123-2005(Temp)

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Certified to be Effective: 10-20-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-023-0130

Rules Suspended: 635-023-0130(T)

Subject: Amend rule to reopen the mainstem Columbia River to the retention of chinook salmon from Buoy 10 upstream to the Highway 395 Bridge consistent with action taken at the October 17, 2005 Joint State Hearing.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-023-0130

Fall Sport Fishery

(1) Notwithstanding, all other specifications and restrictions as outlined in the current 2005 Oregon Sport Fishing Regulations, the following conditions apply:

(2) The mainstem Columbia River from a north-south line through Buoy 10 upstream to the Oregon-Washington border above McNary Dam is closed to the retention of chinook salmon effective 11:59 p.m., September 30, 2005.

(3) Effective October 20, 2005, the mainstem Columbia River from a north-south line through Buoy 10 upstream to the Oregon-Washington border above McNary Dam is open to the retention of chinook salmon.

(4) Eagle Creek upstream to the mainline railroad bridge is open for adipose fin-clipped coho salmon effective August 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

(5) Herman Creek upstream to the main line railroad bridge is open for adipose fin-clipped coho effective August 1 through August 15, 2005, and again from December 1 through December 31, 2005. The area west of the peninsula up to the Lower Herman Creek Pond structure is open for adipose fin-clipped coho August 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(T), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05

Adm. Order No.: DFW 124-2005(Temp)

Filed with Sec. of State: 10-18-2005

Certified to be Effective: 10-18-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-042-0060, 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180, 635-042-0190

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0170(T), 635-042-0180(T), 635-042-0190(T)

Subject: Amend rules to extend the non-Treaty commercial fall season, Zones 1-5, in the Columbia River mainstem and modify sturgeon catch limits in Youngs Bay and other Select Areas. Modifications

are consistent with action taken by the Columbia River Compact and by State action October 17, 2005.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purpose from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-3, from the mouth upstream to the Longview Bridge, the open fishing periods are:

(a) 6:00 a.m. to 6:00 p.m., September 19, 2005.

(b) 6:00 a.m. to 6:00 p.m., September 20, 2005.

(c) 6:00 a.m. to 6:00 p.m., September 22, 2005.

(A) The Elokomin-A and Abernathy sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) and (2)(b) gear is restricted to unslackened floater gill nets with a 6-inch maximum mesh size. During the fishing period identified in (2)(c) gear is restricted to gill nets with a 9-3/4 inch maximum mesh size.

(3) In Zones 1-3, from the mouth upstream to the Kalama River, the open fishing periods are:

(a) 6:00 a.m. to 6:00 p.m., September 26, 2005.

(b) 6:00 a.m. to 6:00 p.m., September 28, 2005

(A) The Elokomin-A, Abernathy, Cowlitz and Kalama-A sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) and (3)(b) gear is restricted to either unslackened floater gill nets with a 6-inch maximum mesh size or to gill nets with a 9-inch minimum to 9-3/4 maximum mesh size.

(4) In Zones 3-5, from the Longview Bridge upstream to Beacon Rock, the open fishing periods are:

(a) 8:00 p.m. September 19, 2005 to 1:00 a.m. September 20, 2005.

(b) 8:00 p.m. September 20, 2005 to 1:00 a.m. September 21, 2005.

(c) 8:00 p.m. September 22, 2005 to 1:00 a.m. September 23, 2005.

(A) The Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) thru (4)(c) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(5) In Zones 3-5, from the Kalama River upstream to Beacon Rock, the open fishing periods are:

(a) 8:00 p.m. September 26, 2005 to 1:00 a.m. September 27, 2005.

(b) 8:00 p.m. September 28, 2005 to 6:00 a.m. September 29, 2005.

(A) The Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (5)(a) and (5)(b) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(6) In Zones 1-5 from the mouth upstream to Beacon Rock, the open fishing periods are:

(a) 2:00 p.m. October 5, 2005 to 6:00 a.m. October 6, 2005.

(b) 7:00 p.m. October 6, 2005 to 5:00 a.m. October 7, 2005.

(c) 7:00 a.m. October 11, 2005 to 7:00 a.m. October 12, 2005

(d) 7:00 a.m. October 13, 2005 to 7:00 a.m. October 14, 2005.

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing period identified in (6)(a) gear is restricted to gill nets with a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(C) During the open fishing period identified in (6)(b) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(D) During the open fishing periods identified in (6)(c) and (6)(d) gear is restricted to gill nets with a 9-inch minimum mesh size.

(7) In Zones 1-5 from the mouth upstream to Beacon Rock, the open fishing periods are:

(a) 8:00 a.m. to 6:00 p.m., October 18, 2005.

(b) 8:00 p.m. October 18, 2005 to 6:00 a.m. October 20, 2005.

(c) 6:00 p.m. October 21, 2005 to 6:00 a.m. October 22, 2005.

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing period identified in (7)(a) gear is restricted to gill nets with a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

ADMINISTRATIVE RULES

(C) During the open fishing periods identified in (7)(b) and (7)(c) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(8) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified above the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & ef. 9-9-88; FWC 93-1988(Temp), f. & ef. 9-16-88; FWC 99-1988(Temp), f. & ef. 10-7-88; FWC 100-1988(Temp), f. & ef. 10-24-88; FWC 94-1989(Temp), f. & ef. 9-15-89; FWC 97-1989(Temp), f. & ef. 9-21-89; FWC 109-1989(Temp), f. & ef. 10-6-89; FWC 113-1989(Temp), f. & ef. 11-9-89; FWC 100-1990(Temp), f. & ef. 9-18-90; FWC 101-1990(Temp), f. & ef. 9-19-90; FWC 102-1990(Temp), f. & ef. 9-20-90; FWC 114-1990, f. & ef. 10-8-90; FWC 105-1991, f. & ef. 9-20-91; FWC 118-1991, f. & ef. 10-4-91; FWC 122-1991(Temp), f. & ef. 10-18-91; FWC 129-1991(Temp), f. & ef. 11-1-91; FWC 97-1992(Temp), f. & ef. 9-22-92; FWC 100-1992(Temp), f. & ef. 9-25-92; FWC 97-92, f. & ef. 9-27-92; FWC 107-1992(Temp), f. & ef. 10-9-92; FWC 109-1992(Temp), f. & ef. 10-19-92; FWC 110-1992(Temp), f. & ef. 10-22-92; FWC 80-1995(Temp), f. & ef. 9-27-95; FWC 46-1996, f. & ef. 8-23-96; FWC 58-1996(Temp), f. & ef. 9-27-96; FWC 60-1996(Temp), f. & ef. 10-7-96; FWC 62(Temp), f. & ef. 10-18-96; FWC 61-1997(Temp), f. & ef. 9-23-97; FWC 92-97; FWC 62-1997(Temp), f. & ef. 10-6-97; FWC 64-1997(Temp), f. & ef. 10-14-97; FWC 65-1997(Temp), f. & ef. 10-20-97; FWC 68-1997(Temp), f. & ef. 11-3-97; DFW 79-1999(Temp), f. & ef. 10-8-99; FWC 10-11-99; DFW 83-1999(Temp), f. & ef. 10-26-99; FWC 10-27-99; DFW 87-1999(Temp), f. & ef. 11-4-99; DFW 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & ef. 9-15-00; FWC 9-19-00; DFW 68-2000(Temp), f. & ef. 10-6-00; FWC 9-19-00; DFW 71-2000(Temp), f. & ef. 10-23-00; DFW 12-31-00; DFW 74-2000(Temp), f. & ef. 10-27-00; FWC 10-30-00; DFW 92-2001(Temp), f. & ef. 9-19-01; DFW 89-2001(Temp), f. & ef. 9-14-01; DFW 92-2001(Temp), f. & ef. 9-19-01; DFW 93-2001(Temp), f. & ef. 9-21-01; DFW 92-2001; DFW 98-2001(Temp), f. & ef. 10-8-01; DFW 104-2002(Temp), f. & ef. 10-26-01; DFW 104-2002(Temp), f. & ef. 9-19-02; DFW 106(Temp), f. & ef. 9-24-02; DFW 109-2002(Temp), f. & ef. 9-27-02; DFW 112-2002(Temp), f. & ef. 10-10-02; DFW 10-14-02; DFW 122-2002(Temp), f. & ef. 10-24-02; DFW 10-28-02; DFW 92-2003(Temp), f. & ef. 9-12-03; DFW 95-2003(Temp), f. & ef. 9-17-03; DFW 105-2003(Temp), f. & ef. 9-22-03; DFW 92-2003; DFW 107-2003(Temp), f. & ef. 10-21-03; DFW 10-26-03; DFW 95-2004(Temp), f. & ef. 9-17-04; DFW 9-19-04; DFW 98-2004(Temp), f. & ef. 9-22-04; DFW 12-31-04; DFW 99-2004(Temp), f. & ef. 9-24-04; DFW 101-2004(Temp), f. & ef. 9-29-04; DFW 102-2004(Temp), f. & ef. 10-1-04; DFW 10-4-04; DFW 12-31-04; DFW 109-2004(Temp), f. & ef. 10-19-04; DFW 12-31-05; DFW 110-2005(Temp), f. & ef. 9-19-05; DFW 110-2005(Temp), f. & ef. 9-26-05; DFW 113-2005(Temp), f. & ef. 9-28-05; DFW 116-2005(Temp), f. & ef. 10-4-05; DFW 12-31-05; DFW 120-2005(Temp), f. & ef. 10-11-05; DFW 124-2005(Temp), f. & ef. 10-18-05; DFW 12-31-05

635-042-0145

Youngs Bay Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at Battle Creek Slough; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(2) Open fishing periods are:

- (a) 6:00 a.m. August 3 to 6:00 p.m. August 4, 2005;
- (b) 6:00 a.m. August 10 to 6:00 p.m. August 11, 2005;
- (c) 6:00 a.m. August 17 to 12:00 Noon August 18, 2005;
- (d) 6:00 a.m. August 24 to 12:00 Noon August 25, 2005;
- (e) 6:00 a.m. August 30 to 6:00 a.m. September 2, 2005;
- (f) 12:00 Noon September 6 to 12:00 Noon October 31, 2005;

(3) Gill nets may not exceed 1, 500 feet (250 fathoms) in length and weight on the leadline may not exceed two pounds per any fathom. Gear is restricted to an 8-inch maximum mesh size from August 3 through August 25, 2005. After which, gear is restricted to a 6-inch maximum mesh size from August 30 through October 31, 2005.

(4) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession

and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 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. & ef. 8-19-88; FWC 55-1989(Temp), f. & ef. 8-20-89; FWC 82-1990(Temp), f. & ef. 8-14-90; FWC 86-1991, f. & ef. 8-7-91; FWC 8-18-91; FWC 123-1991(Temp), f. & ef. 10-21-91; FWC 30-1992(Temp), f. & ef. 4-27-92; FWC 35-1992(Temp), f. & ef. 5-22-92; FWC 5-25-92; FWC 74-1992(Temp), f. & ef. 8-10-92; FWC 8-16-92; FWC 28-1993(Temp), f. & ef. 4-26-93; FWC 48-1993, f. & ef. 8-6-93; FWC 8-9-93; FWC 21-1994(Temp), f. & ef. 4-22-94; FWC 4-25-94; FWC 51-1994, f. & ef. 8-19-94; FWC 8-22-94; FWC 64-1994(Temp), f. & ef. 9-14-94; FWC 9-15-94; FWC 66-1994(Temp), f. & ef. 9-20-94; FWC 27-1995, f. & ef. 3-29-95; FWC 4-1-95; FWC 48-1995(Temp), f. & ef. 6-5-95; FWC 66-1995, f. & ef. 8-22-95; FWC 69-1995, f. & ef. 8-25-95; FWC 8-27-95; FWC 8-1995, f. & ef. 2-28-96; FWC 3-1-96; FWC 37-1996(Temp), f. & ef. 6-11-96; FWC 6-12-96; FWC 41-1996, f. & ef. 8-12-96; FWC 45-1996(Temp), f. & ef. 8-16-96; FWC 8-19-96; FWC 54-1996(Temp), f. & ef. 9-23-96; FWC 4-1997, f. & ef. 1-30-97; FWC 47-1997, f. & ef. 8-15-97; DFW 8-1998(Temp), f. & ef. 2-5-98; DFW 2-28-98; DFW 14-1998, f. & ef. 3-3-98; DFW 18-1998(Temp), f. & ef. 3-9-98; FWC 3-11-98; DFW 31-98; DFW 60-1998(Temp), f. & ef. 8-7-98; DFW 8-21-98; DFW 67-1998, f. & ef. 8-24-98; DFW 10-1999, f. & ef. 2-26-99; DFW 52-1999(Temp), f. & ef. 8-2-99; DFW 8-6-99; DFW 55-1999, f. & ef. 8-12-99; DFW 9-2000, f. & ef. 2-25-00; DFW 42-2000, f. & ef. 8-3-00; DFW 3-2001, f. & ef. 2-6-01; DFW 66-2001(Temp), f. & ef. 8-20-01; FWC 8-6-01; DFW 76-2001(Temp), f. & ef. 8-20-01; DFW 10-31-01; DFW 106-2001(Temp), f. & ef. 10-26-01; DFW 12-31-01; DFW 15-2002(Temp), f. & ef. 2-10-02; DFW 8-18-02; DFW 82-2002(Temp), f. & ef. 8-5-02; DFW 9-7-02; DFW 96-2002(Temp), f. & ef. 8-26-02; DFW 12-31-02; DFW 12-2003, f. & ef. 2-14-03; DFW 17-2003(Temp), f. & ef. 2-27-03; FWC 3-1-03; DFW 32-2003(Temp), f. & ef. 4-23-03; DFW 34-2003(Temp), f. & ef. 4-24-03; DFW 10-1-03; DFW 36-2003(Temp), f. & ef. 4-30-03; FWC 5-1-03; DFW 10-1-03; DFW 37-2003(Temp), f. & ef. 5-7-03; DFW 10-1-03; DFW 75-2003(Temp), f. & ef. 8-1-03; DFW 12-31-03; DFW 89-2003(Temp), f. & ef. 9-9-03; DFW 12-31-03; DFW 11-2004, f. & ef. 2-13-04; DFW 19-2004(Temp), f. & ef. 3-12-04; DFW 22-2004(Temp), f. & ef. 3-18-04; DFW 3-31-04; DFW 28-2004(Temp), f. & ef. 4-12-04; DFW 4-15-04; DFW 39-2004(Temp), f. & ef. 5-5-04; DFW 5-6-04; DFW 7-31-04; DFW 44-2004(Temp), f. & ef. 5-17-04; FWC 8-2-04; DFW 79-2004(Temp), f. & ef. 8-2-04; DFW 8-3-04; DFW 12-31-04; DFW 109-2004(Temp), f. & ef. 10-19-04; DFW 12-31-04; DFW 6-2005, f. & ef. 2-14-05; DFW 15-2005(Temp), f. & ef. 3-10-05; DFW 18-2005(Temp), f. & ef. 3-15-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & ef. 4-20-05; DFW 6-15-05; DFW 28-2005(Temp), f. & ef. 4-28-05; DFW 6-16-05; DFW 37-2005(Temp), f. & ef. 5-5-05; DFW 10-16-05; DFW 40-2005(Temp), f. & ef. 5-10-05; DFW 10-16-05; DFW 46-2005(Temp), f. & ef. 5-17-05; FWC 5-18-05; DFW 10-16-05; DFW 73-2005(Temp), f. & ef. 7-8-05; FWC 7-11-05; DFW 7-31-05; DFW 77-2005(Temp), f. & ef. 7-14-05; DFW 7-18-05; DFW 85-2005(Temp), f. & ef. 8-1-05; DFW 8-3-05; DFW 12-31-05; DFW 109-2005(Temp), f. & ef. 9-19-05; DFW 12-31-05; DFW 110-2005(Temp), f. & ef. 9-26-05; DFW 12-31-05; DFW 116-2005(Temp), f. & ef. 10-4-05; DFW 10-5-05; DFW 12-31-05; DFW 120-2005(Temp), f. & ef. 10-11-05; DFW 124-2005(Temp), f. & ef. 10-18-05; DFW 12-31-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Blind Slough and Knappa Slough.

(a) The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately one-half mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough.

(b) Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to boundary lines defined by markers on the western end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure encompassing a 100-foot radius at the mouth of Big Creek is defined by markers.

(2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

- (a) August 30–September 2, 2005;
- (b) September 6–September 9, 2005;
- (c) September 12–September 16, 2005;
- (d) September 19–September 23, 2005.

(3) Open fishing periods are nightly 6:00 p.m. to 8:00 a.m.:

- (a) September 26–September 30, 2005;
- (b) October 3–October 7, 2005;
- (c) October 10–October 14, 2005;
- (d) October 17–October 21, 2005;
- (e) October 24–October 28, 2005.

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession

ADMINISTRATIVE RULES

sion and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129, 507.020 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point fishing area includes waters bounded by a line from a yellow marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island and a line from a marker on the southwest end of Lois Island due westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the terminus of South Channel.

(3) Salmon and sturgeon may be taken for commercial purposes in the waters of Tongue Point and South Channel as defined in section (1) and section (2) of this rule.

(4) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

(a) August 30–September 2, 2005;

(b) September 6–September 9, 2005.

(5) Open fishing periods are nightly from 4:00 p.m. to 8:00 a.m.:

(a) September 12–September 16, 2005;

(b) September 19–September 23, 2005;

(c) September 26–September 30, 2005;

(d) October 3–October 7, 2005;

(e) October 10–October 14, 2005;

(f) October 17–October 21, 2005;

(g) October 24–October 28, 2005.

(6) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gillnets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. Gear is restricted to gill nets with a 6-inch maximum mesh size. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

(7) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (4) and (5), the weekly aggregate sturgeon limit applies to possession

sion and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129, 507.020 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Deep River. The Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from U.S. Coast Guard navigation marker #16 southwest to a marker on the Washington shore.

(2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

(a) August 30–September 2, 2005;

(b) September 6–September 9, 2005;

(3) Open fishing periods are nightly 4:00 p.m. to 8:00 a.m.:

(a) September 12–September 16, 2005;

(b) September 19–September 23, 2005;

(c) September 26–September 30, 2005;

(d) October 3–October 7, 2005;

(e) October 10–October 14, 2005;

(f) October 17–October 21, 2005;

(g) October 24–October 28, 2005

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size. Nets are not allowed to be tied off to any stationary structures nor are they allowed to fully cross the navigation channel.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129, 507.020 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05

635-042-0190

Steamboat Slough

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Steamboat Slough. Steamboat Slough includes all waters bounded by markers on Price Island and the Washington shore at both ends of Steamboat Slough.

(2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

(a) August 30–September 2, 2005;

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- (b) September 6–September 9, 2005;
- (c) September 12–September 16, 2005;
- (d) September 19–September 23, 2005.
- (3) Open fishing periods are nightly 6:00 p.m. to 8:00 a.m.:
- (a) September 26–September 30, 2005;
- (b) October 3–October 7, 2005;
- (c) October 10–October 14, 2005;
- (d) October 17–October 21, 2005;
- (e) October 24–October 28, 2005.

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129, 507.020 & 507.030
Hist.: DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05

Adm. Order No.: DFW 125-2005(Temp)
Filed with Sec. of State: 10-19-2005
Certified to be Effective: 10-19-05 thru 12-31-05
Notice Publication Date:
Rules Amended: 635-004-0019
Rules Suspended: 635-004-0019(T)
Subject: Amend rule to adopt inseason actions that have implemented by the federal government for commercial fisheries.
Rules Coordinator: Tina Edwards—(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.

(7) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-07, and as corrected within NMFS-SEA-05-08, announced inseason management changes, effective October 1, 2005, to commercial fisheries including trip limits and Rockfish Conservation Area adjustments for the limited entry trawl fishery, trip limit adjustments for sablefish in the open access fishery, and an increase in the allowable harvest of widow rockfish in the whiting fishery.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; 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; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05

Adm. Order No.: DFW 126-2005(Temp)
Filed with Sec. of State: 10-21-2005
Certified to be Effective: 10-23-05 thru 12-31-05
Notice Publication Date:
Rules Amended: 635-042-0060
Rules Suspended: 635-042-0060(T)
Subject: Amend rule to extend the non-Treaty commercial fall season for the Columbia River mainstem consistent with action taken by the Columbia River Compact on October 20, 2005.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-042-0060 Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purpose from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-3, from the mouth upstream to the Longview Bridge, the open fishing periods are:

- (a) 6:00 a.m. to 6:00 p.m., September 19, 2005.
- (b) 6:00 a.m. to 6:00 p.m., September 20, 2005.
- (c) 6:00 a.m. to 6:00 p.m., September 22, 2005.

(A) The Elokomin-A and Abernathy sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) and (2)(b) gear is restricted to unslackened floater gill nets with a 6-inch maximum mesh size. During the fishing period identified in (2)(c) gear is restricted to gill nets with a 9-3/4 maximum mesh size.

(3) In Zones 1-3, from the mouth upstream to the Kalama River, the open fishing periods are:

- (a) 6:00 a.m. to 6:00 p.m., September 26, 2005.
- (b) 6:00 a.m. to 6:00 p.m., September 28, 2005

(A) The Elokomin-A, Abernathy, Cowlitz and Kalama-A sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) and (3)(b) gear is restricted to either unslackened floater gill nets with a 6-inch maximum mesh size or to gill nets with a 9-inch minimum to 9-3/4 maximum mesh size.

(4) In Zones 3-5, from the Longview Bridge upstream to Beacon Rock, the open fishing periods are:

- (a) 8:00 p.m. September 19, 2005 to 1:00 a.m. September 20, 2005.
- (b) 8:00 p.m. September 20, 2005 to 1:00 a.m. September 21, 2005.
- (c) 8:00 p.m. September 22, 2005 to 1:00 a.m. September 23, 2005.

(A) The Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) thru (4)(c) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(5) In Zones 3-5, from the Kalama River upstream to Beacon Rock, the open fishing periods are:

- (a) 8:00 p.m. September 26, 2005 to 1:00 a.m. September 27, 2005.
- (b) 8:00 p.m. September 28, 2005 to 6:00 a.m. September 29, 2005.

(A) The Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (5)(a) and (5)(b) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(6) In Zones 1-5 from the mouth upstream to Beacon Rock, the open fishing periods are:

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- (a) 2:00 p.m. October 5, 2005 to 6:00 a.m. October 6, 2005.
- (b) 7:00 p.m. October 6, 2005 to 5:00 a.m. October 7, 2005.
- (c) 7:00 a.m. October 11, 2005 to 7:00 a.m. October 12, 2005
- (d) 7:00 a.m. October 13, 2005 to 7:00 a.m. October 14, 2005.

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing period identified in (6)(a) gear is restricted to gill nets with a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(C) During the open fishing period identified in (6)(b) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(D) During the open fishing periods identified in (6)(c) and (6)(d) gear is restricted to gill nets with a 9-inch minimum mesh size.

(7) In Zones 1-5 from the mouth upstream to Beacon Rock, the open fishing periods are:

- (a) 8:00 a.m. to 6:00 p.m., October 18, 2005.
- (b) 8:00 p.m. October 18, 2005 to 6:00 a.m. October 20, 2005.
- (c) 6:00 p.m. October 21, 2005 to 6:00 a.m. October 22, 2005.

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing period identified in (7)(a) gear is restricted to gill nets with a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(C) During the open fishing periods identified in (7)(b) and (7)(c) gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4 maximum mesh size.

(8) In Zones 1-5 from the mouth upstream to Beacon Rock, the open fishing periods are:

- (a) 6:00 p.m. October 23, 2005 to 6:00 a.m., October 25, 2005.
- (b) 6:00 p.m. October 25, 2005 to 6:00 a.m. October 27, 2005.
- (c) 6:00 p.m. October 27, 2005 to 6:00 a.m. October 28, 2005.

(A) The Elokomin-B, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) In Zones 1-3 gear is restricted to gill nets with a 9-3/4-inch maximum mesh size. There is no minimum mesh size.

(C) In Zones 4-5 gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4-inch maximum mesh size.

(9) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified above the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. & cert. ef. 10-24-88; FWC 94-1989(Temp), f. & cert. ef. 9-15-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. & cert. ef. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. & cert. ef. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. & cert. ef. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. & cert. ef. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. & cert. ef. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. & cert. ef. 10-21-96; FWC 61-1997(Temp), f. & cert. ef. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. & cert. ef. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. & cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. ef. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. ef. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. ef. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. ef. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. ef. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-

2002(Temp) f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. ef. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. ef. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. ef. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. ef. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. ef. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. & cert. ef. 10-21-05, cert. ef. 10-23-05 thru 12-31-05

Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 15-2005(Temp)

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 10-20-05 thru 3-31-06

Notice Publication Date:

Rules Amended: 413-015-0405, 413-015-0710

Subject: The changes to the Child Protective Services assessment and interviewing rules are reflective of a new process that will outline steps to take when a Department and/or Oregon Youth Authority (OYA) employee is the alleged perpetrator of child abuse or neglect.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0405

CPS Assessment

The following actions are usually taken to assess a child's safety, to establish a child safety plan, and to complete the CPS assessment. The steps do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) **Consult with CPS supervisor.** Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

- (a) Before making initial contact with the family;
- (b) Prior to a decision to place a child in protective custody;
- (c) When a referral indicates potential danger to the worker;
- (d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;
- (e) When a referral involves a foster care home certified by the Department;

(f) When making dispositions in complicated or sensitive situations or cases;

(g) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of the Department of Human Services (DHS) or Oregon Youth Authority (OYA).

(h) Prior to initiating court action; and

(i) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) **Review relevant records.** The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

- (a) Safety threats and risk influences;
- (b) Worker safety;
- (c) Child and family support systems and protective capacity; and
- (d) History of or a pattern of abuse.

(3) **Contact the reporter.** The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) **Contact and work with other entities.** The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 though 0615.

(5) **Determine ICWA Status.** The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

ADMINISTRATIVE RULES

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(8) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(9) Inquire about and determine employment. The CPS worker must make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of DHS or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the DHS or OYA, the CPS supervisor must notify the DHS, Office of Human Resources, at the time of the assessment and at the time the assessment is reviewed as required in section (18) of this rule. The CPS supervisor must document the notifications in FACIS.

(10) Conduct safety assessment. The CPS worker must conduct the safety assessment using the GAP within the time lines set out in OAR 413-015-0500 through 0514. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(11) Develop safety plan. When a safety threat has been identified as a result of the safety assessment, the CPS worker must immediately develop a safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0514 provide specific time lines and requirements for a safety plan.

(12) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(13) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 through 0905.

(14) Provide notice of child placed in protective custody. If a child is placed in protective custody (see OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(15) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0514 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers to protect the child, the safety plan components, identity of relatives who are willing to contribute to the safety plan, and cultural considerations.

(16) Notify reporting party. The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(17) Determine disposition of CPS assessment. The CPS worker must determine a disposition to complete the CPS assessment. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(18) Obtain supervisory review. A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker. After the

assessment is reviewed by a CPS supervisor, if the alleged perpetrator is an employee of DHS or OYA, the CPS Supervisor must inform the DHS, Office of Human Resources, of the disposition. If the disposition is founded, the CPS supervisor also informs the DHS, Office of Human Resources of the type of abuse. The CPS supervisor must document the notification in FACIS.

(19) Enter FACIS data. Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(20) Notify parents or caregivers of CPS assessment dispositions. The CPS worker must notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded). If providing the notice would increase the risk of harm to a child or adult victim, an exception to notification may be made with CPS supervisor approval based on documentation of risk.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06

413-015-0710

Interviewing

The CPS worker must, to the extent possible, do the following during the interview:

(1) Present identification to the family at the beginning of the interview.

(2) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse, and give an explanation of the alleged child abuse.

(3) Allow the parent or caregiver to respond to each allegation.

(4) Ensure the privacy of the persons being interviewed.

(5) Focus the interview on the safety of the children.

(6) Observe and ask questions about indications of child abuse.

(7) Assess whether the parents or caregivers are involved in domestic violence.

(8) Identify legal parents and extended family members who might assist in developing a child safety plan.

(9) Observe the interactions between the parents or caregivers and the children, and between the parents or caregivers.

(10) Inquire about employment status of the alleged perpetrator. If the alleged perpetrator is an employee of the Department of Human Services or Oregon Youth Authority, the CPS worker and CPS supervisor must comply with OAR 413-015-0405(9) and (18).

(11) Summarize the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(12) Obtain names of persons from the parents and caregivers who can provide additional information in making the child safety assessment or child safety plan.

(13) Ask the parents and caregivers to sign an authorization to release information to enable the Department to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(14) If the CPS worker believes the juvenile court will be involved in the case, explain the juvenile court process and the availability of legal representation to the parents and caregivers.

(15) Provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.

(16) Inform the parents and caregivers about the Department's grievance procedure.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06

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

Adm. Order No.: OMAP 55-2005

Filed with Sec. of State: 10-25-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 10-1-05

Rules Amended: 410-121-0157

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services

ADMINISTRATIVE RULES

provided to clients. OMAP amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Releases and updates are included to ensure a 24-month time period for billing is covered, using the appropriate effective dates in all Releases. The most current changes include information from CMS Release #137 (dated May 13, 2005) and #138 (dated August 5, 2005), and the OMAP Master Pharmaceutical Rebate Lists, updated June 23, 2005 and August 19, 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, OMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by OMAP providers to bill for services. OMAP includes in rule by reference, the following CMS Releases and subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release #120, dated November 21, 2002 — Lists updated February 3, 2002; Release #121, dated February 28, 2003 — Lists updated March 5, 2003; Release #122, dated April 22, 2003 — Lists updated May 1, 2003; Release #123, dated June 12, 2003 — Lists updated July 14, 2003; Release #124, dated July 31, 2003 and Release #125, dated September 2, 2003 — Lists updated September 22, 2003; Release #126, dated September 23, 2003, Release #127, dated November 4, 2003 and Release #128, dated January 21, 2004 — Lists updated February 10, 2004; Release #129, dated February 19, 2004 and Release #130, dated April 30, 2004 — Lists updated May 13, 2004; Release #132, dated June 22, 2004 — Lists updated July 19, 2004; Release #133, dated August 13, 2004 — Lists updated August 24, 2004; Release #134, dated November 18, 2004 — Lists updated December 16, 2004; Release #135, dated December 10, 2004 — Lists updated February 14, 2005; and Release #136, dated February 17, 2005 — Lists updated March 30, 2005; Release #137, dated May 13, 2005 and Lists updated June 23, 2005; and Release #138, dated August 5, 2005), and Lists updated August 19, 2005. All CMS Releases are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, and the subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists, are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html.

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to OMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993(Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-20-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05

Adm. Order No.: OMAP 56-2005

Filed with Sec. of State: 10-25-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 10-1-05

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs' payment for pharmaceutical products provided to clients. OMAP amended 410-121-0300 to update Transmittal #37, with Title XIX State Agency Letter Number 05-004, dated June 21, 2005, changes to the list, effective for services rendered on or after July 21, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 05-004, dated June 21, 2005, with changes to be effective on or after July 1, 2005, and is available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994,

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f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05

Adm. Order No.: OMAP 57-2005
Filed with Sec. of State: 10-25-2005
Certified to be Effective: 11-1-05
Notice Publication Date: 10-1-05
Rules Amended: 410-141-0070

Subject: The Oregon Health Plan (OHP-Division 141) Administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP amended 410-141-0070 to specify guidelines and standards for OMAP to "carve out" a prescription drug from capitation. The rule is also amended to include the drug Depakote, which was previously carved out in contract language and Lamictal. Both qualify as carved out drugs under the amended standards.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0070

Oregon Health Plan Fully Capitated Health Plan (FCHP) and Physician Care Organization (PCO) Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded condition treatment pairs. The FCHPs and PCOs shall pay for prescription drugs, except:

(a) As otherwise provided, such as Class 7 & 11 medications (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Office of Medical Assistance Programs (OMAP) specifically carved out from capitation according to subsections 8 through 11 of this rule; and

(c) Any applicable co-payments.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization. The drug list must:

(a) Include FDA-approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their Participating Providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates the FCHP or PCO makes to their drug list within 30 days of a change which may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 24-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide for the dispensing of at least a 72-hour supply of a drug that requires prior authorization.

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referral Provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in the treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the OMAP Member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less-Than-Effective drugs which have reached the Federal Drug Administration Notice-of-Opportunity-for-Hearing stage. The DESI Less-Than-Effective list is available at OMAP's website address: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/misc_files/desi1.pdf

(8) OMAP may exclude (commonly called "carve out") drugs from FCHP and PCO capitation that are FDA approved to treat a serious mental health disorder, such as major depressive, bi-polar and schizophrenic disorders.

(9) In order for a drug to be considered for carve out from FCHP and PCO capitation for the January contract period, OMAP must receive the request for carve out from the FCHP or PCO no later than March 1 of the previous calendar year to be considered for carve out for the following January contract cycle. The request must include:

(a) The drug name;

(b) The FDA approved indications that include an FDA approved use to treat a severe mental health condition; and

(c) The reason that OMAP should consider this drug for carve out.

(10) OMAP determines whether or not to carve out a drug.

(11) OMAP will pay for a drug that is subject to carve out pursuant to the Pharmaceutical Services Rule, OAR 410 division 121. A FCHP or PCO may not reimburse providers for carved out drugs.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414,065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05;

OMAP 57-2005, f. 10-25-05, cert. ef. 11-1-05

Adm. Order No.: OMAP 58-2005
Filed with Sec. of State: 10-27-2005

Certified to be Effective: 11-1-05
Notice Publication Date: 10-1-05

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 amended 410-121-0030 Practitioner Managed Prescription Drug Plan (Table 121-0030-1 Plan Drug List) as it relates to Beta-Blockers, oral hypoglycemics, and Proton Pump Inhibitors. These and the AzD class were added to Table 121-0030-1 Plan drug List.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0030

Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the bench-

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mark 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/.

(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 11/01/05)

[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; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05

Adm. Order No.: OMAP 59-2005(Temp)

Filed with Sec. of State: 11-8-2005

Certified to be Effective: 11-12-05 thru 5-1-06

Notice Publication Date:

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs' payment for pharmaceutical products provided to clients. OMAP temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This temporary filing is to immediately update Transmittal #37, with the October 17, 2005 email notice of Title XIX State Agency Letter Number, changes to the list, effective for services rendered on or after November 12, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, to be effective on or after November 12, 2005, and is available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 59-2005(Temp), f. 11-8-05, cert. ef. 11-12-05 thru 5-1-06

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

Adm. Order No.: PH 16-2005

Filed with Sec. of State: 10-28-2005

Certified to be Effective: 10-28-05

Notice Publication Date: 9-1-05, 10-1-05

Rules Amended: 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070

Rules Repealed: 333-054-0010(T), 333-054-0020(T), 333-054-0030(T), 333-054-0050(T), 333-054-0060(T), 333-054-0100

Subject: The United States Department of Agriculture handed down new requirements mandating that Women, Infants and Children

ADMINISTRATIVE RULES

(WIC) state programs implement certain provisions regarding authorized WIC vendors. The amended rules:

- Require all vendors to maintain and provide documentation of food sales for the duration of the agreement period;
- Identify stores that derive more than 50% of their food sales from WIC food sales as “MT 50’s”;
- Allow “MT50’s” to only offer incentive items to shoppers if they were obtained at no cost to the vendor.
- Do not allow “MT50’s” to offer delivery service to shoppers.
- Notify all vendors of the first violation of a sanction that requires a pattern before documenting any other violations unless notification would jeopardize the investigation;
- Allow vendors, other than “MT 50’s” limited delivery service to shoppers;
- Require all vendors to purchase infant formula from a state authorized infant formula provider;
- Require all vendors to maintain and provide documentation of formula purchases for the duration of the agreement period;
- Change the monetary calculations for state implemented sanctions requiring a civil money penalty in lieu of disqualification; and
- Allow abbreviated, as well as, full administrative reviews for certain adverse actions taken by the Department of Human Services against WIC vendors.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-054-0010

Definitions

(1) “Abbreviated administrative review” means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, fine, or sanction by DHS. Abbreviated Reviews are facilitated by DHS staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(2) “Adequate participant access” means a determination based on the availability of other vendors within a five-mile radius, geographic barriers to using other vendors, local agency recommendations based upon identified participants’ needs, and the availability of public transportation and roads.

(3) “Applicant” means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors that reapply for authorization.

(4) “Authorization” means the process by which DHS assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be vendors.

(5) “Authorized food” means any supplemental foods listed on the WIC Authorized Food List or the food instrument.

(6) “Authorized shopper” means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant’s behalf and, in the case of an infant or child, the caretaker or the caretaker’s designee.

(7) “CFR” means Code of Federal Regulations.

(8) “CMP” means civil money penalty.

(9) “Compliance buy” means a single covert, on-site visit in which a DHS representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(10) “DHS” means Oregon Department of Human Services.

(11) “Disqualification” means the act of ending the WIC Program participation of a vendor, whether as a punitive sanction or for administrative reasons.

(12) “FNS” means the Food and Nutrition Service of the U. S. Department of Agriculture.

(13) “FSP” means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(14) “Food instrument” means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(15) “Full administrative review” means a formal hearing that is held in front of an assigned administrative law judge from the state Office of Administrative Hearings. Attorneys may be present to represent both parties. Formal procedures must be followed as to the presentation of evidence, examination of documentation and cross examination of witnesses in accordance with 7 CFR § 246.18 and ORS Chapter 183.

(16) “Incentive item” means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash prizes, lottery tickets, transportation, sales/specials such as a buy-one-get one free or free additional ounces offer, and other free food or merchandise.

(17) “Inventory audit” means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor’s claim for reimbursement for such foods from DHS during a specific period of time.

(18) “Investigation” means a period of review, not to exceed 24 months, of a vendor’s compliance with program rules and procedures. It opens with the start of an inventory audit or the first compliance buy and it closes when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance.

(19) “Local agency” means:

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(20) “MT 50” means an authorized vendor or applicant that derives, or is expected to derive, more than 50% of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item.

(21) “Participant” means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(22) “Pattern” means three or more of the same rule violation that occurs within a single investigation.

(23) “Peer group” means a group of vendors categorized by DHS based on factors such as store type, store size and geography.

(24) “Person” means a human being, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(25) “Person with an interest in the business” means an officer, director, partner, or manager of the business or a shareholder with 25% interest or more in the business.

(26) “Price adjustment” means an adjustment made by DHS, in accordance with the vendor agreement, to the purchase price on a food instrument, which matches the vendor’s actual shelf price, for the total of the individual items. This adjusted amount shall not exceed the maximum amount allowable by DHS for the vendor’s peer group for that food instrument.

(27) “Prominently displayed” means immediately noticeable by persons entering the vendor location.

(28) “Routine monitoring” means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor personnel.

(29) “Trafficking” means buying or selling food instruments for cash.

(30) “U.S.C.” means United States Code.

(31) “Vendor” means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program.

(32) “Vendor agreement” means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(33) “Vendor overcharge” means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price they charge other shoppers.

(34) “Vendor Price List” means a list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(35) “Violation” means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050.

(36) “WIC Authorized Food List” means the list of supplemental foods approved by the State of Oregon.

ADMINISTRATIVE RULES

(37) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

Stat. Auth.: ORS 291.003, 409.600, 431.110 & 431.250
Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0020

Vendor Participation

(1) Only authorized vendors may accept food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes: an application form; a Vendor Price List; a sample of the applicant's current bank endorsement stamp or other method of endorsement approved by DHS, listing the specific store name and store number; a current Food Stamp Authorization number and any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, when it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the average redemption prices of individual authorized foods within the peer group appropriate to the applicant's characteristics, plus a DHS-determined percentage;

(b) Possess a current bank account number;

(c) Ensure the store has adequate refrigeration facilities;

(d) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(e) Possess a current FSP authorization number. Pharmacies shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(f) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(g) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(h) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired;

(i) Have a fixed location for each store;

(j) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement; however, they shall obtain infant formula, including formula that requires a prescription, within 72 hours of a DHS or participant request.

(k) An applicant's store which is necessary to ensure adequate participant access may be exempt from OAR 333-054-0020(3)(b) and (i);

(l) An applicant must purchase infant formula, which is to be sold to WIC shoppers, only from manufacturers, wholesalers, distributors, and retailers authorized by the Oregon WIC Program;

(m) MT 50's may only provide incentive items, as approved by the State agency, that were obtained by the vendor at no cost (free) to the ven-

dor. Minimal customary courtesies of the retail food trade, such as bagging supplemental food for the participant, or helping the shopper load groceries into the car are exceptions to this rule; and

(n) Pursuant to USDA Moratorium dated December 8, 2004, an applicant that is likely to derive more than 50% of the store's annual food revenue from WIC transactions will not be authorized, except for cases of participant access hardship as determined solely by DHS. When the moratorium is lifted, this requirement will be automatically repealed. MT 50's that were authorized prior to December 8, 2004 are exempt from this selection criterion.

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials: DHS shall give the applicant written notification of denial, in conformance with ORS Chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(c) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC Program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(d) The applicant's history of redemption of food instruments;

(e) The applicant's refusal to accept training from the WIC Program;

or

(f) The applicant's misrepresentation of information on the application.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0030

Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement. The term of a vendor agreement shall not exceed three years. The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.

(2) A vendor shall apply for authorization prior to the expiration of each vendor agreement and shall meet the selection criteria in effect at the time of each application. DHS or local agency shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, and equipment failure) DHS shall disqualify the vendor.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party.

(6) DHS shall terminate a vendor agreement when DHS determines that there is an inappropriate relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store

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locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.

(11) Vendor Responsibility. A vendor shall:

(a) Comply with all applicable federal and state laws, rules and regulations, in addition to the terms of the vendor agreement;

(b) Be accountable for any intentional or unintentional action of its owners, officers, managers or employees, with or without the knowledge of management, who violate the vendor agreement or federal or state statutes, regulations, policies or procedures governing the Program. The vendor is also accountable for the actions of anyone who works as a checker, whether they are paid or not;

(c) Designate one person, at each authorized vendor location, to serve as the designated trainer. The designated trainer shall train all checkers and other staff involved with WIC transactions regarding the handling of food instruments. The vendor or its designated trainer shall promptly inform employees of changes in the WIC Program, including changes to the WIC Authorized Food List;

(d) Ensure that the designated trainer and store manager or other management employee participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter. During the period in which a vendor agreement is in effect, DHS shall conduct at least one live interactive training for that vendor. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training;

(e) At all reasonable times, provide DHS' authorized representative or federal government official access to the vendor's facilities, books, records and documents. The vendor shall provide the above entities and individuals access to food instruments negotiated on the day of review, shelf price records, financial records and other documents that DHS or federal officials determine are pertinent to determining a vendor's compliance. The vendor shall also, upon request, furnish to DHS, within two days, verification of total vendor purchases of specific items in order to justify amounts claimed as WIC Program purchases;

(f) For a period of three years, maintain purchase and receiving records, including, but not limited to, inventory records showing all wholesale and retail purchases, state and federal tax returns, and other pertinent records that substantiate the volume and prices charged for redeemed food instruments. In the case of retail purchases, the vendor shall provide receipts specifying the authorized food item purchased, quantity, unit price and date of purchase;

(g) Notify DHS in writing of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change:

(A) In the event of a cessation of operations or any change in ownership, the legal authority obligating the vendor, or store location, the vendor agreement shall be terminated;

(B) In the event of a name change for any store the vendor shall, within 60 days of the change, ensure that the store's outside sign bears the same name as that listed on the vendor agreement; and

(C) If the vendor closes any store listed in the vendor agreement, which contains more than one store location, the vendor shall notify DHS in writing of the closed store's name, address, and telephone number. This written notification shall be considered an amendment of the vendor agreement unless disapproved in writing by DHS within 15 days of DHS' receipt of the vendor's notification.

(h) Notify DHS in the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, or equipment failure), by no later than 5 p.m. the next business day;

(i) Not sell expired authorized food or infant formula to authorized shoppers;

(j) Mark all authorized foods with the price charged for these products to the general public or prominently display the price of the foods near the location of the foods in clear view of customers and in a manner that clearly identifies the price with the specific food item;

(k) Upon DHS' request, complete and return a Vendor Price List by the deadline set by DHS;

(l) Maintain the premises in a sanitary condition;

(m) Not retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official. This includes not displaying food instruments for any reason;

(n) Not engage in any conduct that would discriminate against any authorized shopper or participant based on the individual's race, color, national origin, gender, age, and disability. Complaints of discrimination will be forwarded to the USDA for follow-up in accordance with 7 CFR § 246.8(b).

(o) Use the "WIC" acronym or logo only as follows:

(A) To identify the vendor as an authorized WIC vendor;

(B) To identify authorized food items by attaching shelf-talkers stating "WIC-approved" or "WIC-eligible" to store shelves.

(p) Not use the "WIC" acronym and/or logo in any way that might give the impression to WIC shoppers that the store location is:

(A) Owned by the Oregon WIC Program;

(B) Operated by the Oregon WIC Program;

(C) Officially endorsed by the Oregon WIC Program; or

(D) Preferred by the Oregon WIC Program.

(q) Comply with investigations by federal or state officials;

(r) Implement corrective action as directed by DHS within 30 days from the issuance of a "Notice of Non-Compliance";

(s) MT 50's are prohibited from offering incentive items, including food items or other free merchandise, to WIC shoppers unless the vendor provides DHS with proof that these items were obtained at no cost to the vendor and DHS approves the provision of the incentive items. The provision of cash gifts, lottery tickets, transportation, and delivery are not allowable incentives.

(A) MT 50's must maintain and provide documentation for each incentive item, such as a statement from the source that the item was provided at no cost to the MT 50.

(B) MT 50's may not circumvent this requirement by soliciting someone else to purchase and then donate the item for the store's use;

(t) All vendors must maintain and provide documentation of food sales throughout the agreement period; and

(u) All vendors must maintain and provide documentation, such as invoices and receipts, showing source(s) of infant formula purchases.

(12) Redemption of food instruments. A vendor shall:

(a) Require each authorized shopper to produce that individual's WIC identification card prior to the transaction. The vendor shall not require the authorized shopper to provide any other identification or information in addition to the WIC identification card in order to use the food instrument;

(b) Not allow any employee, owner, or person with an interest in the business, who is also an authorized shopper, to redeem a food instrument for which he or she is an authorized shopper;

(c) Complete all food instrument transactions at the authorized store location. The vendor shall not deliver food purchased with food instruments to WIC participants unless the transaction was completed at the store location before delivery, no extra charge is added to the purchase price, and the service is also offered to non-WIC shoppers. This service is not allowed for MT 50 vendors;

(d) Refuse to accept food instruments that appear to be altered;

(e) Accept only valid food instruments made payable to "Any Authorized Oregon WIC Vendor";

(f) Accept only food instruments within the time period indicated in the "First Day To Use" and "Last Day To Use" boxes. The vendor shall refer the authorized shopper back to the local clinic if either of these dates is missing;

(g) Ensure authorized shoppers receive the same treatment as provided to other customers such as honoring manufacturer's coupons, in-store specials or store promotions and not requiring separate lines for WIC authorized shoppers;

(h) Not accept any food instrument in exchange for alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802;

(i) Not accept any food instrument in exchange for credit or non-food items other than those listed in (h);

(j) Not accept any food instrument in exchange for food items or quantities other than those specifically identified on the food instrument, including charging the WIC Program for supplemental food in excess of those listed on the food instrument;

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(k) Ensure that only those brand names and food types listed on the WIC Authorized Food List are purchased;

(l) Not influence the authorized shopper's choice of authorized foods;

(m) Not charge authorized shoppers for authorized foods obtained with food instruments;

(n) Not charge DHS more than the vendor's current shelf price or the advertised sale price, whichever is lower, for authorized food purchases;

(o) Not include sales tax or container deposits as part of the purchase price of the authorized foods listed on the food instrument;

(p) Write the actual purchase price in the designated box on the food instrument before the authorized shopper signs the food instrument. The purchase price shall include only the authorized food items actually provided to the authorized shopper at the time of the transaction;

(q) Duly witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of any food instrument accepted for payment and compare that signature with the signature on the WIC Program identification card, ensuring that these signatures match;

(r) Provide the authorized shopper with a receipt for foods purchased with a food instrument;

(s) After each transaction, return the WIC Program identification card to the authorized shopper; and

(t) Stock appropriate quantities of authorized foods and infant formula as specified on the "WIC Minimum Stock Requirements" document.

(13) Post-redemption of food instruments. A vendor shall:

(a) Not contact the shopper after the transaction has been completed, or ask the local WIC clinic to intercede, to correct an error that was made during the transaction, such as a missing signature;

(b) Not provide a refund or exchange for an authorized food item obtained with a food instrument, except for an exchange of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(c) Not alter any food instrument, including by use of correction fluid;

(d) Prior to deposit of a food instrument, stamp each food instrument with the vendor's unique DHS-approved 4-digit number in the designated area on the front of the food instrument;

(e) Prior to deposit of the food instrument, endorse the back of each redeemed food instrument with the store's bank endorsement stamp or other method of endorsement approved by DHS;

(f) Deposit each redeemed food instrument into the vendor's bank within the time period designated on the front of the food instrument; and

(g) Not deposit a food instrument for reimbursement for foods or formula not received by an authorized shopper.

(14) Improperly redeemed food instruments:

(a) DHS may make price adjustments in order to comply with price limitations in accordance with the vendor agreement. The maximum amount DHS will reimburse a vendor for a food instrument is the average peer group price of the food instrument plus a DHS-determined percentage;

(b) DHS may deny reimbursement to the vendor for improperly redeemed food instruments or may demand refunds for reimbursements already made on improperly redeemed food instruments. In addition to denying payment or assessing a claim, DHS may sanction the vendor for overcharges or other errors in accordance with OAR 333-054-0060;

(c) The vendor shall reimburse DHS, within 30 days of DHS' written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments and for unsubstantiated volumes of authorized foods;

(d) When DHS denies reimbursement for a food instrument or requests payment for an improperly redeemed food instrument, the vendor shall have an opportunity to provide DHS with written justification for the error. A vendor shall submit the written justification, along with the returned food instrument, within the timeframe on the front of the food instrument; and

(e) The vendor shall not seek restitution from an authorized shopper or participant for a food instrument that has not been or will not be reimbursed or partially reimbursed by DHS, or for which DHS has requested repayment from the vendor.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0040

Vendor Monitoring

(1) DHS shall monitor vendors for compliance with applicable laws and rules, including on-site investigation of selected vendors.

(2) DHS or its authorized representative may conduct compliance buys or inventory audits to collect evidence of improper vendor practices.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0050

Violations

Violations shall be classified as either Type 1, 2, or 3 violations based on the severity of the violation. Each violation is listed by type below:

(1) Type 1 Violations:

(a) Accepting a food instrument that does not bear a "First Day To Use" and "Last Day To Use" date or is not made payable to "Any Authorized Oregon WIC Vendor";

(b) Accepting a food instrument before the "First Day To Use" or after the "Last Day To Use";

(c) One incident of failing to maintain an adequate stock of authorized foods or formula to fill food instruments consistent with vendor agreement requirements. DHS shall grant an exception if the vendor is able to provide documentation that the appropriate stock was on order at the time of the violation and received by the vendor within 7 days of the violation;

(d) Failing to notify DHS of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change;

(e) Failing to notify DHS by no later than 5 p.m. the next business day following any change in store facilities which adversely impact participants' ability to transact food instruments;

(f) Failing to prominently display shelf prices for authorized foods;

(g) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(h) Failing to correctly endorse food instruments;

(i) Failing to enter the actual purchase price in the designated box before the authorized shopper signs the food instrument;

(j) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(k) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement.

(2) Type 2 violations:

(a) Influencing an authorized shopper's selection of authorized foods;

(b) Accepting any food instrument when a valid WIC Program identification card is not presented prior to the transaction;

(c) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(d) Failing to witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment or failing to compare that signature with the signature on the WIC Program identification card;

(e) Treating authorized shoppers differently than other customers, such as a separate line for authorized shoppers or discourteous treatment;

(f) Selling expired authorized foods or infant formula to authorized shoppers;

(g) Failing to ensure that the designated trainer is able to demonstrate the correct procedure for processing a food instrument;

(h) Allowing a purchase of authorized infant formula in a quantity not prescribed on the food instrument;

(i) Failing to reimburse DHS, within 30 days of written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments;

(j) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(k) Failing to maintain sanitary conditions;

(l) Including sales tax or container deposits as part of the actual cost of the authorized foods listed on the food instrument;

(m) Failing to:

(A) Respond to a request issued by DHS;

(B) Accept training when required by DHS;

(C) Implement corrective action imposed by DHS;

(D) Comply with terms in a final order issued by DHS; or

(E) Comply with an investigation by federal or state officials.

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(n) Charging authorized shoppers for authorized foods obtained with food instruments;

(o) Using the "WIC" acronym or logos in an unauthorized manner;

(p) Failing to maintain or provide, to DHS upon request, invoices or receipts to show source(s) of formula purchase;

(q) Failing to maintain or provide, to DHS upon request, documentation of food sales during the agreement period; and

(r) MT 50's only: Failing to maintain or provide, to DHS upon request, documentation for each incentive item.

(3) Type 3 violations:

(a) For the following violations, DHS shall disqualify a vendor for one year:

(A) A pattern of providing unauthorized food items, in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of allowing the purchase of brand names or food types other than those listed on the WIC Authorized Food List;

(C) Failing to provide purchasing/receiving records to substantiate the volume and prices charged to DHS, within two business days of DHS' request for such documentation;

(D) Refusing DHS or a federal official access to food instruments negotiated on the day of review;

(E) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(F) Seeking restitution from WIC Program participants or authorized shoppers for a food instrument that has not been or will not be paid by DHS or for which reimbursement has been requested by DHS;

(G) Providing change when redeeming a food instrument;

(H) Violating the nondiscrimination clause listed in the vendor agreement or OAR 333-054-0030(11)(n);

(I) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(J) Providing false information or omitting pertinent information on the vendor application; and

(K) MT 50's only: A pattern of providing WIC shoppers with incentive items or other merchandise/services not approved by DHS.

(b) For the following violations, DHS shall disqualify the vendor for three years:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item, which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to: use of an unauthorized vendor/and or unauthorized person, and/or redemption of food instruments outside of an authorized store location;

(E) A pattern of charging for authorized foods not received by the authorized shopper; and

(F) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(3)(b)(A), (3)(c)(A) and (3)(c)(B).

(c) Six year disqualification:

(A) One incident of buying or selling a food instrument for cash (trafficking); or

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument.

(d) Permanent Disqualification: Conviction of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0060

Vendor Sanctions

(1) Prior warning:

(a) DHS may, but is not required to notify the vendor that Type 1 or Type 2 violations have occurred before imposing a sanction.

(b) DHS shall notify the vendor of the initial occurrence of a Type 3 violation that requires a pattern of occurrences in order to impose a sanction, prior to documenting another violation, unless notification would compromise an investigation.

(2) Type 1 violations:

(a) For the first Type 1 violation, DHS may issue the vendor a "Notice of Non-Compliance," regardless of how many Type 1 violations occur during a single compliance buy.

(b) For the second Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan to DHS within 14 days of the date of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(c) For the third Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for six months.

(3) Type 2 violations:

(a) For the first Type 2 Violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan within 14 days of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(b) For the second Type 2 violation committed within 24 months of the first Type 2 violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for one year.

(c) For a Type 2 violation followed by a Type 1 violation within 24 months of the first violation, DHS may disqualify a vendor from the WIC Program for six months.

(d) DHS may disqualify a vendor from the WIC Program for one year for a combination of three Type 1 and 2 violations, such as a Type 2 violation, followed by a Type 1, followed by a Type 2, within 24 months of the first violation.

(4) Type 3 violations:

(a) For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(A), DHS shall disqualify the vendor for one year. For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(B) to (J), DHS may disqualify the vendor for up to one year.

(b) For a Type 3 violation listed in OAR 333-054-0050(3)(K), DHS shall disqualify the vendor for one year.

(c) For a Type 3 violation listed in OAR 333-054-0050(3)(b)(A) to (F), DHS shall disqualify the vendor for three years.

(d) For a Type 3 violation listed in OAR 333-054-0050(3)(c)(A) and (B), DHS shall disqualify the vendor for six years.

(e) For a Type 3 violation listed in OAR 333-054-0050(3)(d), DHS shall permanently disqualify the vendor. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(f) For a second Type 3 violation referred to in OAR 333-054-0060(4)(a), (b) and (c) of this rule, DHS shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under OAR 333-054-0060(5)(j)(C).

(g) For a third Type 3 violation referred to in OAR 333-054-0060(4)(a), (b) and (c) of this rule, DHS shall double the third sanction and all subsequent sanctions that were previously imposed. DHS shall disqualify vendor and may not impose CMPs in lieu of disqualification for third or subsequent sanctions for violations referred to in OAR 333-054-0060(4)(a), (b) and (c).

(5) Disqualification:

(a) A vendor may not apply for authorization during a period of disqualification or termination from the WIC Program.

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(b) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(c) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed. If this vendor was assessed more than one CMP in lieu of disqualification as the result of a single investigation, DHS shall disqualify the vendor for the period corresponding to the most serious violation.

(d) The total period of disqualification imposed for DHS violations, resulting from a single investigation, listed in OAR 333-054-0050(1), 333-054-0050(2) and 333-054-0050(3)(a)(B) through (J) may not exceed one year.

(e) After a vendor is disqualified, in order to participate in the WIC Program, they must apply for authorization.

(f) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification. DHS shall include documentation of its participant access determination and any supporting documentation in each vendor's file. DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access. DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(g) DHS shall disqualify a vendor who has been disqualified from the FSP. The disqualification shall be for the same length of time as the FSP disqualification, although it may begin at a later date than the FSP disqualification. Such disqualification by the WIC Program shall not be subject to administrative or judicial review under the WIC Program.

(A) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP disqualification pursuant to paragraph (9) of this rule or for any of the violations listed in this rule. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(B) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified for any of the violations listed in paragraphs OAR 333-054-0060(4)(a), (4)(b) and (4)(c) of this rule. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP CMP was assessed.

(h) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP. Such disqualification may not be subject to administrative or judicial review under the FSP.

(i) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(A) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(B) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(j) Pursuant to 7 CFR 246.12 (l)(1), DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification under 333-054-0050 (3)(a)(A), 333-054-0050(3)(b) through (d) violations:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10); and

(C) Multiply the product from paragraph (5)(j)(B) of this rule by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$10,000

for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$10,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$40,000.

(k) DHS shall use the formula in section (5)(j) of this rule to calculate a CMP in lieu of disqualification for any violation under 333-054-0050(1), (2), or (3)(a)(B) to (K). DHS has the discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

(A) Whether the vendor had other WIC violations or complaints within the 12 months immediately preceding the month the notice of administrative action is dated;

(B) The degree of severity of the violations and/or complaints in (5)(k)(A);

(C) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations; and

(D) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on DHS recommendations.

(l) DHS shall disqualify a vendor for a period corresponding to the most serious sanction when during the course of a single investigation DHS determines a vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after a hearing or appeal, DHS may impose a sanction for any remaining violations.

(m) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(6) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(7) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

(8) A vendor may be subject to actions in addition to the sanctions in this rule, such as claims by DHS of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(9) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a five-mile radius;

(b) Geographic barriers to using other authorized vendors;

(c) Local agency recommendations based upon identified participants' needs; and

(d) Availability of public transportation and roads.

(10) Any time DHS uses criteria in (9) of this rule, DHS shall include participant access documentation in vendor file.

(11) DHS shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(12) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05

333-054-0070

Administrative Review

(1) DHS shall provide a vendor with a full administrative review in accordance with the provisions of ORS Chapter 183 for the following:

(a) Denial of authorization based on the vendor selection criteria for competitive price or minimum variety and quantity of authorized WIC foods;

(b) Denial of authorization based on a determination that the vendor is attempting to circumvent a sanction;

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(c) Termination of an agreement for cause;
(d) Disqualification; and
(e) Imposition of a fine or a CMP in lieu of disqualification.
(2) DHS may provide a vendor with an abbreviated or full administrative review in accordance with the provisions of ORS Chapter 183 for the following:

(a) Denial of authorization based on the vendor selection criteria for business integrity or for a current FSP disqualification or CMP penalty for hardship;

(b) Denial of authorization based on a DHS selection criteria for previous history of WIC sanctions or FSP withdrawal of authorization or disqualification;

(c) Denial of authorization based on DHS' limiting criteria;

(d) Termination of an agreement because of a change in ownership or location or cessation of operations;

(e) Disqualification based on a trafficking conviction;

(f) Disqualification based on the imposition of an FSP CMP for hardship;

(g) Disqualification or CMP based on a USDA mandatory sanction from another state WIC agency; and

(h) Application of criteria used to determine whether a store is an MT 50.

(3) The vendor shall not be entitled to an administrative review for the following actions:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether a vendor had an effective policy and program in effect to prevent trafficking regardless of the vendor's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the vendor's agreement;

(f) Disputes regarding food instrument payments and vendor claims;

(g) Disqualification of a vendor as a result of disqualification from FSP; and

(h) The validity or appropriateness of DHS' criteria used to determine whether or not a vendor is an MT 50 store.

(4) If the vendor agreement expires during the appeal period, DHS will accept application for renewal and delay determination until the appeal process is over.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05

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

Adm. Order No.: SPD 13-2005(Temp)

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 10-26-05 thru 4-24-06

Notice Publication Date:

Rules Amended: 411-055-0003

Subject: The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new residential care facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-055-0003

Licensing Moratorium

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2009. The Department of Human Services may issue a license to an applicant for operation of a residential care facility who complies with OAR chapter 411, division 055 under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-055-0029 and is not seeking an increase in license capacity;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a targeted population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) Effective August 3, 2005, a non-refundable fee of \$5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2005. This \$5000 fee does not apply to any applicant who has begun construction by December 31, 2005.

(a) If, on or before December 31, 2005, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2006.

(b) The Department must receive the \$5000 fee no later than January 31, 2006. If payment is not received, the project will be considered to be withdrawn.

(3) In addition to a fee paid by January 31, 2006, a non-refundable fee of \$5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2006. This \$5000 fee does not apply to any applicant who has begun construction by December 31, 2006.

(a) If, on or before December 31, 2006, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2007.

(b) The Department must receive the \$5000 fee no later than January 31, 2007. If payment is not received, the project will be considered to be withdrawn.

(4) A construction permit, building permit, or other permit necessary to begin construction must be secured by the applicant, or the entity to whom the business rights on the project has been sold or transferred, no later than August 3, 2007, and must be submitted to the Department no later than September 4, 2007, or the project will be considered withdrawn.

(5) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis, completed by a third party professional, that validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area that have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400-443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(6) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area; and

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(7) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100 may request an increase in capacity of up to ten in a two year period. Where increasing

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capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SDSL 1-2002, f. & cert. ef. 4-23-02; SPD 1-2004 f. & cert. ef. 2-4-04; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04; SPD 13-2005(Temp), f. & cert. ef. 10-26-05 thru 4-24-06

Adm. Order No.: SPD 14-2005(Temp)

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 10-26-05 thru 4-24-06

Notice Publication Date:

Rules Amended: 411-056-0007

Subject: The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new assisted living facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-056-0007

Licensing Moratorium

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2009. The Department of Human Services may issue a license to an applicant for operation of an assisted living facility who complies with OAR chapter 411, division 056 under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-056-0008(9) and is not seeking an increase in licensed units;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a targeted population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) Effective August 3, 2005, a non-refundable fee of \$5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2005. This \$5000 fee does not apply to any applicant who has begun construction by December 31, 2005.

(a) If, on or before December 31, 2005, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2006.

(b) The Department must receive the \$5000 fee no later than January 31, 2006. If payment is not received, the project will be considered to be withdrawn.

(3) In addition to a fee paid by January 31, 2006, a non-refundable fee of \$5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2006. This \$5000 fee does not apply to any applicant who has begun construction by December 31, 2006.

(a) If, on or before December 31, 2006, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2007.

(b) The Department must receive the \$5000 fee no later than January 31, 2007. If payment is not received, the project will be considered to be withdrawn.

(4) A construction permit, building permit, or other permit necessary to begin construction must be secured by the applicant or the entity to whom the business rights on the project has been sold or transferred, no later than August 3, 2007, and must be submitted to the Department no later than September 4, 2007, or the project will be considered withdrawn.

(5) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area; and

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(6) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis, completed by a third party professional, that validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area that have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400-443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(7) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100 may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SDSL 2-2002, f. & cert. ef. 4-23-02; SPD 2-2004, f. & cert. ef. 2-4-04; SPD 14-2005(Temp), f. & cert. ef. 10-26-05 thru 4-24-06

Department of Justice

Chapter 137

Adm. Order No.: DOJ 10-2005

Filed with Sec. of State: 10-31-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 9-1-05

Rules Adopted: 137-001-0087, 137-001-0095, 137-001-0100

Rules Amended: 137-001-0007, 137-001-0008, 137-001-0009, 137-001-0011, 137-001-0018, 137-001-0030, 137-001-0040, 137-001-0060, 137-001-0070, 137-001-0080

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

Rules Coordinator: Carol Riches—(503) 947-4700

137-001-0007

Public Input Prior to Rulemaking

(1) The agency may seek public input before giving notice of intent to adopt, amend, or repeal a rule. Depending upon the type of rulemaking anticipated, the agency may appoint an advisory committee, solicit the views of persons on the agency's mailing list maintained pursuant to ORS 183.335(8), or use any other means to obtain public views to assist the agency.

(2) If the agency appoints an advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the advisory committee shall be open to the public.

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(3) If the advisory committee indicates that the rule will have a significant adverse impact on small businesses, the agency will seek the advisory committee's recommendations on compliance with ORS 183.540.

(4) The agency will consider recommendations from the advisory committee in preparing the statement of fiscal impact required by ORS 183.335(2)(b)(E).

Stats. Implemented: ORS 183.025(2) & 183.341(1)

Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0008

Assessment for Use of Collaborative Process in Rulemaking

(1) The agency may, in its discretion, conduct an assessment to determine if collaborative rulemaking is appropriate and, if so, under what conditions. The agency may consider any relevant factors, including whether:

(a) There is a need for a rulemaking action;

(b) The persons, interest groups or entities that will be significantly affected by any rulemaking action resulting from the collaborative rulemaking process:

(A) Are not so numerous that it would be impractical to convene a collaborative rulemaking committee;

(B) Can be readily identified;

(C) Are willing to participate in the collaborative rulemaking;

(D) Are willing to negotiate in good faith; and

(E) Have the time, resources and ability to participate effectively in a collaborative rulemaking process;

(c) The persons identified as representative of the interests of a group of persons or of an organization have sufficient authority to negotiate on behalf of the group or organization they represent;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rulemaking action within an appropriate period of time to avoid unreasonable delay in the agency's final rulemaking;

(e) The interest of the agency is in joint problem-solving, agreement or consensus which could best be met through collaborative rulemaking, and not solely in obtaining public comment, consultation or feedback, which may be addressed through an advisory committee;

(f) If the public involvement objectives of ORS 183.333 are best met through the use of a collaborative rulemaking process.

(g) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee;

(h) The agency, to the extent consistent with its legal obligations, will use the consensus of the committee with respect to the proposed rulemaking action as the basis for a notice of intended adoption, amendment, or repeal of a rule pursuant to ORS 183.335; and

(i) Whether a collaborative rulemaking committee should also serve as an advisory committee under ORS 183.333(1).

(2) The agency may use the services of a convener to assist the agency in conducting the assessment and in further identifying persons, interest groups or entities who will be significantly affected by a proposed rulemaking action and the issues of concern to them, and in ascertaining whether a collaborative rulemaking committee is feasible and appropriate for the particular rulemaking action. Upon request of the agency, the convener may ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule.

(3) Upon request of the agency, the convener shall report findings in writing and may make recommendations to the agency. Any written report and recommendations of the convener shall be made available to the public upon request.

(4) If the collaborative rulemaking committee also serves as an advisory committee under ORS 183.333(1), the committee will make recommendations about the fiscal impact of the proposed rule or rules, as required by ORS 183.333.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.502 & 183.333

Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0009

Use of Collaborative Dispute Resolution in Rulemaking

(1) If, after consideration of the factors set out in OAR 137-001-0008, the agency establishes a collaborative rulemaking committee, the agency shall inform the committee regarding:

(a) The membership of the rulemaking committee;

(b) Whether or not the agency will be a member of the committee;

(c) A proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of any intended rulemaking action pursuant to ORS 183.335; and

(d) Whether or not the rulemaking committee also serves as an advisory committee under ORS 183.333(1) and is therefore subject to ORS 183.333(3) and (4).

(2) The agency may inform persons on the agency's mailing list maintained pursuant to ORS 183.335(8), those legislators designated in ORS 183.335(15) and any other persons of the subject and scope of rulemaking action that may result from the work of the collaborative rulemaking committee.

(3) The agency may limit membership on a collaborative rulemaking committee to ensure proper functioning of the committee or to achieve balanced membership. If the agency will be a member of the committee, the person or persons representing the agency may participate in the deliberations and activities of the committee with the same status as other members of the committee.

(4) A collaborative rulemaking committee established under this rule shall consider the matter proposed by the agency and attempt to reach a consensus concerning a proposed rulemaking action with respect to such matter.

(5) If the collaborative rulemaking committee established under this rule serves as an advisory committee under ORS 183.333(1), the committee shall comply with ORS 183.333(3) and (4).

(6) The agency shall explain to the committee the agency's expectations for using any consensus reached by the committee in any rulemaking action and explain the decision making process within the agency that would be necessary to bind the agency to any consensus reached by the committee.

(7) The agency may select a facilitator, subject to removal by the committee by consensus. In selecting a facilitator, the agency may consider the convener or any qualified individual, including an agency employee. If the committee elects to remove the facilitator selected by the agency, the agency may select another facilitator or allow the committee to select a facilitator by consensus. An individual designated to represent the agency in substantive issues may not serve as a facilitator or otherwise chair the committee.

(8) A facilitator approved or selected by a collaborative rulemaking committee may chair the meetings of the committee, assist the members of the committee in conducting discussions and negotiations, or manage the keeping of minutes and records and such assistance, if any, shall be provided in an impartial manner.

(9) For purposes of a collaborative rulemaking, both convenors and facilitators are considered dispute resolution providers, except that the agency's personal services contract for convenors need not contain the elements listed in OAR 137-005-0040(6)(b).

(10) A collaborative rulemaking committee established under this rule may adopt procedures for the operation of the committee. If the committee reaches a consensus on a proposed rulemaking action, the committee shall transmit to the agency a report containing the proposed rulemaking action. If the committee does not reach a consensus on a proposed rulemaking action, the committee may transmit to the agency a report specifying any areas in which the committee did reach a consensus.

(11) If the agency chooses to proceed with a rulemaking action after receiving the report of the committee, the agency shall comply with the rulemaking procedures in ORS 183.325 to ORS 183.355.

(12) The agency may request the committee to reconvene after a notice of proposed rulemaking action required by ORS 183.335(1) in order to consider any public comments received by the agency related to the rule. If the agency wishes to receive input from the committee after the deadline for comment on the proposed rulemaking action, the agency shall extend the comment deadline in order to receive such recommendations from the committee. The agency shall provide notice of the extended deadline to persons on the agency's mailing list maintained pursuant to ORS 183.335(8), to those legislators designated in ORS 183.335(15) and to persons identified in its notice rule adopted under ORS 183.341(4).

(13) The collaborative rulemaking committee shall terminate upon the agency's adoption, amendment, or repeal of the final rule under consideration, unless the committee specifies an earlier termination date. The agency may terminate the collaborative rulemaking committee at any time.

(14) The members of a collaborative rulemaking committee are responsible for their own expenses of participation in the committee. If authorized by law, the agency may pay a member's reasonable travel and per diem expenses and other expenses as the agency deems appropriate.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.502

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Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0011

Permanent Rulemaking Notice

(1) The agency will give notice of proposed permanent rulemaking by mailing, electronic mailing, or personally delivering a copy of the rule or rules as proposed and a copy of the notice required under ORS 183.335(2). In lieu of providing a copy of the rule or rules as proposed, the agency may provide a summary of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link shall not affect the validity of any rule.

(2) Persons who have asked the agency to send notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive notice by mail, and not electronically.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.355(2)

Hist.: JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0018

Limitation of Economic Effect on Small Businesses

(1) Before the adoption of a permanent rule, the agency will determine whether the economic effect upon small business is significantly adverse, based upon:

(a) The economic effect analysis under ORS 183.335(2)(b)(E);

(b) The statement of cost of compliance effect on small businesses described in Oregon Laws 2005, chapter 807, section 2;

(c) Recommendations from any advisory committee appointed under ORS 183.333(1) or from any fiscal impact advisory committee, if any, appointed under ORS 183.333(5); and

(d) Comments made in response to its rulemaking notice.

(2) If the agency determines there is a significant adverse effect on a small business or small businesses, it shall modify the rule to reduce the rule's adverse economic impact on those businesses to the extent consistent with the public health and safety purposes of the rule.

(3) Modification to reduce the rule's adverse economic impact on small business shall be as provided in ORS 183.540.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341(1) & 183.540

Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0030

Conduct of Rulemaking Hearings

(1) The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) At the beginning of the hearing, any person wishing to be heard shall provide their name, address, and affiliation to the presiding officer. The presiding officer may also require that the person complete a form showing any other information the presiding officer deems appropriate. Additional persons may be heard at the discretion of the presiding officer.

(3) At the beginning of the hearing, the presiding officer must summarize the content of the notice given under ORS 183.335.

(4) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statements of proponents;

(b) Statements of opponents; and

(c) Statements of other witnesses present and wishing to be heard.

(5) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.

(6) There shall be no additional statement given by any witness unless requested or permitted by the presiding officer.

(7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify.

(8) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq.

(9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(10) The presiding officer shall make a record of the proceeding, by audio or video tape recording, stenographic reporting or minutes

Stat. Auth.: ORS 183.341 & 183.390

Stats. Implemented: ORS 183.335(3) & 183.341(1)

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0040

Rulemaking Record

(1) The agency shall maintain a record of any data or views it receives in response to a notice of intent to adopt, amend, or repeal a rule.

(2) If a hearing is held, the agency may require the presiding officer, within a reasonable time after the hearing, to provide the agency a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, or exhibits. The presiding officer may make recommendations but such recommendations are not binding upon the agency.

(3) The rulemaking record shall be maintained by the rules coordinator. The agency shall make the rulemaking record available to members of the public upon request.

(4) The rulemaking record will include:

(a) The presiding officer's summary of or a recording of oral submissions received at the hearing, and the presiding officer's recommendation, if any;

(b) Any written comments received in response to the notice of rulemaking;

(c) The recommendations of an advisory committee or fiscal impact advisory committee, if any, appointed under ORS 183.333;

(d) The agency's statements of the objective of the rule, including how the agency will evaluate whether the rule accomplishes the objective, when required by ORS 183.335(3)(d);

(e) Any public comment received in response to the request for comments made pursuant to ORS 183.335(2)(b)(G);

(f) The notice of the agency's intended action, required by ORS 183.335(1) and (2); and

(g) A copy of the filing with the Secretary of State, required by ORS 183.355(1) or (3).

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335(3), 183.341(1) & OL 1993, 729, §14

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0060

Secretary of State Rule Filing

(1) The agency shall file in the office of the Secretary of State a certified copy of each adopted or amended rule and each order repealing an agency rule.

(2) The rule or order shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or specified in the rule or order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1) & 183.355

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0070

Petition to Promulgate, Amend, or Repeal Rule

(OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.)

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

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- (c) All propositions of law to be asserted by petitioner.
- (2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:
 - (a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;
 - (b) The continued need for the existing rule;
 - (c) The complexity of the existing rule;
 - (d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and
 - (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

- (a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;
- (b) May schedule oral presentations;
- (c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Auth.: ORS 183.390

Stats. Implemented: ORS 183.390

Hist.: IAG 14, f. & ef. 10-22-75; IAG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 12-2003(Temp), f. & cert. ef. 10-10-03 thru 4-7-04; DOJ 13-2003, f. & cert. ef. 12-9-03; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0080

Temporary Rulemaking Requirements

(1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing, electronic mailing, or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the agency may provide a summary and state how and where a copy of the rule or rules may be obtained on paper, via electronic mail or from a specified web site where the rule or rules are posted. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to give this notice shall not affect the validity of any rule.

(2) Persons who have asked the agency to mail notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive notice by mail, and not electronically.

(3) The agency shall file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).

(4) A temporary rule is effective for 180 days, unless a shorter period is specified in the temporary rule or the certificate of filing for the temporary rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335(5), 183.341(1), 183.355 & OL 1993, 729 §6

Hist.: IAG 14, f. & ef. 10-22-75; IAG 17, f. & ef. 11-25-77; IAG 4-1979, f. & ef. 12-3-79; IAG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0087

Objections to Statements of Fiscal Impact

(1) An objection to a fiscal impact statement must be filed in writing and must:

- (a) Identify the fiscal impact statement to which objection is made;
- (b) Identify the persons likely to be affected by the proposed rule on whose behalf the objection is filed or, if filed by an association, assert the number of members of the association who are likely to be affected by the proposed rule;
- (c) Explain how the persons identified are likely to be affected by the proposed rule;
- (d) Explain the objection or objections to the fiscal impact statement; and
- (e) Be sent to the mailing address or electronic mail address identified in the notice of proposed rulemaking for the submission of written comments.

(2) An objection to a fiscal impact statement is deemed made for purposes of ORS 183.333(5) when received by the agency.

(3) If the agency appoints a fiscal impact advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the fiscal impact advisory committee shall be open to the public.

(4) If the agency determines that the original fiscal impact statement does not adequately reflect the proposed rule's fiscal impact, the agency will file an amended fiscal impact statement, extend the comment period as required by ORS 183.333(5), and give notice of the extended comment period to:

(a) The persons or organizations that have filed objections under section one of this rule;

(b) The persons specified in the agency's notice rule adopted in accordance with ORS 183.335(1)(a);

(c) The persons on the agency's mailing list maintained in accordance with ORS 183.335(8); and

(d) Legislators specified in ORS 183.335(15).

Stat. Auth.: ORS 183.341, 183.502

Stats. Implemented: ORS 183.333, 183.341, 183.502, OL 2005, Ch. 17, Ch. 18, Ch. 807

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0095

Statement of the Objective of Proposed Rules

(1) A request for a statement of the agency's objective in proposing a rule must be submitted in writing and must identify the persons on whose behalf the request is made.

(2) Within ten days of receiving a request or requests for a statement of objective from at least five persons, the agency shall provide the statement, in writing, to the person or persons who submitted written requests. Failure to meet this deadline shall not affect the validity of any rule.

(3) The agency's written statement of the objective of the rule must include an explanation of how the agency will determine whether the rule accomplishes its objective.

Stat. Auth.: ORS 183.341, 183.502

Stats. Implemented: ORS 183.333, 183.341, 183.502, OL 2005, Ch. 17, Ch. 18, Ch. 807

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0100

Review of New Rules

(1) When conducting a review of a new rule as required by Oregon Laws 2005, chapter 807, section 3, the agency may appoint an advisory committee to assist with the review, invite public comment upon the rule, or both.

(2) Notwithstanding Oregon Laws 2005, chapter 807, section 3 (4) and (5), the agency may review any amended rule under the criteria set forth in Oregon Laws 2005, chapter 807, section 3(1).

(3) As part of the review under Oregon Laws 2005, chapter 807, section 3(1), the agency may invite public comment upon the rules and give notice of the review to those parties identified in ORS 183.335(1)(a), (c), and (d). The notice will:

(a) Identify the rule or rules under review, describe the subject matter of the rule or rules under review, and invite comments on any or all of the factors identified in Oregon Laws 2005, chapter 807, section 3(1);

(b) State the date by which written comments must be received by the agency and the mailing address or electronic mail address to which the comments should be sent; and

(c) Include the time and place of the hearing, if the agency provides a public hearing to receive oral comments.

Stat. Auth.: ORS 183.341, 183.502

Stats. Implemented: ORS 183.333, 183.341, 183.502, OL 2005, Ch. 17, Ch. 18, Ch. 807

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

Adm. Order No.: DOJ 11-2005

Filed with Sec. of State: 10-31-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 9-1-05

Rules Adopted: 137-003-0672

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

Subject: These proposed rule changes would amend some of the Attorney General's Model Rules of procedure for contested cases, including both those rules that apply to cases before the Office of

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Administrative Hearings and those rules that agencies may adopt separately.

Rules Coordinator: Carol Riches—(503) 947-4700

137-003-0001

Contested Case Notice

(1) The agency's contested case notice issued pursuant to ORS 183.415 shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel;

(d) A statement of the party's right to a hearing;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(f) Either:

(A) A statement of the specific time within which a person may request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case, automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341(1), 183.413, 183.415(7) & 183.502

Hist.: IAG 14, f. & ef. 10-22-75; IAG 17, f. & ef. 11-25-77; IAG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0075

Final Orders by Default

(1) The agency may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make a request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency that the party will not appear at the hearing, unless the agency agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency may not issue a final order by default under section (1)(c) of this rule but shall schedule a new hearing.

(3) The agency may issue a final order that is adverse to a party by default only after making a prima facie case on the record. The agency must find that the record contains evidence that persuades the agency of the existence of facts necessary to support the order. The record shall be made at a scheduled hearing on the matter or, if the hearing is canceled or not held, at an agency meeting or at the time the final order by default is issued, unless the agency designates the agency file as the record at the time the contested case notice is issued in accordance with OAR 137-003-0001(1).

(4) The record may consist of transcribed, recorded or reported oral testimony or written evidence or both oral testimony and written evidence.

(5) The agency shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order. If the contested case notice contained an order that was to become effective unless a party requested a hearing, and designated the agency file as the record, that order becomes a final order by default if no hearing is requested, and no further order need be served upon any party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), 183.415(6) & 183.470

Hist.: JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0515

Agency Referral to Office of Administrative Hearings

(1) When referring a contested case to the Office of Administrative Hearings, the agency shall provide written notice of the referral to the Office of Administrative Hearings that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned assistant attorney general, if any, upon whom pleadings and other papers should be served, and any other information requested by the Office of Administrative Hearings.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any. The agency may include additional copies of documents already sent to or received from the parties or their counsel with the copy of the referral notice.

(4) After a case has been referred by the agency to the Office of Administrative Hearings, the agency may withdraw the case from the Office of Administrative Hearings if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0520

Filing and Service of Pleadings and Other Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents, correspondence, motions including motions for a discovery order, pleadings, rulings and orders filed for the record in the contested case shall be filed:

(a) With the agency before the case is referred by the agency to the Office of Administrative Hearings;

(b) With the Office of Administrative Hearings or assigned administrative law judge after the agency has referred the case to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order;

(c) With the agency after the assigned administrative law judge issues a proposed order, or with the administrative law judge if the administrative law judge has authority to issue the final order.

(3) The agency shall refer to the Office of Administrative Hearings or the assigned administrative law judge any motion or other matter filed with the agency that is not within the agency's jurisdiction.

(4) The Chief Administrative Law Judge or assigned administrative law judge shall refer to the agency any motion or other matter filed with the Office of Administrative Hearings or assigned administrative law judge that is not within the jurisdiction of the Office of Administrative Hearings.

(5) The person or agency filing any pleading, motion, correspondence or other document with the agency, the Office of Administrative Hearings or administrative law judge assigned to the case shall simultaneously provide copies of the documents to the agency and the parties, or their counsel if the agency or parties are represented.

(a) Copies shall be provided to the agency and the parties, or their counsel if the agency or parties are represented, by hand delivery, by facsimile, by mail or as otherwise permitted by the agency by rule or in writing, or as otherwise directed by the administrative law judge with the agreement of the agency and the parties.

(b) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

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(6) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(7) The agency shall notify all parties and the administrative law judge of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(8) Motions, pleadings and other documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by facsimile or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(9) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(10) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0528

Late Hearing Requests

(1)(a) When a party requests a hearing after the time specified by the agency, the agency may accept the late request only if:

(A) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rules provide a different standard; and

(B) The agency receives the request before the entry of a final order by default or before 60 calendar days after the entry of the final order by default, unless other applicable statutes or agency rules provide a different timeframe.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(d) Before granting a party's late hearing request, the agency will provide all other parties, if any, an opportunity to respond to the late hearing request.

(2) If a party requesting a hearing disputes the facts underlying the agency's claim that a hearing request was late, the agency will provide a right to a hearing on that factual dispute. The administrative law judge will issue a proposed order recommending that the agency find that the hearing request is either timely filed or late.

(3) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency will provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge will issue a proposed order recommending that the agency grant or deny the late hearing request.

(4) In addition to the right to a hearing provided in (2) and (3) of this rule, the agency by rule or in writing may provide in any case or class of cases a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it must be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(5) If the late hearing request is allowed by the agency, the agency will enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(6) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(7) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0550

Representation of Parties; Out-of-state Attorneys

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

(2) Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law.

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 9.320, 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0570

Discovery in Contested Case Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases. Any party or the agency may file a motion pursuant to the requirements in this rule for an order requiring discovery. Before requesting a discovery order, a party or the agency must seek the discovery through an informal exchange of information.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2).

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally.

(4) After receiving a written request for an order requiring discovery, the agency or the administrative law judge shall issue a written order to require or deny discovery, or the agency may issue an order to require discovery on the agency's own motion.

(5) Discovery may include but is not limited to one or more of the following methods:

(a) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(b) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(c) Production of objects for inspection;

(d) Permission to enter upon land to inspect land or other property;

(e) Up to 20 requests for admission, including subparts, unless otherwise authorized by the administrative law judge or the agency;

(f) Up to 20 written interrogatories, including subparts, unless otherwise authorized by the administrative law judge or the agency;

(g) Prehearing conferences, as provided in OAR 137-003-0575.

(6) Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case. If the relevance or necessity of the requested discovery is not apparent, the agency or the administrative law judge may require the party or agency requesting discovery to explain how the request is likely to produce information that is relevant and necessary, or likely to facilitate resolution of the case.

(7) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that the requested discovery is reasonably likely to produce informa-

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tion that is generally relevant to the case and necessary, or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(8) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. The agency or the administrative law judge may limit discovery to a list of witnesses and the documents upon which the agency and parties will rely. The agency may adopt rules governing discovery in the agency's contested cases as long as those rules are not in conflict with the requirements of this rule. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(9) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(10) Unless otherwise prohibited by law, the agency may delegate to an administrative law judge its authority to issue subpoenas in support of a discovery order and control discovery. The delegation must be by rule or in writing, and it may be limited.

(11) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order or discovery request, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge may grant a continuance to allow an opportunity for the agency or other party to respond.

(12) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(13) Nothing in this rule shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

(14) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out above in subsection seven of this rule. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(15) If a party is dissatisfied with the Chief Administrative Law Judge's discovery order, the party may request that the agency review the order. A request for review must be made in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(16) If the agency is dissatisfied with the Chief Administrative Law Judge's discovery order, the agency may review the order on its own motion. Any decision to review the order must be stated in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be

in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(17) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(18) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.425 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03;

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0580

Motion for Summary Determination

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule may elect not to make available this process for summary determination.

(5) The party and the agency may stipulate to a record upon which the requested summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0600

Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

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(2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).

(3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the administrative law judge.

(7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(9) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0615

Judicial Notice and Official Notice of Facts

(1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued. The agency or party(ies) may present rebuttal evidence.

(2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.

(a) If the administrative law judge takes official notice of general, technical or scientific facts, the administrative law judge shall provide such notice to the parties and the agency, if the agency is participating in the contested case hearing, before the issuance of the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued.

(b) The agency or a party may object or may present rebuttal evidence in response to the administrative law judge's official notice of general, technical or scientific facts.

(c) If an objection is made or if rebuttal evidence is presented, the administrative law judge shall rule before the issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order, in the final order on whether the noticed facts will be considered as evidence in the proceeding.

(3) Before the issuance of the proposed order or a final order issued by an administrative law judge, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the administrative law judge and parties to the hearing.

(b) A party may present rebuttal evidence in response to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts.

(c) If a party presents rebuttal evidence, the administrative law judge shall rule on whether the noticed facts will be considered as evidence in the proceeding.

(4) After the issuance of a proposed order, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the parties to the hearing and, if authorized to issue a final order, to the administrative law judge.

(b) A party may object in writing to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts with service on any other parties, the agency and, if authorized to issue a final order, on the administrative law judge in the manner required by OAR 137-003-0520. A party may request that the agency or, if authorized to issue a final order, the administrative law judge provide an opportunity for the party to present written or non-written rebuttal evidence.

(c) The agency may request the administrative law judge to conduct further hearing proceedings under OAR 137-003-0655 as necessary to permit a party to present rebuttal evidence.

(d) If a party presents rebuttal evidence, the agency or, if authorized to issue a final order, the administrative law judge shall rule in the final order on whether the noticed facts were considered as evidence.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.450(4) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0635

Transmittal of Questions to the Agency

(1) Questions regarding the following issues may be transmitted to the agency:

(a) The agency's interpretation of its rules and applicable statutes; or

(b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties in the manner required OAR 137-003-0520(3).

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question within a reasonable time and the response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party. The parties may reply to the agency's response within a reasonable time.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0655

Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

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(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to ORS 244.120 and 244.130.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0670

Default in Cases Involving a Notice of Proposed Action that Does Not Become Final Without a Hearing or Default

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing.

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) Except as provided in subsection (c) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with OAR 137-003-0665.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if

authorized, the administrative law judge shall issue a final order by default in accordance with OAR 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order.

(5) If a final order by default is entered because a party did not request a hearing within the time specified by the agency, the party may make a late hearing request as provided in OAR 137-003-0528.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.415(6), 183.470 & OL 1999, Ch. 849
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0672

Default in Cases Involving an Agency Order that May Become Final Without a Request for Hearing

(1) This rule applies when the agency has issued a contested case notice containing an order that was to become effective unless a party requested a hearing, and has designated the agency file as the record.

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. The party may make a late hearing request as provided in OAR 137-003-0528.

(3) After a party requests a hearing, the agency or the administrative law judge will dismiss the request for hearing, and the agency order is final as if the party never requested a hearing if:

(a) The party that requested a hearing withdraws the request;

(b) The agency or administrative law judge notifies the party of the time and place of the hearing and the party fails to appear at the hearing; or

(c) In a matter in which only one party is before the agency, the agency or administrative law judge notifies the party of the time and place of the hearing, and the party notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agrees to reschedule the hearing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.415(6), 183.470
Hist.: DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0690

Stay Request — Contested Case

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney or representative, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney or representative in the proceeding, then the name, address and telephone number of the attorney or representative shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm;

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be

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imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request; and

(i) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f) and (g) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.482(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

Adm. Order No.: DOJ 12-2005

Filed with Sec. of State: 10-31-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 9-1-05

Rules Amended: 137-004-0800

Subject: The proposed change does not constitute a policy change; rather it would clarify the type of documentation that a person seeking a personal safety exemption to the public records law must provide. The change reorganizes the provisions that describe the kinds of documentation that might be presented.

Rules Coordinator: Carol Riches—(503) 947-4700

137-004-0800

Public Records Personal Safety Exemption

(1) An individual may request that a public body not disclose the information in a specified public record that indicates the home address, personal telephone number or personal electronic mail address of the individual. If the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection, the public body may not disclose that information from the specified public record, except in compliance with a court order, to a law enforcement agency at the request of the law enforcement agency, or with the consent of the individual.

(2) A request under subsection (1) of this rule shall be submitted to the custodian of public records for the public record that is the subject of the request. The request shall be in writing, signed by the requestor, and shall include:

(a) The name or a description of the public record sufficient to identify the record;

(b) A mailing address for the requestor;

(c) Evidence sufficient to establish to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the personal safety of the requestor or of a family member residing with the requestor. Such evidence may include the following documents:

(A) Documentary evidence, including a written statement, that establishes to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the personal safety of the requestor or of a family member residing with the requestor;

(B) A citation or an order issued under ORS 133.055 for the protection of the requestor or a family member residing with the requestor;

(C) An affidavit or police reports showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse or threatening or harassing letters or telephone calls directed at the requestor or a family member residing with the requestor;

(D) A temporary restraining order or other no-contact order to protect the requestor or a family member residing with the requestor from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the requestor or a family member residing with the requestor;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, issued or obtained for the protection of the requestor or a family member residing with the requestor;

(G) An affidavit or police reports showing that the requestor or a family member residing with the requestor has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250-260 providing protection for the requestor or a family member residing with the requestor;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the requestor or a family member residing with the requestor;

(J) An affidavit from a district attorney or deputy district attorney stating that the requestor or a family member residing with the requestor is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the requestor or a family member residing with the requestor is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding and that such involvement places the personal safety of that individual in danger; or

(L) An affidavit, medical records, police reports or court records showing that the requestor or a family member residing with the requestor has been a victim of domestic violence.

(3) A public body receiving a request under this rule promptly shall review the request and notify the requestor, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the public body that the personal safety of the requestor or of a family member residing with the requestor would be in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection. The public body may request that the requestor submit additional information concerning the request.

(4) If a public body grants the request for exemption with respect to records other than a voter registration record, the public body shall include a statement in its notice to the requestor that:

(a) The exemption remains effective for five years from the date the public body received the request, unless the requestor submits a written request for termination of the exemption before the end of the five years; and

(b) The requestor may make a new request for exemption at the end of the five years. If a public body grants the request for exemption with respect to a voter registration record, the public body shall include a statement in its notice to the requestor that

(A) The exemption remains effective until the requestor must update the individual's voter registration, unless the requestor submits a written request for termination of the exemption before that time; and

(B) The requestor may make a new request for exemption from disclosure at that time.

(5) A person who has requested that a public body not disclose his or her home address, personal telephone number or personal electronic mail address may revoke the request by notifying, in writing, the public body to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification shall be signed by the person who submitted the original request for nondisclosure of the home address, personal telephone number or personal electronic mail address.

(6) This rule does not apply to county property and lien records.

(7) As used in this rule:

(a) "Custodian" has the meaning given that term in ORS 192.410(1);

(b) "Public body" has the same meaning given that phrase in ORS 192.410(3).

Stat. Auth.: ORS 192.445

Stats. Implemented: ORS 192.445

Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 8-1995, 8-25-95, cert. ef. 9-9-95; DOJ 8-2001, f. & cert. ef. 10-3-01, Renumbered from 137-004-0100; DOJ 14-2003, f. & cert. ef. 12-9-03; DOJ 12-2005, f. 10-31-05, cert. ef. 1-1-06

Adm. Order No.: DOJ 13-2005

Filed with Sec. of State: 10-31-2005

Certified to be Effective: 10-31-05

Notice Publication Date: 9-1-05

Rules Amended: 137-005-0040

Rules Repealed: 137-005-0300, 137-005-0310

Subject: The rule changes amend the Attorney General's Model Rules to reflect changes by the 2005 Legislative Assembly in OR Laws, ch 334. These changes were necessary to eliminate rule language that restricted the persons who would be eligible to be medi-

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ators to state employees and private parties. These changes also eliminate rules related to a program in the Trial Division of the Department of Justice, the statutory authority for which sunset pursuant to Or Laws 1997, ch 670.

Rules Coordinator: Carol Riches—(503) 947-4700

137-005-0040

Selection and Procurement of Dispute Resolution Providers

(1) The agency may select the collaborative DR provider or may opt to select the provider by consensus of the participants.

(2) A collaborative DR provider who has a financial interest in the subject matter of the dispute, who is an employee of an agency in the dispute, who has a financial relationship with any participant in the collaborative DR process or who otherwise may not be impartial is considered to have a potential bias. If, before or during the dispute resolution process, a provider has or acquires a potential bias, the provider shall so inform all the participants. Any participant may disqualify a provider who has a potential bias if the participant believes in good faith that the potential bias will undermine the ability of the provider to be impartial throughout the process.

(3) If the collaborative DR provider is a public official as defined by ORS 244.020(15), the provider shall comply with the requirements of ORS chapter 244.

(4) If the agency procures the services of a collaborative DR provider, the agency must comply with all procurement and contracting rules provided by law. A roster of collaborative DR providers and a simplified mediator and facilitator procurement process developed by the Department of Justice may be used by the agency when selecting a collaborative DR provider by consensus.

(5) If the collaborative DR provider is a mediator or facilitator who is not an employee of the agency, the participants shall share the costs of the provider, unless the participants agree otherwise or the provider is retained solely by the agency or by a non-participant.

(6) Whenever the agency compensates a provider who is not an employee of the agency, the state must execute a personal services contract with the provider. If the agency and the other participants choose to share the cost of the collaborative DR provider's services, the non-agency participants may enter into their own contract with the provider or may be a party to the contract between the agency and the provider, at the discretion of the agency. The agency's contract with a provider must state:

(a) The name and address of the provider and the contracting agency;

(b) The nature of the dispute, the issues being submitted to the collaborative DR process and the identity of the participants, as well as is known at the time the contract is signed;

(c) The services the provider will perform (scope of work);

(d) The compensation to be paid to the provider and the maximum contract amount;

(e) The beginning and ending dates of the contract and that the contract may be terminated by the agency or the provider upon mutual written consent, or at the sole discretion of the agency upon 30 calendar days notice to the provider or immediately if the agency determines that the DR process is unable to proceed for any reason.

(7) A student, intern or other person in training or assisting the provider may function as a co-provider in a dispute resolution proceeding. The co-provider shall sign and be bound by the agreement to collaborate specified in OAR 137-005-0030, if any, and, if compensated by the agency, a personal services contract as specified in section (6) of this rule.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.502

Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 13-2005, f. & cert. ef. 10-31-05

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Adm. Order No.: DOJ 14-2005

Filed with Sec. of State: 10-31-2005

Certified to be Effective: 2-2-06

Notice Publication Date: 9-1-05

Rules Adopted: 137-008-0120

Subject: The proposed rule would permanently adopt a rule that is currently only in place as a temporary rule. The rule provides for the confidentiality of the mediation of workplace interpersonal disputes between employees or between employees and officials of the Department of Justice. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed. This rule is identical to the rule on the confidential-

ity of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2).

Rules Coordinator: Carol Riches—(503) 947-4700

137-008-0120

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator;

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

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(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.230(4)
Hist.: DOJ 6-2005(Temp), f. & cert. ef. 8-5-05 thru 2-1-06; DOJ 14-2005, f. 10-31-05, cert. ef. 2-2-06

Adm. Order No.: DOJ 15-2005(Temp)
Filed with Sec. of State: 11-2-2005
Certified to be Effective: 11-2-05 thru 4-29-06
Notice Publication Date:
Rules Amended: 137-008-0010

Subject: The rule establishes the fees the Department may charge to reimburse it for costs of providing public records and also establishes the prices of Department publications. Amendments are necessary to reflect changes to hourly billing rates of Department staff upon which the Department's 2005-2007 Legislatively Approved Budget is based and to reflect an increase in the price of the Attorney General's Public Records and Meetings Manual.

Rules Coordinator: Carol Riches—(503) 378-6313

137-008-0010 Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the

services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

- (a) Assistant Attorney General; \$111/hr;
- (b) Alternative Dispute Resolution Coordinator; \$80/hr;
- (c) Investigator; \$76/hr;
- (d) Paralegal; \$69/hr;
- (e) Law Clerk; \$46/hr;
- (f) General Clerical; \$44/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents

(3) The Department shall estimate the costs of making records available for inspection or providing copies of records to requestors. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

- (a) Attorney General's Public Law Conference Papers; \$65;
- (b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; \$40;
- (c) Attorney General's Public Contracts Manual; \$65;
- (d) Attorney General's Public Records and Meetings Manual; \$25;
- (e) Attorney General Opinions:
 - (A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; \$921;
 - (B) Future Bound Volumes; \$70;
 - (C) Slip Opinion Service (yearly); \$60;
 - (D) Letters of Advice Index, 1969-83; \$20;
 - (E) Letters of Advice Index, 1983-88; \$40;
 - (F) Letters of Advice Index, 1988-93; \$40;
 - (G) Future Letters of Advice Indices; \$40.

Stat. Auth.: ORS 192.430(2) & 192.440(3)
Stats. Implemented: ORS 192.440(3)
Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05; DOJ 1-2005, f. & cert. ef. 1-13-05; DOJ 2-2005, f. & cert. ef. 2-1-05; DOJ 15-2005(Temp), f. & cert. ef. 11-2-05 thru 4-29-06

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

Adm. Order No.: OSFM 14-2005
Filed with Sec. of State: 10-21-2005
Certified to be Effective: 10-22-05
Notice Publication Date: 10-1-05
Rules Amended: 837-012-1230

Subject: To rescind the explosive fee increases from the 2003-2005 biennium, due to the fees not being ratified by the 2005 Legislature.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-1230 Fees

- (1) Fees Shall be payable to the Office of State Fire Marshal.

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(2) Fees Shall be paid at, or mailed to, the Office of State Fire Marshal and Shall accompany the appropriate application.

(3) Payment Shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal Shall not take any action on the application until the check has cleared the bank.

(4) Fees are:

(a) \$50 — Certificate of Possession

(b) \$30 — Examination

(c) \$125 — Magazine Registration with Office of State Fire Marshal inspection

(d) \$50 — Magazine Registration with acceptance of BATFE inspection

(5) Fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 4-2005, f. & cert. ef. 2-17-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 14-2005, f. 10-21-05, cert. ef. 10-22-05

Adm. Order No.: OSFM 15-2005(Temp)

Filed with Sec. of State: 11-9-2005

Certified to be Effective: 11-9-05 thru 5-7-06

Notice Publication Date:

Rules Amended: 837-012-1320

Subject: This rule change is needed to rescind an explosives fee that was not ratified by the 2005 legislature.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-1320

Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco, Firearms and Explosives Inspection

(1) The Office of State Fire Marshal may accept an inspection completed by BATFE in lieu of the Office of State Fire Marshal inspection.

(2) The decision to accept or not accept the BATFE inspection rests solely with the Office of State Fire Marshal.

(3) The Office of State Fire Marshal Shall consider, but is not limited to, the following criteria in deciding whether to accept a BATFE inspection:

(a) The inspection Shall be completed not more than 180 days prior to the date of the application for a Certificate of Registration;

(b) United States Post Office postmark date shall be used to determine the date of application.

(c) The inspection Shall show the Magazine is in compliance with these rules.

(d) If deficiencies are noted on the BATFE inspection, the Office of State Fire Marshal may decide to conduct its own inspection. Should the Office State Fire Marshal decide to complete its own inspection, the applicant Shall submit payment of the additional fee amount of \$75 required for a Certificate of Registration with a State Fire Marshal inspection prior to the Office of State Fire Marshal conducting its inspection.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2005(Temp), f. & cert. ef. 11-9-05 thru 5-7-06

Adm. Order No.: OSFM 16-2005

Filed with Sec. of State: 11-9-2005

Certified to be Effective: 11-9-05

Notice Publication Date: 10-1-05

Rules Adopted: 837-030-0235

Rules Amended: 837-030-0120, 837-030-0130, 837-030-0190, 837-030-0200, 837-030-0280

Subject: OAR 837-030-0120 has added a new definition, for Company License and types of fitter licenses.

OAR 837-030-0130 was amended to clean up punctuation and update the referenced Oregon Fire Code and edition year.

OAR 837-030-0190 was amended to correct section (4) subsections and punctuation, add some clarifying language to section (7), and add a new section (9) and (12) failing an examination.

OAR 837-030-0200 was amended to add clarifying language to section (6).

OAR 837-030-0235 is to implement a plan review fee of \$100 for certain storage tanks and clarify ORS 480.450 subsection (2).

OAR 837-030-0280 was amended to add a new subsection (1)(d) and renumber accordingly.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-030-0120

Definitions

(1) For the purpose of these rules, the following definitions apply to OAR 837-030-0100 through 837-030-0280.

(2) Application means the forms required by the Office of State Fire Marshal to be completed and submitted to the Office of State Fire Marshal.

(3) Bulk Plant is a facility where the primary function is to store LP-Gas prior to further distribution. LP-Gas is received by cargo tank vehicle, railroad tank car, or pipeline, and then distributed by portable container (package) delivery, by cargo tank vehicle, or through gas piping.

(4) Company License shall have the same meaning as an Installation License defined in OAR 837-030-0120(10).

(5) Company representative means an individual who has passed the installation examination administered by the Office of State Fire Marshal and represents the company at a specific site.

(6) Delivery Unit means any unit that is used to deliver and/or transport liquefied petroleum gas.

(7) Examination means a document designed to test an applicant's knowledge regarding liquefied petroleum gas, its properties, related equipment and/or applicable safety regulations.

(8) Fitter license means a license issued to an individual who performs liquefied petroleum gas fitting or gas venting work, installs, repairs or remodels any piping or venting, installs or repairs, connects, or disconnects any liquefied petroleum gas appliance. The types of Fitter Licenses are:

(a) HVAC Fitter — Required for all individuals who perform LPG work on HVAC equipment, including hearth products;

(b) IC Fitter (Internal Combustion) — Required for all individuals who work on internal combustion engines of forklifts and vehicles;

(c) Master Fitter — Required for all individuals who perform LPG fitting or venting work, install, repair or remodel any piping or venting. This license covers all areas of LPG work.

NOTE: Individuals licensed as a fitter prior to May 16, 2005, shall be considered a Master Fitter;

(d) RV Fitter — Required for all individuals who work on recreational vehicles (license not required for construction or warranty work for manufactured dwellings or recreational vehicles).

(9) "Individual" shall mean one distinct, individual human being. It shall not mean person.

(10) Installation license means a license issued to a company or business (hereinafter referred to as a Company License) that engages in or works at the business of installing, extending, altering or repairing any liquefied petroleum gas appliance or piping, vent or flue connection pertaining to or in connection with liquefied petroleum gas installations.

(11) License shall mean the official written permission granted by the State Fire Marshal for the purpose of working in the liquefied petroleum gas business.

(12) Liquefied petroleum gas means any liquid composed predominantly of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

(13) "Person" shall mean one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(14) Truck Equipment Operator license means a license issued to an individual who operates liquefied petroleum gas delivery equipment installed on a motorized vehicle.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.410

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 16-2005, f. & cert. ef. 11-9-05

837-030-0130

Fire and Life Safety Standards

(1) The following National Fire Protection Association Standards (NFPA) are hereby adopted by reference and are the Standards on which the examinations referenced in these rules will be primarily based:

(a) NFPA 54 — **National Fuel Gas Code; (2002 Edition);** and

(b) NFPA 58 — **Storage and Handling of Liquefied Petroleum Gases (2004 Edition).**

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(c) NFPA 1192 — Standard on Recreational Vehicles (2002 Edition).

(2) Whenever the following phrases or abbreviations appear in the above referenced standards, they shall mean the following:

(a) Authority Having Jurisdiction means the State Fire Marshal,

(b) National Electrical Code means the **Oregon Electrical Specialty Code**; and

(c) NFPA means the National Fire Protection Association,

(3) The Oregon State Fire Marshal has adopted the **Oregon Fire Code, 2004 Edition and Oregon Fire Code Chapter 38, 2004 Edition** as amended for inspection and enforcement of liquefied petroleum gas installations pursuant to ORS 476.030(1) and 480.420(1). (Refer to Oregon Administrative Rule 837, Division 40.).

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.420

Hist.: FM 22, f. 11-15-65; FM 59, f. 2-25-72, ef. 3-15-72; FM 62, f. 6-14-73, ef. 7-1-73; FM 66, f. 2-20-75, ef. 3-11-75; FM 1-1981, f. 7-20-81, ef. 8-1-81; FM 6-1985, f. & ef. 9-20-85; FM 1-1987, f. & ef. 3-18-87; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0010, 837-030-0015, 837-030-0020 & 837-030-0025; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 2-2002, f. & cert. ef. 2-25-02; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 16-2005, f. & cert. ef. 11-9-05

837-030-0190

Examinations

(1) Persons applying for Installation (company), Fitter, and/or Truck Equipment Operator licenses shall pass a written examination, administered by the Office of State Fire Marshal, with a score of 80 percent or more of the questions answered correctly on each applicable section of the examination.

(2) Examinations for Fitter and Truck Equipment Operator licenses shall assess the individual's knowledge of liquefied petroleum gas, its properties, related equipment, and applicable codes, statutes and safety regulations.

(3) Examinations for the company representative shall assess the individual's knowledge of applicable codes, statutes, safety regulations, Oregon Revised Statutes and Oregon Administrative Rules that regulate and govern liquefied petroleum gas.

(4) License qualifying examinations shall have the following maximum time limits:

(a) Company Representative — 1 hour;

(b) Master Fitter — 2.25 hours;

(c) Truck Equipment Operator — 1.50 hours;

(d) Company Representative, Fitter, Truck Equipment Operator Combination — 3.75 hours;

(e) Company Representative, Fitter Combination — 2.75 hours;

(f) Company Representative, Truck Equipment Operator Combination — 2 hours;

(g) Fitter, Truck Equipment Operator Combination — 3.25 hours;

(h) IC Fitter — 1.50 hours;

(i) RV Fitter — 1.50 hours;

(j) HVAC Fitter — 1.50 hours;

(k) Company Representative, RV Fitter — 2 hours;

(l) Company Representative, HVAC Fitter — 2 hours;

(m) Company Representative, IC Fitter — 2 hours.

(5) Examinations are open book, however, all examinations are required to have an on-site examination proctor that is present throughout the examination process to assure that appropriate testing processes are adhered to. No individual person completing an examination shall use any information other than the information referenced in these rules to complete the examination, nor shall they use any other means to obtain a passing score on the examination. Removal of the examination or the answer sheet from the examination site will result in automatic failure of the examination.

(6) Examinations will be based primarily on the standards referenced in OAR 837-030-0130, Oregon Revised Statutes (ORS) 480.410 through 480.460, 480.990, and OAR 837-030-0100 through 837-030-0280.

(7) All applications to take examinations shall be made on a form provided by the Office of State Fire Marshal and shall be accompanied by the fee(s) required in ORS 480.434.

(8) Upon receipt of a properly completed application and fee, the Office of State Fire Marshal will notify the applicant of a time and place for examination.

(9) If an applicant fails to arrive at the scheduled examination appointment, fails to complete the examination, or fails to pass the examination, the applicant shall submit to the Office of State Fire Marshal a new application and fee pursuant to ORS 480.434.

(10) License holders and persons previously licensed are not required to complete new examinations unless a period of two years or more has elapsed from the date of their last license expiration date.

(11) Notification of examination results will be mailed to the company following the completion of the examination process.

(12) The State Fire Marshal reserves the right to disqualify an applicant's examination score for valid cause.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 16-2005, f. & cert. ef. 11-9-05

837-030-0200

License Application, Approval, Issuance

(1) All license applications shall be on a form provided by the Office of State Fire Marshal.

(2) License applications shall not be submitted until the applicant has passed the appropriate qualifying examination(s).

(3) The completed Application form shall contain the following:

(a) Applicant's name;

(b) Type of License(s) applied for;

(c) Name and address of the Company;

(d) Signature of the Company Representative; and

(e) Company number assigned by the Office of State Fire Marshal.

(4) Applications shall be accompanied by the appropriate license fee(s).

(5) Upon approval of the application, a license will be issued and mailed to the company.

(6) Company licenses shall be valid for a period of one year from date of issue. Fitter and Truck Equipment Operator licenses shall be valid for a period of two years from date of issue. If the examinee has not applied for and been issued a license within two years from the date of completion of the examination in which the passing score was received, the examination score shall be invalid and the applicant shall re-take and pass the examination.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.434

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 5-1988(Temp), f. & cert. 3-31-88; FM 10-1988, f. & cert. ef. 9-19-1988; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0030; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 2-2002, f. & cert. ef. 2-25-02; OSFM 16-2005, f. & cert. ef. 11-9-05

837-030-0235

Plan Review of Certain Storage Tanks

(1) Liquid Petroleum Gas installations wherein a single container is more than 2,000 gallons in water capacity, or the aggregate capacity of the installation is greater than 4,000 gallons, require a plan review from the Office of State Fire Marshal.

(2) Applications for plan reviews shall be submitted to the Office of State Fire Marshal within 10 working days from the proposed installation date.

(3) Applications for plan reviews shall be submitted on an Office of State Fire Marshal form and shall be accompanied by a \$100 fee.

Stat. Auth.: ORS 476.033, 480.410 - 480.460

Stats. Implemented: ORS 476.033, 480.410 - 480.460

Hist.: OSFM 16-2005, f. & cert. ef. 11-9-05

837-030-0280

Fees/Penalties

(1) Fees shall be payable to the Office of State Fire Marshal.

(2) Fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the appropriate application.

(3) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the application until the check has cleared the bank.

(4) Fees for the liquefied petroleum gas program are located in Oregon Revised Statute as follows:

(a) Examination Fees — ORS 480.434 Examination of applicants for licenses; issuance of license. Examination fees are non-refundable and non-transferable.

(b) Company License — ORS 480.436 License fees; term of licenses; delinquency penalty.

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(c) Fitter License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(d) Truck Equipment Operator License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(e) Company, Fitter, and Truck Equipment Operator License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(f) Plan review fee — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(g) Bulk Plant Inspection Fee — ORS 480.440 Inspection of certain storage tanks. (Excludes initial inspection during plant construction).

(h) Delivery Unit Inspection Fee — ORS 480.440 Inspection of certain storage tanks.

(5) Tank Installation Fees for all tanks:

(a) All tanks ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(6) Tank Reinspection Fees — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(a) 10 year tank inspection fee — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(7) Penalty Fees for the Liquefied Petroleum Gas program are located in Oregon Revised Statutes as follows:

(a) ORS 480.436 License fees; term of licenses; delinquency penalty.

(b) ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(c) ORS 480.990 Penalties

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.436, 480.440, 480.450 & 480.460

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04; OSFM 16-2005, f. & cert. ef. 11-9-05

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Department of Public Safety Standards and Training

Chapter 259

Adm. Order No.: DPSST 12-2005

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 11-15-05

Notice Publication Date: 8-1-05

Rules Amended: 259-070-0001, 259-070-0005, 259-070-0010, 259-070-0020, 259-070-0050

Rules Repealed: 259-070-0015, 259-070-0030, 259-070-0040

Subject: Housekeeping changes to bring administrative rule into compliance with legislation. Adds new language related to qualifying death or job-related permanent total disability. Adds new language related to benefit provisions and includes transition process for current beneficiaries.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-070-0001

Policies and Objectives

(1) The policies of the Board are to benefit family members who qualify for monetary awards due to the qualifying death or permanent total disability of public safety personnel.

(2) The Board shall award a lump sum amount of \$25,000 to eligible applicants;

(3) The Board may award the following benefits to eligible applicants:

(a) Health and dental benefits,

(b) Mortgage payments;

(c) Higher education scholarships.

Stat. Auth.: ORS 243.950

Stats. Implemented: ORS 243.950

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; DPSST 12-2005, f. & cert. ef. 11-15-05

259-070-0005

Definitions

(1) "Board" means the Public Safety Memorial Fund Board.

(2) "Department" means the Department of Public Safety Standards and Training.

(3) "Fund" means the Public Safety Memorial Fund.

Stat. Auth.: ORS 243.950

Stats. Implemented: ORS 243.950

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 4-2000(Temp), f. & cert. ef. 9-29-00 thru 3-3-01; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 1-2001, f. & cert. ef. 1-16-01; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05

259-070-0010

Eligibility

Eligibility of award applies to public safety officers who died or became disabled as of October 23, 1999. Subject to availability of funds, the Board may award benefits to family members of public safety officers who died or became disabled after January 1, 1997, through October 23, 1999.

Stat. Auth.: ORS 243.950

Stats. Implemented: ORS 243.956

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05

259-070-0020

Benefits

In determining the amount of scholarship benefits under ORS 243.956(8) and (10), "State Institution of Higher Education" means an institution listed in ORS 352.002.

Stat. Auth.: ORS 243.950

Stats. Implemented: ORS 243.962 & 243.968

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05

259-070-0050

Transition Process for Current Beneficiaries

(1) A family member or public safety officer who had a qualifying death or permanent total disability and who applied for scholarship benefits prior to January 1, 2006, shall continue to be eligible to apply for scholarship benefits under the terms that were operative until January 1, 2004, awarding benefits for undergraduate degrees only.

(2) A family member or public safety officer who had a qualifying death or permanent total disability and who was receiving health and dental benefits prior to January 1, 2004, shall continue to receive health and dental benefits for up to five years or until the spouse remarries, whichever occurs first; and until the child(ren) attain 18 years of age (or 23 years of age if the child(ren) is attending school.

Stat. Auth.: ORS 243.956

Stats. Implemented: ORS 243.956

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; DPSST 12-2005, f. & cert. ef. 11-15-05

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Department of State Lands

Chapter 141

Adm. Order No.: DSL 4-2005

Filed with Sec. of State: 11-3-2005

Certified to be Effective: 11-15-05

Notice Publication Date: 10-1-05

Rules Adopted: 141-001-0020

Rules Amended: 141-001-0000, 141-001-0005

Rules Repealed: 141-001-0000(T), 141-001-0005(T), 141-001-0020(T)

Subject: The Department of State Lands occasionally conducts mediation to resolve a contested case related to a Removal Fill enforcement action. These rules will replace the temporary rules that were filed prior to mediation earlier this year. The temporary rules expire on November 15, 2005. Adoption of this rule is necessary to allow for the confidential mediation of which the Department of State Lands is a party. Without such a rule the agency would have limited ability to conduct candid, confidential settlement negotiations in mediation. Mediation has the potential for resolving lawsuits less expensively than a jury trial and for achieving more satisfactory outcomes. 141-001-0020 contains the text of the Attorney General's model "Combined Rule - Confidentiality and Inadmissibility of Mediation Communications."

SB 311 (Chapter 253 Oregon Laws 2003), enacted during the 2003 session, changed the name of the Division of State Lands to the Department of State Lands (DSL).

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805, ext. 239

ADMINISTRATIVE RULES

141-001-0000

Notice of Proposed Rule

The purpose of this rule is to provide a reasonable opportunity for interested persons to be notified of the proposed actions of the State Land Board and/or the Department of State Lands. Prior to the adoption, amendment, or repeal of any rule, the State Land Board and/or the Department of State Lands shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the State Land Board's and/or Department of State Lands' mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the notice to the United Press International and Associated Press.

(4) When the rule relates to abandoned property:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Department of Commerce, Banking Division; Department of Commerce, Insurance Division; and Executive Council, Oregon Bankers Association.

(5) When the rule relates to waterway users:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees of waterways.

(6) When the rule relates to sand and gravel:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees or companies who remove sand and gravel from state lands.

(7) When the rule relates to mining and explorations:

(a) Notice as provided in sections (1), (2), and (3) of this rule;

(b) Lessees who mine or explore for hard minerals, oil and gas, or geothermal resources on state lands; and

(c) Department of Geology.

(8) When the rule relates to the removal and/or filling of material:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, U.S. Corps of Engineers, and environmental groups requesting notification of removal and/or fill applications.

(9) When the rule relates to grazing lands:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees of grazing or agricultural lands.

(10) When the rule relates to natural area preserves:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, and environmental groups requesting notification of proposed natural areas.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341 & 273.054

Hist.: LB 32, f. & ef. 11-18-75; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

141-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Department of State Lands and the State Land Board adopt the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended October 3, 2001.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Department of State Lands.]

Stat. Auth.: ORS 183.413 - 183.470

Stats. Implemented: ORS 273

Hist.: LB 10, f. 11-15-71, ef. 12-1-71; LB 13, f. 1-21-74, ef. 2-11-74; LB 35, f. & ef. 1-6-76; LB 2-1978, f. & ef. 4-20-78; LB 1-1980, f. & ef. 2-20-80; LB 1-1982, f. & ef. 2-25-82; LB 4-1983, f. & ef. 12-23-83; LB 4-1989, f. & cert. ef. 7-25-89; LB 2-1992, f. & cert. ef. 6-15-92; LB 1-1994, f. & cert. ef. 4-13-94; DSL 7-1998, f. & cert. ef. 7-15-98; DSL 3-2002, f. & cert. ef. 4-24-02; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

141-001-0020

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) all the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) the mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation**

Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 141-001-0020(7) and this agreement. This agreement relates to the following mediation:

a) _____
(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 141-001-0020(7), mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____
Name of Agency

Signature of Agency's authorized representative _____ Date
(when agency is a party) or Agency employee acting
as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

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Signature of party's authorized representative Date

e) _____
Name of party to the mediation

Signature of party's authorized representative Date

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) a request for mediation; or

(B) a communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) a final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) a strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) attorney work product prepared in anticipation of litigation or for trial; or

(C) prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

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

Hist.: DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

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Department of Transportation
Chapter 731

Adm. Order No.: DOT 6-2005

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 9-1-05

Rules Amended: 731-080-0020, 731-080-0030, 731-080-0040, 731-080-0070

Subject: These rules establish the Road User Fee Pilot Program. Chapter 862, Oregon Laws 2001 authorizes the Department of Transportation to develop one or more alternatives to the current system of taxing highway use through motor vehicle fuel taxes. Section 43, Chapter 618, Oregon Laws 2003 allows the Department to vary any fee established under a pilot program to facilitate the maximum use of road capacity. The amendments modifying existing rules allowing ODOT to run a pilot program to test the collection of a mileage based fee in lieu of fuels tax. Since the pilot is not slated to begin until March of 2006, the rules are changing before participants are recruited. The rule changes are made in order to avoid participants

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dropping out of the study due to higher out-of-pocket expenses by being in the congestion pricing group.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-080-0020

Definitions

(1) "Area Pricing" means a different fee charged per mile driven in an area specified as an Area Pricing Zone during certain hours on certain days, as specified in the Pilot Program Agreement.

(2) "Area Pricing Zone" means a specified area within Oregon in which a Program Volunteer is charged a different fee when driving within that area during certain hours on certain days.

(3) "Area Pricing Group" means the group of Program Volunteers who are subject to Area Pricing.

(4) "Applicant" means an individual or service station that has indicated an interest in participating in the Pilot Program by completing and submitting an application for consideration.

(5) "Control Group" means the group of Program Volunteers who will not pay a VMT Fee.

(6) "Endowment Account" means an account funded by ODOT from which Program Volunteer VMT Fees will be deducted.

(7) "Fuels Tax" means the Oregon Motor Vehicle Fuels Tax as administered under ORS 319.010 through 319.430.

(8) "Non-Area Pricing Group" means the group of Program Volunteers who are not subject to Area Pricing.

(9) "Participating Service Station" means a service station selected to participate in the Pilot Program by installing necessary equipment for the Pilot Program.

(10) "Pilot Area" means the geographic area where the Program Volunteers reside.

(11) "Pilot Program" means the ODOT pilot program designed to test a mileage fee concept recommended by the RUFTF to the legislature in "Report to the 72nd Oregon Legislative Assembly" March 2003.

(12) "Program Volunteer" means an individual selected to participate in the Pilot Program.

(13) "Reader Device" means a VMT reader.

(14) "Reader Location Owner" means the owner of a location where a Reader Device is located, with the exception of Participating Service Stations.

(15) "Road User Fee Task Force" or "RUFTF" means the task force described in section 2, chapter 862, Oregon Laws 2001.

(16) "Vehicle Miles Traveled" or "VMT" means miles driven.

(17) "VMT Fee" means a fee charged per mile driven in Oregon.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05; DOT 6-2005, f. 10-20-05, cert. ef. 11-1-05

731-080-0030

Road User Fee Task Force Pilot Program Generally

(1) ODOT will conduct a 12-month Pilot Program in which Program Volunteers must pay a designated VMT Fee during the program's last six months in lieu of paying an amount equal to the Fuels Tax associated with the fuel purchased except for those in the Control Group, who will not pay a VMT Fee.

(2) The VMT Fee for the Non-Area-Pricing Group is 1.2 cents per mile.

(3) The VMT Fee for the Area Pricing Group is .43 cents per mile outside Area Pricing Zones and 10 cents per mile in Area Pricing Zones.

(4) Area Pricing Zones will be determined by ODOT prior to the start of the Pilot Program.

(5) Area Pricing Zones will be determined by ODOT based on high volume traffic locations and times.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05; DOT 6-2005, f. 10-20-05, cert. ef. 11-1-05

731-080-0040

Program Volunteers

(1) ODOT may recruit up to 500 Applicants to participate in the Pilot Program as Program Volunteers.

(2) Program Volunteers will not have the Fuels Tax associated with fuel purchased at Participating Service Stations included in the fuel purchase price.

(3) ODOT will assess Program Volunteers the VMT Fee and refund the Fuels Tax associated with the fuel purchased when the Program Volunteer purchases fuel from a service station other than a Participating Service Station.

(4) ODOT will ensure that Participating Services Stations are reimbursed for Fuels Tax associated with the amount of fuel purchased by Program Volunteers each month.

(5) All Program Volunteers will receive compensation, not to exceed \$500 each, for participating in the Pilot Program.

(6) Program Volunteers are required to enter into a Pilot Program agreement, outlining the duties and obligations of each party in the Pilot Program. Fulfillment of each requirement of such agreement is a prerequisite to receipt of any compensation.

(7) ODOT may limit the amount of additional VMT Fee paid by Program Volunteers.

(8) Each Program Volunteer in the Non-Area Pricing Group and the Area Pricing Group will be assigned an Endowment Account during the last six months of the Pilot. Each Endowment Account will be assigned a dollar figure based on the amount of miles driven during the first six months of the Pilot.

(9) ODOT will charge Program Volunteers' Endowment Accounts any assessed VMT Fees during the last six months of the Pilot.

(10) ODOT will not charge any VMT fees during the first six months of the Pilot.

(11) Program Volunteers may receive unused Endowment Account funds as compensation.

(12) Program Volunteers may be charged for VMT Fees exceeding Endowment Account amounts. The amount charged shall not exceed the compensation amount.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05; DOT 6-2005, f. 10-20-05, cert. ef. 11-1-05

731-080-0070

VMT Fee or Fuels Tax Collection

(1) A Program Volunteer's Endowment Account will be assessed the VMT Fee when purchasing fuel at a Participating Service Station except if in the Control Group.

(2) The amount of Fuels Tax associated with the amount of fuel purchased by the Program Volunteer will be automatically deducted from the purchase price by the Participating Service Station except if in the Control Group.

(3) When a Program Volunteer purchases fuel from a service station that is not a Participating Service Station and ODOT receives documentation of such purchase, including the amount of fuel purchased, the Fuels Tax associated with the purchase and the VMT:

(a) The Program Volunteer, except if in the Control Group, will be assessed the VMT Fee by ODOT; and

(b) ODOT will refund the Fuels Tax associated with the amount of fuel purchased.

(4) ODOT will reimburse Participating Service Stations, on a monthly basis, any Fuels Tax amounts associated with fuel purchased that have been deducted from a Program Volunteer's purchase price.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05; DOT 6-2005, f. 10-20-05, cert. ef. 11-1-05

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

Adm. Order No.: DMV 22-2005

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 10-20-05

Notice Publication Date: 9-1-05

Rules Repealed: 735-062-0100

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

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longer renewing driver licenses by mail, DMV has repealed OAR 735-062-0100, Driver License Renewal by Mail Program.

Rules Coordinator: Brenda Trump—(503) 945-5278

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTD 6-2005

Filed with Sec. of State: 10-20-2005

Certified to be Effective: 10-20-05

Notice Publication Date: 9-1-05

Rules Amended: 740-055-0030

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

Rules Coordinator: Brenda Trump—(503) 945-5278

740-055-0030

International Fuel Tax Agreement Fees

(1) Each Oregon based International Fuel Tax Agreement (IFTA) licensee shall pay Oregon an annual fee as established in this rule. The annual fee is based on the number of motor vehicles the licensee elects to operate under IFTA and shall be computed as follows: [Table not included see Ed. Note]

(2) The IFTA licensee shall pay the fee to the Department at the time of making application for, or renewing, IFTA credentials. Subsequent addition(s) to the number of participating motor vehicles may require payment of additional fees. Additional fees, if applicable, are due at the time of making application for additional participating motor vehicles.

(3) The Department may suspend, revoke or cancel IFTA participation for failure to timely pay required IFTA fees or comply with the provisions of ORS 825.555.

(4) Farmers, for the purpose of this rule, are those persons having more than 50% of their participating vehicles registered as farm vehicles pursuant to ORS 805.300.

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

Stat. Auth.: ORS 184.616, 184.619, 825.555

Stat. Implemented: Sec. 1, Ch. 698, OL 2001

Hist.: MCTB 3-2001, f. & cert. ef. 11-9-01; MCTD 6-2005, f. & cert. ef. 10-20-05

Department of Veterans' Affairs Chapter 274

Adm. Order No.: DVA 6-2005

Filed with Sec. of State: 10-24-2005

Certified to be Effective: 10-24-05

Notice Publication Date: 10-1-05

Rules Amended: 274-020-0345, 274-020-0348, 274-020-0380, 274-025-0070, 274-028-0015, 274-045-0080, 274-045-0090, 274-045-0280, 274-045-0431

Subject: For the purposes of clarification, references to the Federal National Mortgage Association (FNMA) and the FNMA Selling Guide are being replaced with more specific text which identifies the criteria and industry standards used by the Agency in its Home Loan Programs.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-020-0345

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet current industry standards determined by the Department to be applicable to the proposed loan. Applicable industry standards may include, but are not limited to:

- (a) Local lending practices;
- (b) FannieMae and other lending organization standards; and
- (c) Federal and state legal requirements.

(2) The veteran applicant may be required to have an equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state and local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary, and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 7-1982, f. & ef. 3-15-82; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05; DVA 6-2005, f. & cert. ef. 10-24-05

274-020-0348

Grounds for Refusing to Make a Loan

The Director may refuse to make a loan to any applicant if he finds any of the following:

(1) Prior loan experience with an applicant was unsatisfactory, including, but not limited to, late payment or nonpayment on loan and impairment of security.

(2) The applicant did not disclose all debts or obligations as required under the terms of the loan credit application.

(3) The applicant has a negative cash flow.

(4) The applicant has declared bankruptcy within the last three years unless:

(a) The applicant or the applicant's spouse has been regularly employed, other than self-employed, since the discharge; and

(b) The applicant has established credit since the bankruptcy and made timely and satisfactory payments on obligations; and

(c) The bankruptcy was caused by circumstances beyond the applicant's control, such as uninsured medical expense, layoff, strike, or divorce.

(5) The applicant has declared bankruptcy between three and five years prior to application for a loan, unless: The applicant has reestablished credit since the bankruptcy.

(6) Business bankruptcies will not be grounds for refusing to make a loan if:

(a) The applicant was self-employed and the bankruptcy was not due to misconduct; and

(b) There is no evidence of derogatory credit information prior to the self-employment or after the bankruptcy; and

(c) The applicant has subsequently obtained a permanent position with reliable income.

(7) Chapter 13 bankruptcies will not be grounds for refusing to make a loan if: The applicant has made satisfactory payment of at least three-fourths of the total payments due the trustee.

(8) The applicant's ability to repay the loan is insufficient, as determined by the Department of Veterans' Affairs (Department) by applying relevant industry standards.

(9) The applicant is an unsatisfactory credit risk, as determined by the underwriting analysis of the credit rating agency selected by the Director. In that case, the Director shall advise the applicant of his refusal on this basis and supply to the applicant the name and address of any consumer reporting agency which provided the Director with information on the applicant. If the applicant requests in writing within 60 days after being notified of the refusal, the Director shall provide the applicant with the name of any person other than a consumer reporting agency who provided information which was, wholly or in part, a basis of such refusal.

(10) The applicant is involved in the following type of transactions:

(a) The purchase of property from a spouse where the amount which the applicant seeks to borrow from the Department exceeds the unpaid balance on loans used to acquire or improve the property;

(b) The purchase from a corporation wholly or substantially owned by the applicant;

(c) The purchase of property indirectly owned by the applicant.

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(11) The applicant has or has had any interest, within the past three years, either title or contractual, in the property being purchased, **except** it will not be grounds for refusing to make a loan:

- (a) If the applicant is purchasing a one-half interest from a divorced spouse. The sum shall be stated in the divorce decree;
- (b) If the applicant acquired an interest in property by inheritance and is purchasing the interest which co-heirs have in the same property;
- (c) If the application is for an improvement or additional loan;
- (d) If the application is for a rehabilitation loan or a loan to pay off a bridge loan. A "bridge loan" is temporary financing obtained for the purpose of financing the purchase of a home pending the sale of a home owned by the borrower and listed with a real estate broker or advertised for sale;
- (e) If the application is for a loan to pay off an interim loan whose term does not exceed 24 months (not renewable);
- (f) If the application is for a loan to pay off a construction period loan obtained not more than 24 months, and the construction was completed not more than 18 months, before submitting an application to the Director;
- (g) If the application is for amount spent on the purchase of, or the value of, land only (whichever is less) and construction commences within 24 months of land acquisition **and** the loan is funded within 18 months of the start of construction.

(12) The applicant does not meet the applicable underwriting or industry property standards as determined by the Department.

(13) Effective with applications received after May 15, 1984, except for farm loans and loans for multi-family dwellings, if the applicant will use the property offered as security for the loan for a purpose that would jeopardize the tax-exempt status of interest to holders of Bonds issued by the Director of Veterans' Affairs:

(a) Specifically excluded uses are:

- (A) As an investment;
- (B) As a recreational home;
- (C) As a principal place of business for any trade or business of the applicant.

(b) Examples of excluded uses (if a portion of the property is used regularly and exclusively in connection with a trade or business) are:

- (A) Using any portion of the residence as a place to meet patients, clients, or customers in the normal course of business;
- (B) Storage of inventory in a separate and identifiable fixed location and kept for the wholesale or retail selling of products as a part of the applicant's trade or business which would entitle the applicant to a "Business Use of the Home" income tax deduction;

(C) Providing care for children, for the elderly, or for handicapped persons, if the nature and character of the care entitles the property owner to a "Business Use of the Home" income tax deduction.

(c) Any use of a residence which does not qualify for a "Business Use of the Home" income tax deduction shall not be considered as a use in a trade or business. Examples of such permitted uses are:

(A) Storage of inventory for the benefit of an employer or in conduct of a direct selling business, if the use is not exclusive of any personal use of that part of the residence;

(B) Babysitting, if the nature and character of the babysitting does not entitle the property owner to a "Business Use of the Home" income tax deduction;

(C) Engaging in person-to-person sales of consumer products to customers in the home, such as Tupperware, Amway, Avon, wicker, crystal, or similar products;

(D) Foster home established by Court Order, or designated by a Government Agency with jurisdiction to make such a designation;

(E) Using part of the residence to write legal briefs, prepare tax returns, read financial periodicals and reports, clip bond coupons, or engage in similar work, if the use is not exclusive of any personal use of that part of the residence.

Stat. Auth.: ORS 183, 286, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375
Stats. Implemented: ORS 407.115, 407.125, 407.179 & 407.225
Hist.: DVA 7-1982, f. & ef. 3-15-82; DVA 8-1983, f. & ef. 6-1-83; DVA 3-1984, f. 5-2-84, ef. 5-15-84; DVA 6-1984, f. 7-25-84, ef. 8-1-84; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 8-2001, f. & cert. ef. 11-23-01; DVA 6-2005, f. & cert. ef. 10-24-05

274-020-0380

Transfer of Ownership

(1) The director shall be notified in writing of any transfer of ownership or the right to possess property that is used as security for a loan with the Oregon Department of Veterans' Affairs (ODVA).

(2) The interest rate on any outstanding obligation will be adjusted at the time of the transfer as provided by ORS 407.335.

(3) The following are conditions which constitute a transfer of an ownership interest or the right to possess the loan security:

(a) A borrower takes title to the property with a person other than his or her legal spouse;

(b) Contract of sale;

(c) Any deed transfer;

(d) Any other indenture that purports to convey or transfer any portion of equitable title except for the following:

(A) Deed to create a life estate retained by the eligible veteran mortgagor; or

(B) Deed to a government entity for public use as noted in Chapter 238 Oregon Laws 1995.

(4) Other types of transactions that may provide for an automatic adjustment in interest rate include:

(a) A purchase option that extends for a period of 12 months and 32 days, or more;

(b) A lease that extends for more than the following periods:

(A) 60 months for farms of 20 acres or more;

(B) 12 months and 32 days for all properties other than farms of 20 acres or more.

(c) A purchase option with a consideration of three percent or more of the stated purchase price.

(5) An assumption by an eligible veteran may be approved at the rate set under ORS 407.305 under the following conditions:

(a) The applicant uses his or her entitlement to make application to the Department for the assumption; and

(b) Meets the requirements for a new loan; and

(c) Executes an assumption agreement which will release the original veteran borrower from personal liability.

(6) The director will not enter into an assumption agreement with a person (or persons) acquiring an ownership interest in ODVA security whereby the existing debtor is relieved of further liability on the debt, unless the new owner (or owners) meets current industry standards determined by the Department to be applicable to the proposed assumption. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and Federal and state legal requirements. The director may on an individual case and with good and sufficient reason documented in the loan file enter into an assumption agreement which does not meet applicable underwriting requirements or industry property standards, if the director decides it is in the best interest of the Department to do so.

(7) The director will not consent to the assignment of a Land Sale Contract whereby the present purchaser is relieved of further liability on the contract, unless the assignee meets current industry standards determined by the Department to be applicable to the proposed assignment. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and Federal and state legal requirements. The director may on an individual case and with good and sufficient reason documented in the file consent to an assignment which does not meet applicable underwriting requirements or industry property standards, if the director decides it is in the best interest of the Department to do so.

Stat. Auth.: ORS 406.030, 407.115, 407.275, 407.305 & 407.335

Stats. Implemented: Ch. 238, OL 1995, 407.275 & 407.335

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 36, f. 7-25-69, ef. 8-25-69; DVA 39, f. 5-27-71, ef. 6-25-71; DVA 45, f. & ef. 12-1-75; DVA 2-1982(Temp), f. & ef. 1-21-82; DVA 17-1982, f. & ef. 7-1-82; DVA 25-1982, f. & ef. 10-1-82; DVA 28-1982, f. 12-30-82, ef. 1-1-83; DVA 5-1989, f. & cert. ef. 11-15-89; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 6-2005, f. & cert. ef. 10-24-05

274-025-0070

Flood Insurance

(1) Beginning September 1, 1995, the Director of the Oregon Department of Veterans' Affairs (Department) shall require that the location of the security on all loan applications received by the Department be reviewed and a determination made as to whether flood insurance will be required as a condition of the loan.

(2) A flood determination fee will be charged to the borrower equal to the amount charged by the flood determination reporting company at the time the application is submitted.

(3) All flood determinations are to be provided for the duration of the loan while it exists in the Department's portfolio (more commonly referred to as life-of-loan tracking).

(4) The flood determination company must meet the qualifications as determined by the Department by applying relevant industry standards.

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(5) Based on the determination that the security for the loan is located in an area classified as a special flood hazard area, the director shall require the borrower to purchase flood insurance as a requirement of the loan.

(6) If following loan closing, it is determined that the security is located within a flood hazard area as defined by the **National Flood Insurance Reform Act of 1994 (42 USCS 3701-4370a)**, the borrower may be required to purchase flood hazard insurance at no cost to the Department. If flood hazard insurance is not voluntarily acquired, the director may force place said insurance and:

(a) Disburse all costs associated with the acquisition of the coverage from the escrow account; or

(b) Add said cost to the balance of the loan and interest will be collected at the note rate; and

(c) Loan payments will be increased to repay the amount advanced.

Stat. Auth.: ORS 406.030, 407.115, 407.169, 407.177 & 407.275

Stats. Implemented: ORS 407.169, 407.177 & 407.275

Hist.: DVA 9-1995(Temp), f. 8-23-95, cert. ef. 9-1-95; DVA 2-1996, f. & cert. ef. 3-22-96; DVA 6-2005, f. & cert. ef. 10-24-05

274-028-0015

Approval of Veterans' Home Improvement Loans

Veterans' home improvement loans will be processed using current industry standards determined by the Department to be applicable to the proposed loan as they relate to the borrower's ability and willingness to repay and the borrower having required funds for closing. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and federal and state legal requirements.

Stat. Auth.: ORS 407.115 & 407.265

Stats. Implemented: ORS 407.115, 407.145, 407.225, 407.265 & 407.325

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0080

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the current industry standards determined by the Department to be applicable to the proposed loan. Applicable industry standards may include, but are not limited to:

- (a) Local lending practices;
- (b) FannieMae and other lending organization standards; and
- (c) Federal and state legal requirements.

(2) The veteran applicant may be required to have equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state or local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0090

Grounds for Refusing to Make a Loan

The Director may refuse to make a loan to any applicant if he finds any of the following:

(1) Prior loan experience with an applicant was unsatisfactory, including, but not limited to, late payment or nonpayment on loan and impairment of security.

(2) The applicant did not disclose all debts or obligations as required under the terms of the loan credit application.

(3) The applicant has a negative cash flow.

(4) The applicant has declared bankruptcy within the last three years unless:

(a) The applicant or the applicant's spouse has been regularly employed, other than self-employed, since the discharge; and

(b) The applicant has established credit since the bankruptcy and made timely and satisfactory payments on obligations; and

(c) The bankruptcy was caused by circumstances beyond the applicant's control, such as uninsured medical expense, layoff, strike, or divorce.

(5) The applicant has declared bankruptcy between three and five years prior to application for a loan, unless the applicant has reestablished credit since the bankruptcy.

(6) Business bankruptcies will not be grounds for refusing to make a loan if:

(a) The applicant was self-employed and the bankruptcy was not due to misconduct; and

(b) There is no evidence of derogatory credit information prior to the self-employment or after the bankruptcy; and

(c) The applicant has subsequently obtained a permanent position with reliable income.

(7) Chapter 13 bankruptcies will not be grounds for refusing to make a loan if the applicant has made satisfactory payment of at least three-fourths of the total payments due the trustee.

(8) The applicant's ability to repay the loan is insufficient, as determined by the Department of Veterans' Affairs (Department) by applying relevant industry standards.

(9) The applicant is an unsatisfactory credit risk, as determined by the underwriting analysis of the credit rating agency selected by the Director. In that case, the Director shall advise the applicant of his refusal on this basis and shall advise the applicant of his decision per Regulation B of the Fair Credit Reporting Act.

(10) The applicant is involved in the following type of transactions:

(a) The purchase of property from a spouse where the amount that the applicant seeks to borrow from the Department exceeds the unpaid balance on loans used to acquire or improve the property;

(b) The purchase from a corporation wholly or substantially owned by the applicant;

(c) The purchase of property indirectly owned by the applicant.

(11) The applicant has or has had any interest, either title or contractual, in the property being purchased, **except** it will not be grounds for refusing to make a loan if:

(a) The applicant is purchasing a one-half interest from a divorced spouse, as stated in the divorce decree, and the new loan must be funded no more than 18 months from the date of the original purchase money obligation;

(b) Within the past 18 months, the applicant closed a non-ODVA loan or completed construction on a construction loan and is now applying for an ODVA loan to pay it off;

(c) If the application is for amount spent on the purchase of, or the value of, land only (whichever is less) and construction commences within 24 months of land acquisition and the loan is funded within 18 months of the start of construction.

(12) The applicant does not meet applicable underwriting or industry property standards as determined by the Department.

(13) If the applicant will use the property offered as security for the loan for a purpose that would jeopardize the tax-exempt status of interest to holders of Bonds issued by the Director:

(a) Specifically excluded uses are:

(A) As an investment;

(B) As a recreational home;

(C) As a principal place of business for any trade or business of the applicant.

(b) Examples of excluded uses (if a portion of the property is used regularly and exclusively in connection with a trade or business) are:

(A) Using any portion of the residence as a place to meet patients, clients, or customers in the normal course of business;

(B) Storage of inventory in a separate and identifiable fixed location and kept for the wholesale or retail selling of products as a part of the applicant's trade or business which would entitle the applicant to a "Business Use of the Home" income tax deduction;

(C) Providing care for children, for the elderly, or for handicapped persons, if the nature and character of the care entitles the property owner to a "Business Use of the Home" income tax deduction.

(c) Any use of a residence which does not qualify for a "Business Use of the Home" income tax deduction shall not be considered as a use in a trade or business. Examples of such permitted uses are:

(A) Storage of inventory for the benefit of an employer or in conduct of a direct selling business, if the use is not exclusive of any personal use of that part of the residence;

(B) Babysitting, if the nature and character of the babysitting does not entitle the property owner to a "Business Use of the Home" income tax deduction;

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(C) Engaging in person-to-person sales of consumer products to customers in the home, such as Tupperware, Amway, Avon, wicker, crystal, or similar products;

(D) Foster home established by Court Order, or designated by a Government Agency with jurisdiction to make such a designation;

(E) Using part of the residence to write legal briefs, prepare tax returns, read financial periodicals and reports, clip bond coupons, or engage in similar work, if the use is not exclusive of any personal use of that part of the residence.

Stat. Auth.: ORS 183, 286, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305, 407.375 & Federal Tax Act of 1986
Stats. Implemented: ORS 183 & 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 8-2001, f. & cert. ef. 11-23-01; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0280

Flood Insurance

(1) The Director of the Oregon Department of Veterans' Affairs (Department) shall require that the location of the security on all loan applications received by the Department is reviewed and a determination made as to whether flood insurance will be required as a condition of the loan.

(2) A flood determination fee will be charged to the borrower equal to the amount charged by the flood determination reporting company at the time the application is submitted.

(3) All flood determinations are to be provided for the duration of the loan while it exists in the Department's portfolio (more commonly referred to as life-of-loan tracking).

(4) The flood determination company must meet the qualifications as determined by the Department by applying relevant industry standards.

(5) Based on the determination that the security for the loan is located in an area classified as a special flood hazard area, the Director shall require the borrower to purchase flood insurance as a requirement of the loan.

(6) If following loan closing, it is determined that the security is located within a flood hazard area as defined by the **National Flood Insurance Reform Act of 1994 (42 USCS 3701-4370a)**, the borrower may be required to purchase flood hazard insurance at no cost to the Department. If flood hazard insurance is not voluntarily acquired, the Director may force place said insurance and:

(a) Disburse all costs associated with the acquisition of the coverage from the escrow account; or

(b) If there is no established escrow account, disperse all costs of the acquisition and establish an escrow account to cover the cost; and

(c) Loan payments will be increased to repay the amount advanced.

Stat. Auth.: ORS 406.030, 407.115, 407.169, 407.177 & 407.275
Stats. Implemented: ORS 407.169, 407.177 & 407.275
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 6-2005, f. & cert. ef. 10-24-05

274-045-0431

Approval of Veterans' Home Improvement Loans

Veterans' home improvement loans will be processed using ODVA Processing Manual and current industry standards determined by the Department to be applicable to the proposed loan. Applicable industry standards may include, but are not limited to, local lending practices, FannieMae and other lending organization standards, and federal and state legal requirements. A copy of the Processing Manual is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem Oregon, and is available to the public during normal business hours.

Stat. Auth.: Art. XI-A, OR Const., ORS 406.030, 407.115 & 407.125
Stats. Implemented: Art. XI-A, OR Const., ORS 407.115 & 407.125
Hist.: DVA 10-2001, f. & cert. ef. 12-26-01; DVA 6-2005, f. & cert. ef. 10-24-05

Economic and Community Development Department

Chapter 123

Adm. Order No.: EDD 7-2005(Temp)

Filed with Sec. of State: 10-24-2005

Certified to be Effective: 10-24-05 thru 12-21-05

Notice Publication Date:

Rules Amended: 123-024-0031

Subject: The temporary rule implements a new methodology for defining "distressed areas" which are mentioned in ORS 285A.095. The new methodology concentrates on four variables to capture economic conditions at the county level. It then uses information from those counties to determine counties and areas to designate as distressed. To determine economic conditions of a county, the approach calculates changes in the average wage per job and the

employment for all major sectors and weights them by their payroll for those sectors over a two-year period. Those measurements are then combined to develop a measure of economic change in an economy over the two-year period. Next, the economic standing of the county relative to the state is estimated by comparing the county's per capita personal income and unemployment rate with those of the state. This relative measure is then used to adjust the level of economic change in the county. The measure that results becomes the index that is used to judge whether a county is distressed or not.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-024-0031

Methodology for Determining Distressed Areas

The determination of the economic distress index is based on four factors: the weighted average wage change for a county over the preceding two years; the weighted employment change for a county over the preceding two years; the per capita personal income of a county relative to the personal income of the state at the beginning of the preceding two years; and the unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two year period.

(1) The weighted average wage change for a county is determined by weighting the change in the average wages for every industry sector by that sector's share of total payroll for that county. The change is measured as a ratio. The weighted changes for all sectors are aggregated to arrive at one measure of the weighted average wage change for the whole economy in the county.

(2) The weighted employment change for a county is determined by weighting the change in employment for every industry sector by that sector's share of total payroll for that county. The change is measured as a ratio. These weighted changes are then aggregated to arrive at one measure of weighted employment change for the whole economy in the county.

(3) The per capita personal income of a county relative to the personal income of the state at the beginning of the preceding two years is measured as a ratio. This ratio is determined by dividing the county's per capita personal income by the state's per capita personal income, at the end of the preceding two year period.

(4) The unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two-year period is measured as a ratio. This ratio is determined by dividing the state's unemployment rate by the county's unemployment rate, at the end of the preceding two-year period.

(5) These four measures are then multiplied together to create an index that reflects the general economic conditions of a county's economy relative to those of the state. The multiplication of the factors of change (i.e. employment and wages) with relative factors (i.e. per capita personal income and unemployment rate) adjusts change in the county's economy by the general economic conditions prevailing in the state.

(a) The weights also allow the index to capture changes in different sectors of the economy as well as the importance of those sectors to the overall economy of a county.

(b) Counties experiencing no economic improvements at the aggregate level over the two year period will have an index that is less than or equal to .8. These counties are the distressed counties. Counties with indexes greater than .8 are counties that experienced significant improvement over the period after adjusting for their economic conditions relative to the state. These counties are the non-distressed counties.

(c) The determination of distressed areas in non-distressed counties may occur in two ways. The first is based on an analysis of census geography, namely, major sub-county areas that have unemployment and poverty rates similar to the distressed counties. Areas with poverty or unemployment rates similar to the distressed counties are considered distressed areas. The department shall conduct the analysis and make such determinations.

(d) The second method is based on petitions from local governments. Communities outside of distressed areas that consider themselves to be distressed must provide unemployment and poverty data that can be compared to those of the distressed counties. If such a data is found to meet the criteria for distressed counties, these areas will be designated as distressed. The department shall conduct the analysis and make such determinations.

Stat. Auth.: ORS 285A.075 (5)
Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065
Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05

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Adm. Order No.: EDD 8-2005

Filed with Sec. of State: 10-24-2005

Certified to be Effective: 10-24-05

Notice Publication Date: 9-1-05

Rules Adopted: 123-018-0065, 123-018-0085

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

Rules Repealed: 123-018-0055

Subject: The Oregon Capital Access Program provides access to commercial loans for small businesses. Capital formation, new business start-up and expansion, and job development occur as a result. These rules effect permanent provisions for Senate Bill 215 (2003), to make additional deposits in loan loss reserve accounts to encourage banks to participate in the Capital Access Program, as well as other improvements to the clarity and accuracy of guidelines for procedures, criteria, contingencies and technical issues.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-018-0000

Purpose and Scope

(1) The purpose of this division of administrative rules is to provide definitions, procedures, standards and criteria, to establish eligibility, and to stipulate rights and obligations for operation of the Capital Access Program.

(2) The Capital Access Program assists small businesses needing financial capital to grow and to undertake economic activity in this state by subsidizing loss reserves so that conventional lending institutions have greater capacity to satisfy this need.

Stat. Auth.: ORS 183.310 - 183.550 & 285.507 - 285.527

Stats. Implemented: ORS 285.507 - 285.527

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0010

Definitions

As used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.132.

(2) "Borrower" means a Qualified Business that has received a Qualified Loan from a Participating Financial Institution, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship or cooperative.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Economic and Community Development Department under ORS Chapter 285A.

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Financial Institution" means a financial institution, as defined in ORS 706.008.

(8) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.147.

(9) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(10) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the

Department for the benefit of a Financial Institution participating in Program.

(11) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program and has enrolled one or more qualified loans.

(12) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(13) "Program" means the Capital Access Program authorized by ORS 285B.126 to 285B.147.

(14) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(15) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include:

(a) A loan for the construction or purchase of residential housing;

(b) A loan for the purchase of real property that is not used for the business operations of the Borrower; and

(c) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3), 285B.139(2)

Stats. Implemented: ORS 285B.126 - 285B.147 & 285B.150

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0020

Authority to Implement Program

The Manager of the Department's Business Finance programs, or his/her designee, may execute any document reasonably necessary or convenient to implement the Program.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)

Stats. Implemented: ORS 285B.126 - 285B.147 & 285B.150

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0030

Program Registration Procedure

(1) A Financial Institution wishing to participate in the Program must submit a completed program registration application using a form prescribed by the Department.

(2) The Department shall determine the Financial Institution's eligibility to participate in the Program, based on the submitted application and other information the Department may deem necessary or appropriate.

(3) A Financial Institution that the Department determines is eligible to participate in the Program may enter into an Agreement with the Department as described in OAR 123-018-0040.

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

Stats. Implemented: ORS 285B.126 & 285B.132

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0040

Agreement

All Agreements entered into between a Participating Financial Institution and the Department shall provide:

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.135;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution;

(3) That the terms and conditions of Qualified Loans are to be determined solely by the Participating Financial Institution and Borrower;

(4) The method for enrolling Qualified Loans in the Program;

(5) That the Borrowers, the Participating Financial Institution, and (subject to the availability of money in the Fund) the Department will deposit moneys into the Participating Financial Institution's Loss Reserve Account when the Participating Financial Institution makes a Qualified Loan to a Borrower;

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(6) A claims process for reimbursement of Losses that have been incurred from defaults on Enrolled Loans;

(7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such Losses, up to the total amount then currently credited to the Loss Reserve Account.

(8) For disposition of any recoveries from a Borrower made by the Participating Financial Institution subsequent to being reimbursed for any Loss by the Department;

(9) Conditions for subrogation of the Department, at the Department's request, to the rights of the Participating Financial Institution in collateral, personal guarantees or other forms of security for the Qualified Loan;

(10) Conditions for withdrawal by the Department of excess balances or of certain interest earnings (see OAR 123-018-0150) in the Loss Reserve Account;

(11) Conditions for termination by the Department of the obligation to enroll Qualified Loans under the Program;

(12) Conditions for termination of the Agreement, and disposition by the Department of any remaining balance in the Loss Reserve Account;

(13) For withdrawal by the Participating Financial Institution from the Program and disposition by the Department of any remaining balance in the Loss Reserve Account;

(14) For the Participating Financial Institution to periodically report to the Department any information the Department requires, including financial information that is identifiable with, or identifiable from, the financial records of a Borrower;

(15) For inspection by the Department of the Participating Financial Institution's pertinent files relating to Enrolled Loans;

(16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or that the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities; and

(17) For other terms and conditions as the Department may require.
Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.132, 285B.135, 285B.138 & 285B.141
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0050

Establishing a Loss Reserve Account

After executing an Agreement with a Participating Financial Institution, the Department shall establish a Loss Reserve Account to receive the fees described in OAR 123-018-0070 from the Borrower and the Participating Financial Institution, as well as the Department's matching contribution from the Fund as described in OAR 123-018-0080 and 123-018-0085. Except as determined by the Department to be otherwise necessary or desirable, the Loss Reserve Account shall be domiciled with the Participating Financial Institution in the form of an insured, interest-earning demand deposit account.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.138
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0060

Ownership, Control, Investment of Loss Reserve Account

(1) All moneys in a Loss Reserve Account are the exclusive property of the State of Oregon, acting by and through the Department, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as described in this division of administrative rules or as contained in provisions of the applicable Agreement.

(2) Any earnings on the balance in a Loss Reserve Account are part of the Loss Reserve Account, except as described in OAR 123-018-0150.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.147
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0065

Loan Eligibility

A Participating Financial Institution may determine that a Qualified Loan is eligible for the Department to enroll in the Program if the

Participating Financial Institution determines the Qualified Loan meets the following conditions:

(1) The Qualified Loan is not for a business enterprise in which a person described in section (2) of this section has a shared ownership, investment or other significant pecuniary interest; and

(2) The Qualified Loan is provided to a Borrower, who is not an executive officer, director or principal shareholder of the Participating Financial Institution, or person with comparable official capacity with or significant ownership in the Participating Financial Institution, or a member of the immediate family of such a person.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.147
Hist.: EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0070

Fees

(1) When making a Qualified Loan for which enrollment under the Program will be sought, the Participating Financial Institution shall charge the Borrower a fee that is at least 1.5 percent but not more than 3.5 percent of the principal amount of the Qualified Loan.

(2) The Participating Financial Institution shall pay a fee equal to the fee paid by the Borrower pursuant to section (1) of this rule. The Participating Financial Institution may charge the Borrower a fee to recover its contribution.

(3) These fees are non-refundable once the Qualified Loan is enrolled.
Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285B.138
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0080

Procedure for Enrollment of a Qualified Loan

(1) A Participating Financial Institution may enroll a Qualified Loan in the Program by taking the following actions:

(a) Notifying the Department in writing of the Qualified Loan to be enrolled, using a form prescribed by the Department, within 30 days after the date the Participating Financial Institution disburses proceeds of the Qualified Loan to the Borrower or the date the loan documents are fully executed and the Participating Financial Institution is obligated to disburse proceeds, whichever occurs sooner; and

(b) Transmitting to the Department the fees required by OAR 123-018-0070. If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit of fees by the Participating Financial Institution into the Loss Reserve Account satisfies the requirements of this section if the Participating Financial Institution provides the Department with proof of deposit or written notification confirming the deposit.

(2) The Department shall, upon receipt of documentation and fees satisfying the requirements in section (1) of this rule, enroll the Qualified Loan if:

(a) The Department is satisfied that the Qualified Loan is eligible under OAR 123-018-0065; and

(b) Sufficient moneys are or can be made available from the Fund to meet the Department's minimum contribution obligation described in OAR 123-018-0085.

(3) The Department shall notify the Participating Financial Institution of enrollment within 10 business days from receipt of the required documentation and fees.

(4) After notifying the Participating Financial Institution that the Qualified Loan is enrolled, the Department shall transfer from the Fund to the Loss Reserve Account of the Participating Financial Institution a contribution amount as described in OAR 123-018-0085.

(5) Before making a Qualified Loan, a Participating Financial Institution may request a commitment from the Department that sufficient funds are available to meet the Department's contribution as described in OAR 123-018-0085 are available in the Fund to transfer to the Loss Reserve Account when the Qualified Loan is enrolled. If the Department provides the commitment, it will be binding on the Department for 30 days after the date of the commitment if the Participating Financial Institution has complied with section (1) of this rule and the Qualified Loan is eligible under OAR 123-018-0065.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)
Stats. Implemented: ORS 285B.135, 285B.138 & 285B.139
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 8-2005, f. & cert. ef. 10-24-05

ADMINISTRATIVE RULES

123-018-0085

State Contributions to Loss Reserve Accounts

The Department shall determine the amount of money it transfers from the Fund to a Loss Reserve Account as follows:

(1) For each Enrolled Loan, the Department shall deposit an amount equal to or greater than the total fees transmitted as described in OAR 123-018-0080(1)(b) and as required in OAR 123-018-0070, subject to further limitations in this rule.

(2) If one or both of the following conditions exist, the Department shall deposit an amount equal to 200 percent of the minimum allowed by section (1) of this rule, except as otherwise restricted in section (4) of this rule:

(a) The Borrower's business operations that benefit from the Enrolled Loan are entirely located in a Distressed Area at the time that the Qualified Loan is made consistent with OAR 123-018-0080(1)(a); or

(b) The Enrolled Loan provides the Borrower with funding for use in an environmental action on a brownfield(s).

(3) For purposes of this rule, and incorporating the definitions in OAR chapter 123, division 135, "environmental action on a brownfield(s)" means activities undertaken to:

(a) Determine if a release has occurred, if the release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal at a site.

(4) Whenever the Department's total Loss Reserve Account deposits described in section (2) of this rule are greater than 35 percent of the total appropriated to the Fund, then the Department may deposit no more than 150 percent of the minimum allowed by section (1) of this rule.

(5) Whenever the Department's total Loss Reserve Account deposits pursuant to section (2) of this rule are 40 percent of the total appropriated to the Fund, the Department may deposit no more than the minimum allowed by section (1) of this rule.

(6) For any Participating Financial Institution, the Department may deposit 200 percent of the minimum allowed by section (1) of this rule if the Loss Reserve Account currently contains less than \$200,000 according to the most recent information provided to the Department at the time of loan enrollment.

(7) When the Department executes an Agreement with a Participating Financial Institution for the first time or more than year after termination of a prior Agreement, the Department may make an additional deposit not to exceed \$50,000. These additional deposits are not in lieu of future transfers and the total of all additional deposits may not exceed \$250,000 each biennium.

(8) The Department may not transfer:

(a) An amount greater than \$35,000 per Enrolled Loan and associated, concurrent transactions with related business interests; or

(b) More than a total of \$150,000 from the Fund to a Loss Reserve Account for a single Qualified Business.

(9) Unless otherwise provided in this rule, the Department may transfer up to 200 percent of the minimum described in section (1) of this rule, if the Department finds the Qualified Loan advances economic development or job creation in this state by small business.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.139

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0090

Procedure for Making Claim for Reimbursement of Loss

(1) If a Participating Financial Institution charges off all or part of an Enrolled Loan as a result of a default by the Borrower, the Participating Financial Institution may claim reimbursement for all or part of the Loss incurred by notifying the Department of the claim in writing on a form prescribed by the Department within three calendar months of the date the Enrolled Loan was charged off.

(2) Subject to OAR 123-018-0110 to 123-018-0130, a Participating Financial Institution may make a claim for reimbursement of a Loss prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources.

(3) The Participating Financial Institution shall retain documentation in its files substantiating all claims for a term commensurate with standard banking records retention practices but not less than five years after the date that the Enrolled Loan is terminated.

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

Stats. Implemented: ORS 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0100

Payment of Claims by Department

(1) The Department shall reimburse a Participating Financial Institution for Losses claimed as described in OAR 123-018-0090. The Department may reject a claim only if the Department determines the representations and warranties provided by the Participating Financial Institution at the time of enrolling the Qualified Loan were false.

(2) Except as described in OAR 123-018-0150, all interest earnings shall be available to pay Loss claims, until such time as the Department deems a change in this process is required, at which time earnings available for withdrawal by the Department from the Loss Reserve Account shall not be available to pay Loss claims.

(3) When there are insufficient funds in the Loss Reserve Account to cover the total amount of a Loss claim, the Department shall pay an amount equal to the balance of the Loss Reserve Account. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

(4) The Department shall reimburse Loss claims in the order it receives them. If a Participating Financial Institution files two or more Loss claims simultaneously and there are insufficient funds in the Loss Reserve Account to pay them, the Participating Financial Institution may designate the order the Loss claims are to be paid by the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0110

Recoveries on Loans Subsequent to Payment of Claim

(1) If, subsequent to the payment of a Loss claim by the Department, the Participating Financial Institution recovers from the Borrower, through liquidation of collateral or from any other source, amounts for which Participating Financial Institution was reimbursed from the Loss Reserve Account, the Participating Financial Institution shall promptly repay into the Loss Reserve Account the amount received up to the amount of the reimbursement.

(2) If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit to the Loss Reserve Account of the amount recovered from the Borrower by the Participating Financial Institution (with written notification by the Participating Financial Institution to the Department confirming such deposit) is deemed payment to the Department of the amount recovered from the Borrower by the Participating Financial Institution and shall satisfy the requirements of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0120

Available Collateral, Guarantees and Other Security Not Realized

(1) After the Department has paid a Loss claim to the Participating Financial Institution from the Loss Reserve Account, as described in OAR 123-018-0100, and at the Department's request, the Participating Financial Institution shall promptly provide the Department with all available information, including but not limited to, copies of documents related to all pledges or security against the Enrolled Loan, or payment of principle or interest thereon. Such pledges or security include, but are not limited to:

(a) Collateral, such as real estate, bonds and personal property assets;

(b) Duly recorded and perfected liens, certificates of title, deeds, UCC information and other documents representing security related to the collateral or other sources of payment; and

(c) Guarantees (personal or otherwise), warranties, insurance, letters of credit and other instruments from the Borrower, or a third party, supporting the Qualified Loan.

(2) When a Participating Financial Institution furnishes information pursuant to section (1), it shall identify:

(a) Whether the pledges or security remain outstanding or available for potential collection;

(b) If the pledges or security has been liquidated or realized to recover some or all of the Loss;

(c) Any reason that the pledges or security is otherwise forfeit, worthless or undiscoverable; or

ADMINISTRATIVE RULES

(d) The extent to which the lender has attempted to exercise its right to recover its Loss through that source.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.141
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0130

Subrogation

(1) The Department may request to be subrogated to the rights of a Participating Financial Institution to the pledges and security, pursuant to OAR 123-018-120.

(2) The Department may make such a request if the Department believes that it would be able to take effective and proper action to more completely realize a return on the remaining available collateral or other sources of security, compared to the Lender, regardless of whether:

(a) The Lender has indicated its inability or unwillingness to take such action;

(b) Full or partial recovery of the Lender's loss has occurred through reimbursement of the Loss claim by the Department or by combination of such reimbursement and by liquidation or realization of pledges and security.

(3) In response to such a request, the Lender shall promptly subrogate its rights to the Department, providing the Department with originals of all applicable documents, accompanied by enforceable assignments and conveyances to the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.141
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0140

Reporting

(1) When a Loss Reserve Account is domiciled with the Participating Financial Institution, the Participating Financial Institution shall provide the Department with a monthly statement providing details of the balance and the payments and receipts activity in the Loss Reserve Account for the prior month.

(2) On or before February 15, May 15, August 15, and November 15 of each year, a Participating Financial Institution must file a quarterly report with the Department indicating the number and aggregate outstanding balance of all its Enrolled Loans.

(3) When a Participating Financial Institution computes the aggregate outstanding balance of all its Enrolled Loans, it may only consider the balance of the portion of a loan enrolled in the Program.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.144
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0150

Withdrawal of Excess Deposits in Loss Reserve Accounts

Upon and after a formal determination or order by the Director of the Department

(1) The following shall apply to all interest earnings on moneys transferred by the Department to match transmitted fees, as described in OAR 123-018-0085, for any loan enrolled after the date of Director's order:

(a) All Participating Financial Institutions shall continually remove such interest earnings from the Loss Reserve Account, sequestering them in a separate account;

(b) Such interest earnings shall not be available to cover any Loss, regardless of when they are effectively sequestered or transferred as described in this rule; and

(c) Such interest earnings shall be paid or transferred to the Department consistent with policies and directions of the Department, pursuant to the Director's determination; and

(2) Interest earnings arising from prior match funds or from any fee assessed on or paid by a Borrower or Lender shall remain in the Loss Reserve Account and available to cover Losses.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.147
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0160

Termination of and Withdrawal from Program

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero, regardless of authority under ORS 285B.150. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any remaining balance in the Participating Financial Institution's Loss Reserve Account.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.147
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0170

Disposition of Funds Withdrawals from Loss Reserve Accounts

The Department shall deposit moneys withdrawn by the Department from Loss Reserve Accounts as described in OAR 123-018-0040, 123-018-0150 and 123-018-0160 into the Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.141
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0180

Inspection of Files

The Department may inspect a Participating Financial Institution's files relating to Enrolled Loans at any time during normal business hours. The Department is not required to provide a Participating Financial Institution with prior notice of an inspection.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.132 & 285B.135
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0190

Reports of Regulatory Agencies

The Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities. The Department shall not disclose any confidential information obtained as described in this rule, to the extent permitted by law.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.132
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0200

Administrative Costs of Program

The Department may charge actual and necessary administrative expenses in operating the Program to the Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
Stats. Implemented: ORS 285B.135 & 285B.147
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

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Adm. Order No.: EDD 9-2005

Filed with Sec. of State: 11-4-2005

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Notice Publication Date: 10-1-05

Rules Adopted: 123-155-0050, 123-155-0175, 123-155-0350

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Rules Amended: 123-155-0000, 123-155-0100, 123-155-0150, 123-155-0200, 123-155-0250, 123-155-0270, 123-155-0300, 123-155-0400

Subject: These rules revise and update specification of procedures and criteria for implementing a certification program to approve businesses for an income and corporate excise taxable income exemption, especially with respect to amendments by chapter 374, Oregon Laws 2003.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-155-0000

Purpose and Scope

The purpose of these administrative rules is to specify procedures and criteria necessary to guide the Economic and Community Development Department's duties of certification under ORS 285B.103 to 285B.108 for the exemption on qualified facilities from State of Oregon business income and corporate excise taxation, as allowed under ORS 316.778 or 317.391. These tax exemptions are intended to encourage businesses to invest in new operations with new full-time employees earning minimum compensation levels at qualifying facilities inside small cities in counties exhibiting the worst per capita income and unemployment rates statewide.

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

Stats. Implemented: ORS 285C.500 – 285C.506, 316.778 & 317.391

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0050

Preliminary Certification From 2006 Through 2010 (HB 3350~05)

For purposes of a Facility, for which approval of the application for preliminary certification occurs after December 31, 2005, but before January 1, 2011:

(1) The Facility must be located in a county eligible under section 3(1)(b), Chapter 595, Oregon Laws 2005, even if the county was not eligible under ORS 285C.500(5)(b) when application was made.

(2) For purposes of an application submitted in the latter part of 2010, for which the Facility is in a county that will not be eligible under ORS 285C.500(5)(b) (2005), issuance of the preliminary certification may be expedited with the cooperation of the Municipal Corporations.

(3) Annual employee compensation at the Facility is not a requirement.

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

Stats. Implemented: ORS 285C.500 – 285C.506, 316.778, 317.391; OL 2005, Ch. 595 1 - 3

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0100

Definitions

For purposes of this division of administrative rules, the following definitions apply, unless the context clearly indicates otherwise:

(1) Business firm means a person operating or conducting one or more trades or businesses but does not include any governmental agency, municipal corporation or nonprofit corporation, consistent with OAR 123-065-4050.

(2) Department means the State of Oregon Economic and Community Development Department as organized under ORS Chapter 285A.

(3) Facility has the meaning given under ORS 285C.500(4).

(4) Municipal Corporation means the following with respect to the location of a Facility proposed in an application for preliminary certification:

(a) The county government of the county, the territory of which contains the Facility, regardless of whether the location is incorporated or not;

(b) A city government, if the Facility will be located within the corporate limits or urban growth boundary of the city; and

(c) A port district, as defined under ORS 285A.666, if the Facility will be located within the territorial limits of the district.

(5) Qualified Location means a site for a Facility as described in OAR 123-155-0150.

(6) Unique Operations has the meaning described in OAR 123-155-0175.

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

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

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0150

Qualified Locations

A proposed Facility must be inside a county as determined according to section (1) of this rule, and located at a site satisfying the requirements

of section (2) of this rule, at the time when application for preliminary certification is made; accordingly:

(1) With respect to county eligibility:

(a) Effective July 1 of each year, the Department shall determine the counties fulfilling the criteria under ORS 285C.500 (or chapter 595, Oregon Laws 2005) based on county annual unemployment rates and per capita personal income levels for the three most recent years for which such data is then available.

(b) This determination shall remain in effect until and including June 30 of the next year for purposes of any proposed Facility, for which the application for preliminary certification is submitted on or after the preceding July 1 (including those approved subject to OAR 123-155-0050), except in the event that the determination is modified to reflect official revisions in the data occurring during that annual period at least a month prior to the submission date.

(c) Revisions to data after the annual period described in subsection (b) of this section do not affect the eligibility of a county as determined for a preliminary certification application submitted during that annual period.

(2) The specific site of a proposed Facility must meet at least one of the following two requirements:

(a) The site is completely inside the urban growth boundary (UGB) of a city with a population of 15,000 or less; or

(b) Regardless of being inside or outside of any city's UGB, the site consists entirely of land zoned for industrial use:

(A) Pursuant to effective municipal zoning ordinances that expressly and generally permit permanent facilities and private operations for heavy or light industry, manufacturing, energy production, fabrication, warehousing, distribution, mineral/agricultural processing or similar types of intensive, economic uses;

(B) In accordance with applicable state land-use laws, including but not limited to those for unincorporated communities, exceptions from state planning goals, or chapter 688, Oregon Laws 2003; and

(C) Such that the Facility's business operations must directly benefit a traded sector industry under ORS 285B.280, regardless of other uses permitted under the particular zoning code ordinance.

(3) For purposes of subsection (2)(a) of this rule, relevant city populations are the most recent population estimates available from the Portland State University Center for Population Research and Census at the time of application for preliminary certification.

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

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0175

Unique Operations

Under ORS 285C.503(5)(e), a business firm's operations that comprise a Facility proposed for preliminary certification must be new business operations respective to the site of the Facility and to any other location in this state, such that:

(1) In the case of the business firm itself, the new business operations must be categorically different from any operations in which that same firm has recently engaged. (As an example, a business firm may be certified for a Facility that will manufacture or distribute certain products here for the first time, even if the firm's products were already being sold in this state)

(2) In the case where the business firm has 100-percent common equity interest or is under common control (by way of corporate, familial or similar affiliations) with one or more other business firms operating in this state, the new business operations must be significantly dissimilar from any operations in which any other such firm has recently engaged. (As an example, a corporate subsidiary may be certified for a new, first-in-Oregon facility fabricating a laminated wood product, even if another subsidiary of the same parent company already makes essentially the same product in this state, but the new operations utilize an advanced generation of technology with which the product has higher performance standards or weight-bearing specifications)

(3) Irrespective of section (1) or (2) of this rule, the acquisition of a preexisting Facility does not qualify as new business operations, unless both of the following are satisfied:

(a) The business firm also will invest appreciably in real property or extensively in terms of installing personal property at the Facility after applying for preliminary certification; and

(b) The operations to be undertaken pursuant to the new investment are significantly dissimilar from operations recently performed at the Facility.

(4) For purposes of this rule:

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(a) "Categorically different" means that the existing, in-state business operations produce, render, deliver or provide another type of good or service for a distinct market segment or customer base.

(b) "Recently" means at any time during the 12 months before the submission date of the application for preliminary certification to the Department.

(c) "Significantly dissimilar" means that the existing, in-state business operations, or the goods or services arising from them, utilize different technology, processes, delivery methods, points in supply chain, marketing, brand names or the like.

(5) This rule is in no way concerned with how much a Facility's proposed operations are like those of any other business existing anywhere else in Oregon, except as provided under ORS 285C.503(4)(b)(A) and (5)(f):

(a) To the extent the operations will compete with local business or businesses; and

(b) As described in OAR 123-155-0270(4) and (5).

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

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0200

Preliminary Certification Application

For purposes of ultimately seeking the exemption under ORS 316.778 or 317.391:

(1) A business firm must complete an application for preliminary certification and file it with the Department, as follows:

(a) Using the form prescribed by the Department; and

(b) Before the following:

(A) Commencement of construction, installation or similar activities with respect to any new property or improvements comprising the proposed Facility; and

(B) Hiring of any employees to work at that location, who constitute the five or more employees required under ORS 285C.503.

(2) An application fee of \$500 must be submitted with the application in the form of a check or money order payable to the Department.

(3) Application materials may be obtained from: Business Incentives Staff, Economic & Community Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

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

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0250

Determination of Preliminary Certification

Pursuant to a filing as described in OAR 123-155-0200

(1) The Department shall:

(a) Review the application for preliminary certification for completeness; and

(b) Determine whether the business firm and the applicant's proposed Facility:

(A) Is at a Qualified Location;

(B) Represents Unique Operations; and

(C) May be reasonably expected to satisfy the employment and other applicable requirements under ORS 285C.503(5).

(2) Not more than 30 days after receipt of the application for preliminary certification, the Department shall do the following:

(a) Notify the applicant in writing whether the application is complete; and

(b) If it is sufficiently complete for purposes of the Municipal Corporations, send the following items to the Municipal Corporations, in such a way that the date of sending is recorded:

(A) A copy of the application; and

(B) A standardized form for each Municipal Corporation to complete and return in response to the business firm's application.

(3)(a) The Department shall complete the determination described in subsection (1)(b) of this rule, after receiving any:

(A) Additional information requested from the applicant; and

(B) Materials from the Municipal Corporations.

(b) This determination shall not be final sooner than 60 days from the date the copy of the application was sent to the Municipal Corporations, unless an official and conclusive response has already been received from all of them.

(4) Within 10 business days of determining whether the application meets the requirements for preliminary certification, the Department shall notify the applicant in writing of its decision, which shall include but is not limited to the following:

(a) In the event that preliminary certification is denied, Department staff shall send either notice consistent with OAR 123-001-0700 to 123-001-0799, or only a written statement of explanation if the denial results from an objection as described in OAR 123-155-0270(2), (5)(b) or (6).

(b) In the event that preliminary certification is approved, Department staff shall send a letter conferring preliminary certification.

(5) The Department shall send written notification of the final determination on preliminary certification to relevant staff of the Department of Revenue and the Municipal Corporations.

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

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0270

Local Objection and Relevant Preliminary Certification Requirements

(1) A Municipal Corporation may object to preliminary certification and furnish formal evidence of its objection; however:

(a) The Department must receive the objection and evidence within 60 days from the date the Department sent a copy of the application for preliminary certification to the governing body of a Municipal Corporation, as described in OAR 123-155-0250(2)(b).

(b) If the Department does not receive the objection and any necessary evidence or copy of an adopted resolution within that time period, the Municipal Corporation shall be deemed to agree to preliminary certification.

(2) In order for the objection to be automatic and not subject to appeal in a contested case, the objection under section (1) of this rule must take the form of a resolution that is adopted by the governing body during the 60-day period, in accordance with applicable local laws, government charter and practices, and it must contain a statement of the reason(s) for the objection under ORS 285C.503(4)(b).

(3) If local officials believe that the proposed Facility does not satisfy a requirement under ORS 285C.503(5), the Municipal Corporation is encouraged and expected to timely furnish relevant information to the Department even if it does not adopt a resolution.

(4) In addition to information in the application, the Department shall rely primarily on the Municipal Corporations in determining whether:

(a) Health insurance coverage will be at least equal to that of Municipal Corporation employees, if applicable.

(b) Business operations will significantly and detrimentally compete with one or more existing local businesses operating in or employing persons from the city or county, including competition for:

(A) Local customers;

(B) Skilled workers or managers within the local labor pool;

(C) Other resources or input, for which local supplies and accessibility are critical but scarce or problematic; or

(D) Comparable circumstances, which do not include general inter-firm rivalry within the larger marketplace.

(5) If local competition as described in subsection (4)(b) of this section is indicated, then it must also be:

(a) Supported with clear evidence furnished by the Municipal Corporation, pursuant to which the Department can independently make a determination under ORS 285C.503(5)(f); or

(b) Formally stated as an objection in the resolution adopted by the governing body of a Municipal Corporation that at a minimum identifies the type and basic nature of local competition that the proposed facility would be expected to engender.

(6) In order for the Department to deny an application for preliminary certification based on local growth or development standards, the Municipal Corporation's adopted resolution must include information showing that the relevant standards were contained in municipal ordinances effective when the application was submitted to the Department.

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

Stats. Implemented: ORS 285C.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0300

Annual Certification

For purposes of annual certification of a Facility for each tax year of the business firm, up to ten times under ORS 285C.506:

(1) A preliminarily certified business firm that owns or leases and operates the Facility and is seeking to be certified must file the application for annual certification with the Department:

(a) On or before the 30th day after the end of the income or corporate excise tax year, for which it is seeking to claim or exercise the exemption under ORS 316.778 or 317.391; and

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(b) Using the form prescribed by and available from the Department.
(2) An application fee of \$100 must be submitted with each application in the form of a check or money order payable to the Department.

(3) Not more than 30 days after the date of filing, Department staff shall review the application, consider other fact-finding about the Facility under ORS 285C.506(5) to (7) and determine whether it satisfies the applicable requirements for annual certification.

(4) Within 10 business days of determining whether the Facility satisfies applicable requirements for annual certification, the Department shall notify the applicant in writing of the decision, which shall include but is not limited to the following:

(a) In the event that annual certification is denied, Department staff shall send notice consistent with OAR 123-001-0700 to 123-001-0799.

(b) In the event that annual certification is approved, Department staff shall send a letter conferring certification for the previous tax year.

(5) The Department shall also notify the Oregon Department of Revenue of its decision to approve or disapprove annual certification by copying relevant staff at the Department of Revenue with items as described in section (4) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.506(4)

Stats. Implemented: ORS 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0350

Issues of Initial and Subsequent Annual Certifications

For purposes of annual certification as described in OAR 123-155-0300:

(1) The first such application for annual certification may not be filed with the Department until after the end of the tax year in which all of the following are true:

(a) Business operations have commenced at the Facility;

(b) Relevant employees have been hired; and

(c) Facility property has been fully acquired or leased by the business firm and completed in terms of the construction, reconstruction, modification and installation of proposed property and improvements.

(2) For purposes of this first filing, the application shall show that after the date on which preliminary certification was approved:

(a) Business operations commenced at the Facility within 18 months, if involving major construction or reconstruction, or 6 months, if only acquiring existing buildings or structures; and

(b) Facility property did not remain in an unfinished state of construction, reconstruction, modification or installation for more than six months without significant progress toward completion of such activities.

(3) The Facility may not be certified, if subsection (2)(a) or (b) of this rule is not satisfied, except as allowed by Department staff through a written finding that the delay or interruption is reasonable and not excessive, given the nature and extent of the business firm's investment in the Facility or of inadvertent circumstances.

(4) Approval of an application for annual certification shall not depend on issues of actual competition with other local businesses, Qualified Location or Unique Operations. However, the application may be denied if Department staff discover that when the application for preliminary certification was submitted, the Facility was not at a Qualified Location or did not represent Unique Operations, including but not limited to the case where the preliminary certification application contained false or incomplete information.

(5) The business firm need not make its first such filing immediately following the tax year described in section (1) of this rule, and the business firm may miss or skip any of the ten opportunities to apply for annual certification; however:

(a) Neither postponement of the first filing nor failure to apply in any subsequent tax year shall modify or extend the 10-year period for which certification is otherwise allowed.

(b) The business firm may not claim or exercise the exemption under ORS 316.778 or 317.391 for any such tax year, after which timely application for annual certification is not made as described in OAR 123-155-0300. The firm may still use the exemption for any remaining, eligible tax year (not more than nine consecutive tax years after the year described in section (1) of this rule) for which it does apply and is certified.

(c) If an application for annual certification is timely filed but denied by the Department, then the exemption is disallowed for not only that year, but also for all other remaining, eligible tax years (but without retroactive effect on any prior exemption).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.506(6)

Stats. Implemented: ORS 285C.506, 316.778 & 317.391

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0400

Fee Waivers, Usage and Reimbursement

With respect to application fees as described in this division of administrative rules:

(1) Department staff may eliminate the fee or reduce the required amount:

(a) If a business firm's Facility readily qualifies for certification but is very small in size or has minimal employment, or the firm has modest revenue prospects and little likelihood of effectively realizing much benefit from the exemption on taxable income, as determined based on Department experience and expertise relative to general business activity in the county, region or statewide; or

(b) If it can be demonstrated that such a waiver will further the goals and objectives of the program and other relevant public policies, for example, when partial or non-imposition of the fee might promote business investments in areas of the state where the exemption has not yet been used.

(2) The Department shall return or refund the amount collected to the applicant, if the application is rejected or the preliminary or annual certification is denied, pending a final order to that effect.

(3) The moneys collected are intended to defray administrative costs; in particular, they may be critical for offsetting legal expenses in the event of contested case appeal.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.503(3), 285C.506(4)

Stats. Implemented: ORS 285C.503 & 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

Adm. Order No.: EDD 10-2005(Temp)

Filed with Sec. of State: 11-4-2005

Certified to be Effective: 11-4-05 thru 12-21-05

Notice Publication Date:

Rules Amended: 123-024-0031

Rules Suspended: 123-024-0031(T)

Subject: The temporary rule is correcting the number in (5)(b) line 2, and (5)(b) line 3 from .8 to 1.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-024-0031

Methodology for Determining Distressed Areas

The determination of the economic distress index is based on four factors: the weighted average wage change for a county over the preceding two years; the weighted employment change for a county over the preceding two years; the per capita personal income of a county relative to the personal income of the state at the begin of the preceding two years; and the unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two year period.

(1) The weighted average wage change for a county is determined by weighting the change in the average wages for every industry sector by that sector's share of total payroll for that county. The change is measured as a ratio. The weighted changes for all sectors are aggregated to arrive at one measure of the weighted average wage change for the whole economy in the county.

(2) The weighted employment change for a county is determined by weighting the change in employment for every industry sector by that sector's share of total payroll for that county. The change is measured as a ratio. These weighted changes are then aggregated to arrive at one measure of weighted employment change for the whole economy in the county.

(3) The per capita personal income of a county relative to the personal income of the state at the beginning of the preceding two years is measured as a ratio. This ratio is determined by dividing the county's per capita personal income by the state's per capita personal income, at the end of the preceding two year period.

(4) The unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two-year period is measured as a ratio. This ratio is determined by dividing the state's unemployment rate by the county's unemployment rate, at the end of the preceding two-year period.

(5) These four measures are then multiplied together to create an index that reflects the general economic conditions of a county's economy relative to those of the state. The multiplication of the factors of change (i.e. employment and wages) with relative factors (i.e. per capita personal income and unemployment rate) adjusts change in the county's economy by the general economic conditions prevailing in the state:

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(a) The weights also allow the index to capture changes in different sectors of the economy as well as the importance of those sectors to the overall economy of a county.

(b) Counties experiencing no economic improvements at the aggregate level over the two year period will have an index that is less than or equal to 1 .8. These counties are the distressed counties. Counties with indexes greater than 1.8 are counties that experienced significant improvement over the period after adjusting for their economic conditions relative to the state. These counties are the non-distressed counties.

(6) The determination of distressed areas in non-distressed counties may occur in two ways. The first is based on an analysis of census geography, namely, major sub-county areas that have unemployment and poverty rates similar to the distressed counties. Areas with poverty or unemployment rates similar to the distressed counties are considered distressed areas. The department shall conduct the analysis and make such determinations.

(7) The second method is based on petitions from local governments. Communities outside of distressed areas that consider themselves to be distressed must provide unemployment and poverty data that can be compared to those of the distressed counties. If such a data is found to meet the criteria for distressed counties, these areas will be designated as distressed. The department shall conduct the analysis and make such determinations. Production of the List: The index will be produced for each biennium. The department will produce the index before the biennium begins. During the biennium, the department will permit communities facing unforeseen economic conditions to petition for inclusion on the distressed communities list, subject to the criteria established above.

Stat. Auth.: ORS 285A.075 (5)

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05

Oregon Board of Dentistry Chapter 818

Adm. Order No.: OBD 3-2005

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 9-1-05

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

Subject: 818-015-0040, Additional Forms of Disciplinary Action, is amended to correct an error in the listing of a state statute.

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

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

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

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

818-042-0040, Prohibited Acts, is amended to correct errors in the listing of the state statute. The Board also amended the rule to update and make current the rules regarding the exposing of radiographs to make them consistent with the recent rule changes adopted by the

Department of Human Services, Health Services, Radiation Protection Services Section (RPS).

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

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

Rules Coordinator: Sharon Ingram—(503) 229-5520

818-015-0040

Additional Forms of Disciplinary Action

In addition to other discipline, the Board may order a licensee who violates ORS 679.140(2)(d) or this Division to:

(1) Cease and desist.

(2) Publish corrective advertising, the time, place, manner, and content of which is to be specified by the Board.

(3) Post notices, the time, place, manner and contents of which to be specified by the Board.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.140

Hist.: DE 3-1984, f. & ef. 5-17-84; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-021-0010

Application for License to Practice Dentistry

(1) An applicant to practice general dentistry, in addition to the requirements set forth in ORS 679.060 and 679.065, shall submit to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Certification of having passed the dental examination administered by the Joint Commission on National Dental Examinations or Canadian National Dental Examining Board Examination.

(2) An applicant who has not met the educational requirements for licensure may apply for examination if the Dean of an accredited school certifies the applicant will graduate.

(3) An applicant must pass a Board examination consisting of a clinical portion administered by the Board, or any clinical Board examination administered by any state or regional testing agency and a jurisprudence portion administered by the Board. Clinical examination results will be recognized by the Board for five years.

(4) An applicant who passes the clinical portion but not the jurisprudence portion of the examination may retake the jurisprudence examination without limit on the number of times. The applicant must pass the jurisprudence portion within five years of passing the clinical portion or must retake the clinical examination.

(5) A person who fails any Board approved clinical examination three times must successfully complete the remedial training recommended by the testing agency. Such remedial training must be conducted by a dental school accredited by the Commission on Dental Accreditation of the American Dental Association.

Stat. Auth.: ORS 670 & 679

Stats. Implemented: ORS 679.060, 679.065, 679.070 & 679.080

Hist.: DE 10-1984, f. & ef. 5-17-84; DE 7-1985, f. & ef. 11-1-85; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-20-053 & 818-20-055; DE 1-1997, f. & cert. ef. 1-2-97; DE 5-1997, f. & cert. ef. 12-31-97; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-021-0017

Application to Practice as a Specialist

(1) A dentist who wishes to practice as a specialist in Oregon, who does not have a current Oregon license, in addition to meeting the requirements set forth in ORS 679.060 and 679.065, shall submit to the Board satisfactory evidence of:

ADMINISTRATIVE RULES

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association and licensure as a general dentist in another state. Licensure as a general dentist must have been obtained as a result of the passage of any clinical Board examination administered by any state or regional testing agency; or

(b) Having graduated from a dental school located outside the United States or Canada:

(A) Completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, proficiency in the English language, and evidence of licensure as a general dentist in another state; or

(B) Certification of having successfully passed the clinical examination administered by WREB within the five years immediately preceding application, and proficiency in the English language.

(c) Certification of having passed Parts I and II of the dental examination administered by the Joint Commission on National Dental Examinations; and

(d) Proof of satisfactory completion of a post-graduate specialty program accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) An applicant who meets the above requirements shall be issued a specialty license upon:

(a) Passing a specialty examination administered by examiners appointed by the Board who are specialists in the same specialty as the applicant; and

(b) Passing the Board's jurisprudence examination.

(3) Any applicant who does not pass the first examination for a specialty license may apply for a second and third regularly scheduled specialty examination. The applicable fee and application for the reexamination shall be submitted to the Board at least 45 days before the scheduled examination. If the applicant fails to pass the third examination for the practice of a recognized specialty, the applicant will not be permitted to retake the particular specialty examination until he/she has attended and successfully passed a remedial program prescribed by a dental school and approved by the Board.

(4) Licenses issued under this rule shall be limited to the practice of the specialty only.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.140, 679.060, 679.065, 679.070, 679.080 & 679.090

Hist.: DE 4-1997, f. & cert. ef. 12-31-97; OBD 2-1999(Temp), f. 3-10-99, cert. ef. 3-15-99 thru 9-10-99; OBD 5-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 11-2001, f. & cert. ef. 1-8-01; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-021-0020

Application for License to Practice Dental Hygiene

(1) An applicant to practice dental hygiene, in addition to the requirements set forth in ORS 680.040 and 680.050, shall submit to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Certification of having passed the dental hygiene examination administered by the Joint Commission on National Dental Examinations or the Canadian National Dental Hygiene Certificate Examination.

(2) An applicant who has not met the educational requirements for licensure may apply if the Director of an accredited program certifies the applicant will graduate.

(3) An applicant must pass a Board examination consisting of a clinical portion administered by the Board, or any clinical Board examination administered by any state or regional testing agency and a jurisprudence portion administered by the Board. Clinical examination results will be recognized by the Board for five years.

(4) An applicant who passes the clinical portion but not the jurisprudence portion of the examination may retake the jurisprudence examination without limit on the number of times. The applicant must pass the jurisprudence portion within five years of passing the clinical portion or must retake the clinical examination.

(5) A person who fails any Board approved clinical examination three times must successfully complete the remedial training recommended by the testing agency. Such remedial training must be conducted by a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.010, 680.040, 680.050, 680.060 & 680.070

Hist.: DE 15, f. 1-20-72, ef. 2-10-72; DE 29, f. & cert. ef. 3-2-77; DE 7-1985, f. & cert. ef. 11-1-85; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-20-053 & 818-20-055; DE 5-1997, f. & cert. ef. 12-31-97; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-026-0030

Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor

(1) A permit holder who administers sedation shall assure that drugs, drug dosages, and/or techniques used to produce sedation shall carry a margin of safety wide enough to prevent unintended deeper levels of sedation.

(2) No dentist or dental hygienist shall induce central nervous system sedation or general anesthesia without first having obtained a permit under these rules for the level of anesthesia being induced.

(3) No dentist or dental hygienist may be granted a permit to administer sedation or general anesthesia under these rules without documentation of current training/education and/or competency in the permit category for which the licensee is applying. The applicant may demonstrate current training/education or competency by any one the following:

(a) Current training/education or competency shall be limited to completion of initial training/education in the permit category for which the applicant is applying and shall be completed no more than two years immediately prior to application for sedation or general anesthesia permit; or

(b) Completion of initial training/education no greater than five years immediately prior to application for sedation or general anesthesia permit. Current competency must be documented by completion of all continuing education that would have been required for that anesthesia/permit category during that five year period following initial training; or

(c) Completion of initial training/education no greater than five years immediately prior to application for sedation or general anesthesia permit. Current competency must be documented by completion of a comprehensive review course approved by the Board in the permit category to which the applicant is applying and must consist of at least one-half (50%) of the hours required by rule for Class 1, Class 2, or Class 3 Permits. Class 4 Permits will require at least 120 hours of general anesthesia training.

(d) An applicant for sedation or general anesthesia permit whose completion of initial training/education is greater than five years immediately prior to application, may be granted a sedation or general anesthesia permit by submitting documentation of the requested permit level from another state or jurisdiction where the applicant is also licensed to practice dentistry, and provides documentation of the completion of at least 25 cases in the requested level of sedation or general anesthesia in the 12 months immediately preceding application; or

(e) Demonstration of current competency to the satisfaction of the Board that the applicant possesses adequate sedation or general anesthesia skill to safely deliver sedation or general anesthesia services to the public.

(4) Persons serving as anesthesia monitors in a dental office shall maintain current certification in Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR) training, or its equivalent, shall be trained in monitoring patient vital signs, and be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience.)

(5) No dentist or dental hygienist holding an anesthesia permit shall administer anesthesia unless they hold a current Health Care Provider BLS/CPR level certificate or its equivalent, or holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, whichever is appropriate for the patient being sedated.

(6) When a dentist utilizes a single dose oral agent to achieve anxiolysis only, no anesthesia permit is required.

(7) The applicant for an anesthesia permit must pay the appropriate permit fee, submit a completed Board-approved application and consent to an office evaluation.

(8) Permit fees may be prorated based on the 24-month renewal cycle.

(9) Permits shall be issued to coincide with the applicant's licensing period.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

ADMINISTRATIVE RULES

818-042-0040

Prohibited Acts

No licensee may authorize any dental assistant to perform the following acts:

- (1) Diagnose or plan treatment.
 - (2) Cut hard or soft tissue.
 - (3) Any Expanded Function duty (818-042-0070 and 818-042-0090) or Expanded Orthodontic Function duty (818-042-0100) without holding the appropriate certification.
 - (4) Correct or attempt to correct the malposition or malocclusion of teeth or take any action related to the movement of teeth except as provided by OAR 818-042-0100.
 - (5) Adjust or attempt to adjust any orthodontic wire, fixed or removable appliance or other structure while it is in the patient's mouth.
 - (6) Administer or dispense any drug except fluoride, topical anesthetic, desensitizing agents or drugs administered pursuant to OAR 818-026-0060(11), 818-026-0070(11) and as provided in 818-042-0115.
 - (7) Prescribe any drug.
 - (8) Place periodontal packs.
 - (9) Start nitrous oxide.
 - (10) Remove stains or deposits except as provided in OAR 818-042-0070.
 - (11) Use ultrasonic equipment intra-orally except as provided in OAR 818-042-0100.
 - (12) Use a high-speed handpiece or any device that is operated by a high-speed handpiece intra-orally.
 - (13) Use lasers, except laser-curing lights.
 - (14) Use air abrasion or air polishing.
 - (15) Remove teeth or parts of tooth structure.
 - (16) Cement or bond any fixed prosthetic or orthodontic appliance including bands, brackets, retainers, tooth moving devices, or orthopedic appliances except as provided in 818-042-0100.
 - (17) Condense and carve permanent restorative material.
 - (18) Place any type of cord subgingivally.
 - (19) Take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except diagnostic or opposing models or for the fabrication of temporary or provisional restorations or appliances.
 - (20) Apply denture relines except as provided in OAR 818-042-0090(2).
 - (21) Expose radiographs without holding a current Certificate of Radiologic Proficiency issued by the Board (818-042-0050 and 818-042-0060) except while taking a course of instruction approved by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS), or the Oregon Board of Dentistry.
 - (22) Use the behavior management techniques known as Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.
 - (23) Any act in violation of Board statute or rules.
- Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 679.020, 679.025 & 679.250
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-042-0060

Certification — Radiologic Proficiency

- (1) The Board may certify a dental assistant in radiologic proficiency by credential in accordance with OAR 818-042-0120, or if the assistant:
 - (2) Submits an application on a form approved by the Board, pays the application fee and:
 - (a) Completes a course of instruction in a program approved by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS), or the Oregon Board of Dentistry, in accordance with OAR 333-106-0055 or submits evidence that RPS recognizes that the equivalent training has been successfully completed;
 - (b) Passes a clinical examination approved by the Board and graded by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board, consisting of exposing, developing and mounting a full mouth series of radiographs (14 to 18 periapical and 4 bitewing radiographs) within one hour and under the supervision of a person permitted to take radiographs in Oregon. No portion of the clinical examination may be completed in advance; a maximum of three retakes is permitted; only the applicant may determine the necessity of retakes. The radiographs should be taken on an adult patient with at least 24 fully erupted teeth. The radiographs must be submitted for grading within six months after they are taken; and

(c) Passes the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, Inc. (DANB), or comparable exam administered by any other testing entity authorized by the Board, or other comparable requirements approved by the Oregon Board of Dentistry.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-042-0070

Expanded Function Dental Assistants (EFDA)

The following duties are considered Expanded Function Duties and may be performed only after the dental assistant complies with the requirements of 818-042-0080:

- (1) Polish the coronal surfaces of teeth with a brush or rubber cup as part of oral prophylaxis to remove stains if a licensed dentist or dental hygienist has determined the teeth are free of calculus;
- (2) Remove temporary crowns for final cementation and clean teeth for final cementation;
- (3) Preliminarily fit crowns to check contacts or to adjust occlusion outside the mouth;
- (4) Place temporary restorative material (i.e., zinc oxide eugenol based material) in teeth providing that the patient is checked by a dentist before and after the procedure is performed;
- (5) Place and remove matrix retainers for alloy and composite restorations;
- (6) Polish amalgam or composite surfaces with a slow speed handpiece;
- (7) Remove excess supragingival cement from crowns, bridges, bands or brackets with hand instruments providing that the patient is checked by a dentist after the procedure is performed;
- (8) Fabricate temporary crowns, and temporarily cement the temporary crown. The cemented crown must be examined and approved by the dentist prior to the patient being released; and
- (9) Under general supervision, when the dentist is not available and the patient is in discomfort, an EFDA may recement a temporary crown or recement a permanent crown with temporary cement for a patient of record providing that the patient is rescheduled for follow-up care by a licensed dentist as soon as is reasonably appropriate.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-042-0120

Certification by Credential

- (1) Dental Assistants who wish to be certified by the Board in Radiologic Proficiency or as Expanded Function Dental Assistants, or as Expanded Function Orthodontic Dental Assistants shall:
 - (a) Be certified by another state in the functions for which application is made. The training and certification requirements of the state in which the dental assistant is certified must be substantially similar to Oregon's requirements; or
 - (b) Have worked for at least 1,000 hours in the past two years in a dental office where such employment involved to a significant extent the functions for which certification is sought; and
 - (c) Shall be evaluated by a licensed dentist, using a Board approved checklist, to assure that the assistant is competent in the expanded functions.
 - (2) Applicants applying for certification by credential in Radiologic Proficiency must obtain certification from the Department of Human Services, Health Services, Radiation Protection Services Section, of having successfully completed training equivalent to that required by OAR 333-106-0055 or approved by the Oregon Board of Dentistry.
- Stat. Auth.: ORS 679
Stats. Implemented: ORS 679.020, 679.025 & 679.250
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

818-042-0130

Application for Certification by Credential

- An applicant for certification by credential shall submit to the Board:
- (1) An application form approved by the Board, with the appropriate fee;
 - (2) Proof of certification by another state and any other recognized certifications (such as CDA or COA certification) and a description of the

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examination and training required by the state in which the assistant is certified submitted from the state directly to the Board; or

(3) Certification that the assistant has been employed for at least 1,000 hours in the past two years as a dental assistant performing the functions for which certification is being sought.

(4) If applying for certification by credential as an EFDA or EFODA, certification by a licensed dentist that the applicant is competent to perform the functions for which certification is sought; and

(5) If applying for certification by credential in Radiologic Proficiency, certification from the Department of Human Services, Health Services, Radiation Protection Services Section, or the Oregon Board of Dentistry, that the applicant has met that agency's training requirements for x-ray machine operators, or other comparable requirements approved by the Oregon Board of Dentistry.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05

Oregon Department of Education Chapter 581

Adm. Order No.: ODE 9-2005

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

Certified to be Effective: 11-2-05

Notice Publication Date: 10-1-05

Rules Adopted: 581-011-0210

Subject: Adoption of instructional materials as specified in ORS 337.050 is done through the administrative rule making process. The adoption of OAR 581-011-0210 will add to the reference list programs in the Arts in the following categories:

- 1) Visual Art Education - Grades K-5/6
- 2) Visual Art Education - Grade 6-8
- 3) Music Education - Grades K-5/6
- 4) Music Education - Grades 6-8
- 5) Visual/Performing Arts - Grades 9-12

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, Ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-011-0210

Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education adopts by reference "State-Adopted Instructional Materials for the Arts, 2006-2012," listing basic instructional materials in the following categories:

- (a) Visual Art Education, Grades K-5/6;
- (b) Visual Art Education, Grades 6-8;
- (c) Music Education, Grades K-5/6;
- (d) Music Education, Grades 6-8; and
- (e) Visual/Performing Arts, Grades 9-12.

(2) The recommended materials referred to in section 1 of this rule are adopted for the adoption cycle beginning July 1, 2006, and ending June 30, 2012.

Stat. Auth.: ORS 337.050

Stats. Implemented: ORS 337.050

Hist.: ODE 9-2005, f. & cert. ef. 11-2-05

Adm. Order No.: ODE 10-2005

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 11-15-05

Notice Publication Date: 5-1-05

Rules Amended: 581-053-0507, 581-053-0517, 581-053-0550

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

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

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-053-0507

School Bus Definitions

(1) A Type "A-1" school bus is a vehicle with a gross weight rating of 14,500 pounds or less.

(2) A Type "A-2" school bus is a vehicle with a gross weight rating between 14,500 and 19,500 pounds, and a passenger capacity not to exceed 36.

(3) A Type "B" school bus is a vehicle with a gross weight rating of more than 10,000 pounds, but less than 19,500 pounds. Most of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

(4) A Type "C" school bus is a vehicle with all or part of the engine is in front of the windshield and the entrance door is behind the front wheels.

(5) A Type "D" school bus is a vehicle with the engine mounted in the front behind the windshield, midship, or rear. The entrance door is ahead of the front wheels.

(5) A Type "D" school bus is a vehicle with the engine mounted in the front behind the windshield, midship, or rear. The entrance door is ahead of the front wheels.

Stat. Auth.: ORS 820

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 1-2004, f. & cert. ef. 10-4-04; ODE 14-2004, f. & cert. ef. 8-4-04; ODE 10-2005, f. & cert. ef. 11-15-05

581-053-0517

Minimum Standards for School Bus Bodies

(1) Aisle:

(a) Minimum clearance of all aisles shall be 12 inches;

(b) Aisle supports of seat backs shall be slanted away from aisle sufficiently to give aisle clearance of 15 inches at tops of seat backs.

(2) Battery:

(a) Battery is to be furnished by chassis manufacturer;

(b) When battery is mounted as described in electrical section, Battery of Chassis Standard, i.e., the body manufacturer shall securely attach battery on slide-out or swing-out tray in closed, vented compartment in body skirt whereby battery may be exposed to outside for convenient servicing and removal. Battery compartment door or cover shall be hinged at front or top and secured by adequate and conveniently operated latch or other type fastener;

(c) Access to battery through body floor not permitted;

(d) Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

(3) Body Sizes: It is the body supplier's responsibility to determine that the completed body-on-chassis type bus will fulfill weight distribution requirements as explained in OAR 581-053-0512, Bus Chassis, section (30), Weight Distribution. Body manufacturer shall determine the vehicle's maximum designed and equipped passenger capacity and post it along with GVWR and vehicle compliance information.

(4) Bumper (Front): See OAR 581-053-0512, Bus Chassis, section (6) Bumper, Front. Deer guards may be added to a front bumper to protect the front grill. Deer guards may not be in any portion of the driver's forward view, including use of all mirrors.

(5) Bumper (Rear):

(a) Rear bumper for all body on chassis units shall be of pressed steel channel or equivalent material at least 3/16-inch thick and eight inches wide (high), and of sufficient strength to permit pushing by another vehicle without distortion. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(b) Bumper for all body on chassis units shall wrap around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(c) Bumper shall be attached to chassis frame in such manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be so attached as to prevent the insertion of small fingers between the body and bumper;

(d) Bumper shall extend beyond rear-most part of body surface at least one inch, measured at floor line;

(e) An energy absorbing rear bumper may be used providing a self-restoring energy absorbing bumper system so attached as to prevent the hitching of rides and of sufficient strength to:

(A) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body;

(B) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

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- (i) 2.0 MPH fixed barrier impact (FMVSS cart and barrier test);
- (ii) 4.0 MPH corner impact at 30 degrees (Part 581 CFR Title 49);
- (iii) 5.0 MPH buses (Part 581 CFR Title 49).

(C) The manufacturer of the energy absorbing system shall provide evidence from an approved test facility (capable of performing the above FMVSS tests) that their product conforms to the above.

(6) Ceiling: See section (19) of this rule, Insulation, and section (20), of this rule, Interior.

(7) Color:

(a) The school bus body shall be painted a uniform National School Bus Yellow. The body exterior paint trim, bumper, lamp hoods, and emergency door lettering shall be black. The roof of the bus may be painted white. The white color may extend across the roof down to the drip rails or within 6 inches above the passenger windows on the sides of the bus except that front and rear caps shall remain National School Bus Yellow. Retroreflective material may be used as trim on rear bumper. Beltline lettering may be yellow;

(b) Retroreflective material approved by the Department of Education shall be installed as a background for the required school bus lettering both on the front and rear of the body of buses purchased after September 1, 1993. Maximum dimensions: 12" x 36", unless equipped with approved lighted school bus signs. Retroreflective material shall have reflective values equal or greater than 3M Scotchlite Diamond Grade and retain at least 50 percent of those values for a minimum of six years;

(c) Additional retroreflective material, if used, shall be automotive engineering grade or better, meeting initial reflectance values in FHWA FP-85 and retaining at least 50 percent of those values for a minimum of six years. Retroreflective materials and markings, if used, may include any or all of the following:

(A) Front and rear bumper: may be marked diagonally 45 degrees down to centerline of pavement with two-inch wide strips of noncontrasting reflective material;

(B) Rear of the bus body may be marked with a strip of retroreflective National School Bus Yellow matching material no greater than two inches wide to be applied to the back of the bus, extending from the left lower corner of the "SCHOOL BUS" lettering, across to the left side of the bus; then vertically down to the top of the bumper; across the bus on a line immediately above the bumper to the right side, then vertically up to a point even with the strip placement on the left side, and concluding with a horizontal strip terminating at the right lower corner of the "SCHOOL BUS" letter;

(C) Sides of bus body: may be marked with retroreflective National School Bus Yellow matching material comprising background for letters at least six inches but no more than twelve inches in width, extending the length of the bus body and located (vertically) as close as practicable to the beltline. Two-inch wide reflective material having high intensity reflectance values (3M Scotchlite Diamond Grade or equivalent) may be substituted for the six inch to twelve-inch wide materials;

(D) See appendix for diagram defining locations of marking referred to above.

(8) Construction:

(a) Construction shall be of prime commercial quality steel, or other metal, or other material with strength at least equivalent to all-steel as certified by bus body manufacturer;

(b) Construction shall provide a water-tight and reasonably dustproof unit;

(c) Must meet or exceed applicable federal motor vehicle safety standards for construction, effective April 1, 1977.

(9) Crossing Arm: A crossing arm may be mounted on the front of a school bus in accordance with the following specifications:

(a) Installed on the front bumper as close as practicable to the right (curb) side, opening left to right and providing an extension of the curbside of bus;

(b) Arm shall be located at least 18 inches but not more than 24 inches above ground level and in the closed position; arm shall not cover numbers on license plate;

(c) Installed in a manner to limit the outward deployment to 90 degrees from the front bumper;

(d) Arm shall extend 72 inches from the front bumper in its extended position;

(e) Arm shall be activated through the existing bus safety light system assuring the driver is required to take no additional action to either deploy or retract the arm. No outward movement of the arm may occur before red flashing sequence begins;

(f) Override switches are prohibited;

(g) Crossing arm must be safeguarded from damage due to pushing or pulling by hand through the use of a clutch-like device or equivalent, double spring hinges are not acceptable);

(h) The arm may be equipped with an amber flashing light that functions only when the arm is in the fully extended position;

(i) Entire unit shall have no sharp edges or other projections that could injure children or others due to casual contact;

(j) Unit shall provide secure mounting opportunities to prevent misalignment or failure due to extreme weather conditions;

(k) Shall meet or exceed all requirements in SAE Standard J1133;

(l) Shall be either air, vacuum, or electrically operated and in conformance to section (39)(g) of this rule;

(m) Crossing arm color shall either appear in an unpainted state or comply with trim requirements listed in section (7)(a) of this rule;

(n) All components and connections shall be weatherproofed.

(10) Defrosters:

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to reduce the amount of frost, fog and snow;

(b) The defroster units shall have separate blower motors, in addition to the heater motors. Type A-1 and A-2 buses may have manufacturers' standard defrosters;

(c) A right front windshield and door defrosting unit with a separate hot water core and separate blower motors shall be provided on Type C buses;

(d) The defrosting system shall conform to SAE performance standards J-381 and 382;

(e) The defroster and defogging system shall be capable of furnishing heated outside ambient air, except that part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the recirculation air type;

(f) Auxiliary fans are not to be considered as a defrosting and defogging system:

(A) Auxiliary fans, if used, must be mounted above the windshield, so as not to interfere with the driver's vision of the roadway, mirrors or students outside the bus;

(B) The fan blades shall be covered with a protective cage.

(11) Doors: Service Door:

(a) Service door shall be under control of driver, and so designed as to afford easy release and provide a positive latching device for manual operating door so as to afford easy release and prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers;

(b) Service door shall be located on right side of bus opposite driver and within direct view;

(c) Service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches. Type A-1 and A-2 buses shall have a minimum opening of 1,200 square inches;

(d) Service door shall be of split type, sedan type or jack-knife type. (Split type door includes any sectioned door, which divides and opens inward or outward.) If one section of split type door opens inward and other opens outward, front section shall open outward. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation;

(e) If power operated, pressure shall be controlled by a regulator valve or switch and provision shall be made for opening the door manually in the event of driver disability or mechanical failure. Emergency release valve or switch for power operated doors shall be located in an accessible place, in plain view, as near the service door as practicable. Valve or switch shall be properly identified and "open" and "closed" position plainly marked;

(f) Sedan type door which opens inward in normal use shall be equipped with an adequate device for emergency opening outward;

(g) Lower as well as upper panels shall be of approved safety glass. Bottom of lower glass panel shall not be more than ten inches from top surface of bottom step. Top of upper glass panel shall not be more than six inches from top of door. Type A-1 and A-2 buses shall have a minimum 350 square inch upper glass panel;

(h) Vertical closing edges shall be equipped with flexible material to protect children's fingers. Type A-1 and A-2 buses may be equipped with chassis manufacturers' standard entrance door;

(i) There shall be no door to left of driver. (This shall not be interpreted to conflict with emergency doors or windows.) Type A-1 and A-2 and B buses may be equipped with manufacturers' left side driver's door;

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(j) All doors shall be equipped with an energy absorbing pad at the top edge of each door opening. Pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening. Pad not required on Type A-1 and A-2 and B buses, left side driver's door.

(12) Emergency Exits:

(a) All buses purchased after January 1, 1999 shall be equipped with required emergency exits and identification listed in 49 CFR Part 571 FMVSS 217 as it has been adopted by National Highway Traffic Safety Administration for June 9, 1995 implementation plus all applicable standards specified in this rule. These rule changes apply to buses ordered after July 1, 2004

(b) For buses equipped with a rear emergency door additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide [one of] the following:

(i) 2 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23 to 45 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Two FMVSS 217 complying swing-out windows one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46 to 62 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and one FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 63 and above shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(iii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and One FMVSS 217 complying roof hatch.

(c) For buses equipped with a rear push-out window, a left side emergency door shall be provided and the following additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide one of the following:

(i) Two FMVSS 217 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23-45 shall provide:

(i) Two FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46-57 shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 58 and above shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; and One FMVSS 217 complying roof hatch

(d) Selection of the added exits (if any) necessary to comply with the "additional emergency exit area" requirements of FMVSS 217 shall be made by the vehicle purchaser in conformance to applicable rules;

(e) Manufacturer shall identify all emergency exits used for calculations relating to FMVSS 217 compliance and list the daylight (clear) opening for each exit;

(f) A document identifying the following shall be provided by the vehicle seller to the Oregon Department of Education and bus purchaser prior to the bus being introduced into a bus system for the first time:

(A) Bus manufacturer;

(B) Bus identification number;

(C) Bus designed and equipped passenger capacity;

(D) Bus purchaser and district(s) served;

(E) All emergency exits used for FMVSS 217 compliance; and

(F) Total square inches/square cm clear opening for each emergency exit provided in the bus.

(g) Swing out windows shall provide a minimum clear opening of 18" x 24". If side emergency swing-out windows can be opened from outside the bus the words "Emergency Exit" shall be placed directly above the window in letters at least two inches high on the exterior of the bus. If the words "Emergency Exit" are placed on the exterior of the bus above swing-out windows inoperable from outside, the label must include the following statement in letters approximately one inch high "Operates From Inside Only."

(h) Rear emergency door exits:

(A) Type A-1 and A-2 buses with double rear emergency doors shall be hinged on the outside and have a three point fastening device;

(B) Upper portion of emergency door shall be equipped with approved safety glazing, exposed area of not less than 400 square inches;

(C) Lower portion of rear emergency door shall be equipped with approved safety glass and shall have an exposed area of not less than 350 square inches of approved safety glazing. Type A-1 and A-2 buses are not required to have lower rear emergency door glazing;

(D) There shall be no steps leading to emergency door;

(E) Clearance between outside emergency door handle and the emergency door shall not exceed 1/4-inch when handle is in closed position. Handle shall not provide a firm handhold to someone trying to "hitch" a ride. Handles shall be positioned to prevent snagging of clothing or pinching of fingers;

(F) Emergency door hinge shall not provide an opening for insertion of fingers when door is closed;

(G) If emergency door is lockable, provision must be made to prevent the bus from starting while the door is locked. An audible warning that does not affect engine operation shall be provided to alert the driver should the door be locked while the bus is in operation;

(H) An adequately padded head bumper shall be placed on the interior directly above any emergency exit door opening. The pad shall extend the full width of the door opening and shall be at least three inches wide and one inch thick.

(i) Approximately one inch/three centimeter retroreflective exterior perimeter marking shall be yellow in color, of automotive engineering grade material, and in compliance with both the retroreflective requirement of FMVSS and durability specifications listed in National Minimum Standards for reflective material;

(j) Roof emergency exit:

(A) Roof emergency exit, when required, shall be installed in a school bus body in accordance with FMVSS 217;

(B) A roof exit shall be waterproof and provide a minimum clear opening of 16" x 16"; and have an audible warning signal able to be heard at the driver's area. These rule changes apply to buses ordered after July 1, 2004

(C) Roof exit may also serve as a roof ventilator; however, this may not be used in place of the required static vent.

(13) Emergency Equipment:

(a) Belt cutter: Each bus equipped with passenger seat belts or webbed restraining devices shall have a belt cutter mounted in the driver's compartment, readily accessible and in plain view of the driver. Device shall be of a design offering protected cutting edges to prevent accidental or intentional injury to drivers or passengers;

(b) Emergency road reflectors:

(A) Each bus shall be equipped with at least three DOT triangle reflectorized disabled vehicle warning devices;

(B) Reflectors must be in a container securely mounted with nut-and-bolt fasteners enhanced with large flat (fender) washers or held in place by a nut-and-bolt mounted metal bracket that also protects and secures the container lid. Both shall be located in an accessible location. Reflectors shall not be mounted in any engine compartment;

(C) If not mounted in plain view of the driver, the location shall be clearly designated.

(c) Body fluid cleanup kit: Buses purchased after September 1, 1993 shall have a removable moisture proof and dust proof body fluid cleanup

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kit, mounted in an accessible place within the driver's compartment. This place shall be marked to identify its location. Contents shall include at least the following items:

- (A) Two pair rubber/latex gloves;
- (B) Two four-ounce packages of stabilized chlorine absorbent deodorant (or equivalent) capable of stabilizing at least 1 litre/36 fl. oz. of body fluids;
- (C) One spatula for pick up of congealed fluid;
- (D) One plastic bag in which to place congealed fluid;
- (E) One red plastic bag with tie, identified for infectious waste and as a bio-hazard;
- (F) One two-ounce bottle of germicidal detergent to apply to a contaminated area;
- (G) Four paper towels to wipe up contaminated area;
- (H) One one-ounce antiseptic alcohol hand rinse (or equivalent);
- (I) One placard of step by step use instructions;
- (J) Germicidal detergents, stabilized chlorine absorbent deodorant, alcohol hand rinse, or their equivalents shall provide documentation of EPA approval regarding their microbiological efficacy for at least the following:
 - (i) *Staphylococcus aureus*;
 - (ii) *Pseudomonas aeruginosa*;
 - (iii) *Salmonella choleraesuis*;
 - (iv) *Streptococcus* species;
 - (v) Herpes simplex Type II;
 - (vi) HIV (Associated with AIDS);
 - (vii) Fungi (athlete's foot);
 - (viii) Poliovirus; and
 - (ix) Tuberculosis.
- (K) Documentation of efficacy for Hepatitis B may be hospital or test studies. The certified effective shelf life of these products shall be a minimum of 12 months. Product expiration date shall be clearly displayed on all time-sensitive products.

(d) Fire extinguishers:

(A) Each bus shall be equipped with at least one pressurized, dry, chemical type fire extinguisher, mounted in a bracket and located in the driver's compartment, readily accessible and in plain view of the driver. A pressure gauge shall be mounted on the extinguisher so as to be readily read without removing the extinguisher from its mounted position;

(B) The fire extinguisher shall be of a type approved by the Underwriters Laboratories, Inc., with a rating of not less than 2 A-10 BC. The extinguisher shall have a minimum five pound capacity and equipped with a hose and nozzle;

(C) The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher;

(D) Extinguishers with plastic heads are not permitted.

(e) First aid kit:

(A) Each bus shall have a readily removable, moisture proof and dust-proof first-aid kit container mounted in an accessible place within driver's compartment. If not mounted in plain view of the driver, the location shall be clearly designated;

(B) The first aid kit contains a minimum of 24 units that shall include the following:

- (i) One 1" adhesive compress — 16 per unit;
- (ii) Two 2" bandage compress — 4 per unit;
- (iii) Two 3" bandage compress — 2 per unit;
- (iv) Two 4" bandage compress — 1 per unit;
- (v) Two 3" x 3" plain gauze pads — 4 per unit;
- (vi) Two 2" x 6 yards gauze roller bandage — 1 per unit;
- (vii) Three 1/2 square yard gauze;
- (viii) Three 24" x 72" gauze;
- (ix) Four Triangular bandage;
- (x) One 1/2 x 5 yard adhesive tape-one per unit;
- (xi) One round nose scissors and tweezers. Latex gloves-one pair; and
- (xii) One microshield for mouth to mouth airway (to lay on top of other contents).

(C) Specific local requirements may be substituted in lieu of 2 units of 1/2 square yard gauze.

(14) Floor:

(a) Floor in underseat area, including tops of wheelhousing, driver's compartment and toeboard, shall be covered with rubber floor covering or equivalent having minimum overall thickness of .125 inch:

(A) Floor covering in aisle shall be of aisle-type fire-resistant rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .1875 inch measured from tops of ribs;

(B) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

(b) Edge of floor at stepwell shall be treated as a step edge and shall be protected as required in section (37)(c) of this rule;

(c) A vapor and liquid proof inspection plate provided for access to the fuel tank sending unit is permissible;

(d) A subfloor of 5-ply plywood, at least 5/8 inch nominal thickness or equivalent, may be installed over the standard school bus floor. Plywood shall equal or exceed properties of exterior-type softwood plywood, C-D grade as specified in standards issued by the Department of United States Commerce. Floor shall be level from front to back and from side to side except for wheelhousing, toeboard and driver's seat platform areas;

(e) For Type A-1 and A-[1]2 buses that are not constructed with a standard school bus floor, the existing metal floor in the passenger area shall be covered with not less than 1/2-inch nominal thickness exterior C-D grade plywood. All plywood seams shall extend from side to side (laterally), longitudinal seams not permitted.

(15) Heaters:

(a) At least one heater of hot water type is required in all buses;

(b) If only one heater is used, it shall be of fresh-air or combination fresh-air and recirculation type;

(c) If more than one heater is used, additional heaters may be of recirculation air type;

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 50 degree Fahrenheit at average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the vehicle is to be operated;

(e) All heaters installed by body manufacturers shall bear a name plate which shall indicate the heater rating in accordance with SBMI Standard No. 001, said plate to be affixed by the heater manufacturer which shall constitute certification that the heater performance is as shown on the plate;

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges, and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater hoses on the interior of the bus shall be shielded to prevent scalding of the driver or passengers;

(g) Each hot water heater system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines near the engine in an accessible location. There shall be a water flow regulating valve or airflow regulating door for the front heater installed for convenient operation by the driver while seated;

(h) Return heater lines on body company installed heaters shall be equipped with bleeder valves in an accessible location to allow for removal of heater line air;

(i) Combustion type heaters may be installed and shall comply with all the following:

(A) The combustion type heater must be installed outside the passenger compartment;

(B) Exhaust exit from the heater must meet the same location requirements as for engine exhaust;

(C) The heater must have been tested by a qualified laboratory and certified as complying with the following regulations:

(i) Code of Federal Regulations, CFR 300-399, Transportation Heaters, 393.77 and CFR 49: Part 571, Transportation: Motor Vehicle Safety Standard 301; Fuel System Integrity;

(ii) American Institute of Electrical and Electronic Engineers, IEEE1: Temperature Limits in Rating Electrical Equipment;

(iii) UL 307A: Liquid Fuel-Burning Heating Appliances, UL 756C: Polymeric Materials — Use in Electrical Equipment, and UL 796: Printed Wiring Boards;

(iv) TE-12: Impact Testing of Vehicular Components.

(D) Provide isolation valves at the heater for both the coolant feeder and return lines;

(E) Heater must be equipped with a pressure relief valve preset to release any internal system pressure over 50 psi;

(F) An impact switch for the heater's electric fuel pump that will stop the pump with special inertial mechanics.

(j) Portable heaters may not be used.

(16) Identification:

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(a) School bus bodies shall bear the words "School Bus" in black letters at least eight inches high and of proportionate width on both front and rear of body. Lettering shall be placed as high as possible without impairment of its visibility;

(b) A warning sign, calling attention to the school bus stop law shall be installed on the rear of all school buses. It shall be centered on the back of the bus and occupy the space, belt high, directly beneath the upper window in the rear door. Signs on transit type buses shall occupy approximately the same area. Signs on Type A buses with double rear door having obstructions such as door handles and recessed license plate holders that prevent sign centering shall be placed completely on the right side (rear) door in a manner that all reflective letters are located on that door and as high on the lower portion of the door as practicable in relationship to the door handle, but the top of the sign may be no more than four inches below handle shaft. Sign shall conform to the following:

(A) Decals with white reflectorized letters conforming to retroreflective requirements listed in section (7)(c) of this rule mounted on a flat black background;

(B) Decal shall be 9 inches by 30 inches with lettering as shown below:

UNLAWFUL TO PASS
WHEN RED LIGHTS FLASH

(C) It is prohibited for any school bus to display a warning sign, which does not meet the above requirements;

(D) The name of the school district IE: (and contractor company name if applicable) contractor company name shall be placed on the side of each bus. Such signs shall appear in the area directly below the side windows and the letters and figures in such signs shall not be less than four inches nor more than six inches in height and of proportionate width;

(E) School team name or contractor's insignia may be placed above the side windows on the front portion of the bus body. All such lettering must be approved by the Pupil Transportation Section of the Oregon Department of Education;

(F) At least one bus identification number at least four inches in height shall be placed on a flat vertical surface on each side and on the front and rear of the bus. At least one complete unit number shall be visible from any point 50 feet from the bus. Symbols may be used in lieu of numbers. Type A-1 and A-2 bus numbers may be three inches in height. Bus identification numbers are not required if the school has only one route bus;

(G) Only signs and lettering approved by state law or by the regulations of the Department of Education shall appear on the inside or outside of a school bus.

(17) Inside Height: Clear inside body height shall be 72 inches or more measured at any point on the longitudinal center line from front vertical bow to rear vertical bow. Type A bus height shall be not less than 62 inches.

(18) Instruments, Gauges, Indicators: Body manufacturer shall in no manner obstruct the driver's visibility of required instruments, gauges or indicators provided by the chassis manufacturer. Body instrument panel lights shall be controlled by an independent rheostat switch.

(19) Insulation:

(a) Ceiling and walls in all new buses purchased after September 1, 1985, shall be insulated with proper material to deaden sound and to reduce vibration to a minimum. Thermal insulation of fire-resistant and non-water absorbing material approved by Underwriters Laboratories, Inc., is required in body ceiling and walls;

(b) If floor insulation is desired it must be 5-ply, at 5/8-inch thick plywood as specified in section (14) of this rule.

(20) Interior:

(a) Interior of bus shall be free of all unnecessary projections likely to cause injury including luggage/book racks on buses purchased after September 1, 1993 or retrofitting occurring after that date. This standard requires inner lining on ceilings and walls. If ceiling is constructed so as to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged or otherwise treated to minimize sharp edges;

(b) Ceiling of bus shall be free of all projections that can cause injury in the event of a collision or rollover (see section (30) of this rule.);

(c) All materials used in the interior of a school bus body shall meet the requirements of Federal Motor Vehicle Safety Standard No. 302, Flammability of Interior Materials;

(d) Construction of buses manufactured after September 1, 1993 shall assure noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 DBA when tested according to the procedure found in the Appendix (Noise Test Procedure).

(21) Lamps and Signals:

(a) All lamps on exterior of bus shall conform with and be installed as required by Oregon Motor Vehicle law and the Federal Motor Vehicle Safety Standard No. 108, effective January 1985;

(b) Headlamps, when furnished by body manufacturer, shall be of proper intensity and adjustment as specified by Oregon Motor Vehicle law;

(c) Stop-tail lamps: Buses shall be equipped with four combination red stop-tail lamps. Two combination lamps with a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus on the beltline or immediately below. Two combination lamps with a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. Rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 and A-2 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps;

(d) Clearance and identification lights: Each bus shall be equipped with clearance and identification lights as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(e) Reflectors: Each bus shall be equipped with reflectors as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(f) Directional signals: Each bus shall be equipped with front and rear turn signal lamps that conform to requirements of the Oregon Motor Vehicle law. Lamps shall have a minimum illuminated area of 38 square inches. Lamps shall be amber in color whether mounted at the front or rear. Type A-1 and A-2 buses may be equipped with manufacturer's standard front turn signals. Signal lamps shall be independent units and connected to chassis-supplied turn signal switch and four-way hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. A turn signal lamp with a minimum of 4 candlepower shall be mounted on each body side at approximately seat level height, located to the rear of the entrance door on the right side of the body and approximately the same location on the left side. These are to be connected to and function with the regular turn signal lamps. Type B buses may have the right side body turn signal forward of the entrance door;

(g) Back-up lamps: Two back-up lamps shall be provided in accordance with Federal Motor Vehicle Safety Standard 108;

(h) Back-up warning alarm: An automatic audible alarm shall be installed on the rear of all buses purchased after November 1, 1985, that complies with the Society of Automotive Engineers (SAE 994 Backup Alarm Standard specifying 97 ±4db(A);

(i) Interior dome lamps: Interior lamps shall be provided which will adequately illuminate interior aisles. There shall be at least one interior lamp for every two rows of passenger seats. One or two rear dome lamp(s) shall be wired through a separate switch. Separate circuit for rear dome lamp(s) is not required on buses with less than five rows of seats;

(j) Stepwell lamp: A stepwell lamp shall be provided which will adequately illuminate the entire stepwell. The lamp circuit shall be wired through the headlamp or clearance lamp system and shall be activated only when the door is opened;

(k) School Bus Safety Lights:

(A) Each school bus shall be equipped with a system meeting FMVSS 108 consisting of four red signal lamps designed to conform to SAE Standard J887, "School Bus Red Signal Lamps," July 1964, and four amber signal lamps designed to that standard, except for color, and except that their candle power shall be at least 2-1/2 times that specified for red signal lamps. Lamps shall have minimum of 17.25 square inches and shall be clearly visible in direct sunlight from a distance of 500 feet along axis of vehicle;

(B) The system shall be wired so that the system is activated by a manually operated spring-loaded switch clearly labeled and distinguishable from other switches. A circuit master switch is permitted if the manually operated activating switch and the master switch are together in one switch;

(C) For buses equipped with power-controlled entrance doors, an additional spring loaded switch that will activate the red school bus safety lights prior to opening entrance door is permissible;

(D) The flashing mechanism shall be capable of carrying the full current load of the signal system;

(E) Right and left signal lamps shall flash alternately. Each signal lamp shall flash not less than 60 or more than 120 flashes per minute. The "on" period shall be long enough to permit bulb filament to come up to full brightness;

(F) Pilot lamps/monitors:

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(i) Each bus shall be equipped with two, 3/8-inch illuminated pilot lamps — one amber and one red — to indicate when the respective amber or red system is actuated. Pilot lamps shall be placed within a 140° field of vision for a 95th percentile female anthropomorphic test dummy seated in a normal driving position. Pilot lamps shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not otherwise functioning normally unless a separate monitoring system performs all those functions; or

(ii) Each bus shall be equipped with a monitor system utilizing 3/8-inch illuminated red and amber lamps to indicate when the respective amber or red system is actuated. Monitor shall be placed within a 140° field of vision for a 50th percentile anthropomorphic test dummy seated in a normal driving position. Monitor shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not functioning normally.

(G) School Bus Safety Light system shall operate as follows:

(i) With entrance door closed, depress activation switch. Amber pilot light and amber bus safety lights shall go on;

(ii) Open entrance door; amber bus safety lights shall go off, and red pilot light and red bus safety lights shall go on;

(iii) Close entrance door; pilot and bus safety lights shall go off;

(iv) Reopen entrance door without depressing hand switch; no bus safety lights shall go on. Depress hand switch, red pilot light and red bus safety lights shall go on.

(H) There shall be a canceling switch that will deactivate the amber bus safety lights and flasher sequence if they are accidentally activated or if the driver discovers there is no need to make a stop after activating the switch;

(I) Installation requirements:

(i) Both red and amber signal lamps shall be installed in accordance with SAE Standard J887, except that each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. Each signal lamp shall be mounted with its axis substantially parallel to the longitudinal axis of the vehicle;

(ii) Front and rear alternately flashing bus safety lights shall be spaced as far apart laterally as practicable;

(iii) Alternately flashing bus safety lights shall be mounted at the front above the windshield and at the rear so that the lower edge of the lens is not lower than the top line of the side windows;

(iv) Vertical and lateral vision of the front and rear alternately flashing warning bus safety lights shall not be obstructed by any part of the body or lamphouse insofar as standard bus body construction will permit;

(v) Where practicable, the area around lens of each alternately flashing warning bus safety light and extending outward at least 3 inches or more shall be painted black;

(vi) Front amber school bus safety lights shall be visible (directly or indirectly) from the driver's area inside the bus;

(vii) A separate fuse or circuit breaker, adequate to prevent damage to the system in the event of a short circuit, shall be provided between the power source and flasher system.

(J) Strobe Lamp:

(i) A white flashing lamp, approved by the Oregon Department of Education, may be installed on the longitudinal center of the roof on rear half of the bus but no closer than one foot from the rear of the bus body. The lamp shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 6-1/2 inches or maximum legal vehicle height;

(ii) The lamp shall have a separate switch and be wired through the vehicle hazard lamp system. A pilot lamp to indicate when the light is in operation is required.

(22) Metal Treatment:

(a) All metal used in construction of bus body shall be zinc- or aluminum-coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels and floor sills; excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts;

(b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed or conditioned by equivalent process;

(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections,

unvented or undrained areas and surfaces subjected to abrasion during vehicle operation;

(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus body, when subjected to 1000-hour salt spray test as provided for in latest revision of ASTM designation, B-117 "Standard Method of Salt Spray (Fog) Testing," shall not lose more than 10 percent of material by weight.

(23) Mirrors:

(a) Exterior Mirror Systems:

(A) All buses purchased after September 1, 1993 shall be equipped with mirror systems complying with 49 CFR Part 571, FMVSS 111 as adopted by the National Highway Traffic Safety Administration for December 3, 1993 implementation, plus all applicable standards specified in this rule;

(B) Manufacturer shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide copy to bus purchaser for all buses manufactured prior to January 1, 1994.

(b) Interior Mirror:

(A) Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage[s]. Mirror shall be a minimum of 6" x 30". Mirror shall have rounded corners and protected edges;

(B) Type A buses shall be equipped with a mirror providing at least 96 square inches of flat mirror surface;

(C) Bus seller shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide a copy to used bus purchasers when certification is not available from manufacturer for all buses manufactured prior to January 1, 1994.

(24) Mounting:

(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such a manner as to prevent shifting or separation of body from chassis under severe operating conditions;

(b) Body front shall be attached and sealed to chassis in such manner as to prevent entry of water, dust or fumes through joint between chassis cowl and body;

(c) When floor is provided by bus body manufacturer, adequate insulating padding shall be placed at all contact points between body and chassis frame. Insulating material shall be approximately 1/4-inch thick and shall be so attached as to prevent movement under severe operating conditions.

(25) Mud Flaps:

(a) Mud flaps or splash aprons are required for rear wheels on all school buses and shall be provided by the body manufacturer;

(b) Flaps shall be of heavy-duty rubberized material or equivalent and shall extend at least the full width of tires from a point above the center of the tires to a point not more than ten inches above the surface of the highway when such vehicle is empty.

(26) Overall Length: Maximum length for school buses shall be limited to 40 feet (see OAR 581-053-0512, Bus Chassis, section (33), Turning Radius: ORS 818.080).

(27) Overall Width: Overall width of bus shall not exceed the maximum permitted by Oregon Motor Vehicle laws.

(28) Overhang: Body shall be so mounted as to comply with requirements described in chassis weight distribution standard. Body length extending beyond the rear axle shall not exceed three-fourths the length of the vehicle's wheel base per Oregon Vehicle Code.

(29) Racks: The installation of any kind of exterior luggage rack outside the bus is prohibited. This does not prohibit enclosed luggage compartments.

(30) Radios and Public Address Systems:

(a) Interior speakers mounted in the ceiling panels shall be either flush mounted or may protrude not more than 1-1/2 inches if the speaker housing is free of any corners or projections which can cause injury by striking with the head or in the event of a collision or rollover. Speakers protruding more than 1-1/2 inches may be mounted in the vertical end panels above the windshield or back windows as long as speakers are free of corners or projections that could cause injury;

(b) Speakers shall not be placed above any aisle;

(c) Buses purchased after November 1, 1985, shall be equipped with a public address system having interior and exterior speakers and a switch to separate from inside and outside.

(31) Rub Rails:

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(a) There shall be one rub rail located on each side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except for emergency door and access panel(s)) to point of curvature near outside cowl on left side;

(b) There shall be one rub rail located approximately at floor line which shall cover same longitudinal area as upper rub rail, except at wheel-housing, and shall extend only to radii of right and left rear corners;

(c) Both rub rails shall be attached at each body post and all other upright structural members;

(d) Both rub rails shall be four inches or more in width, shall be of 16-gauge steel, suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion;

(e) Both rub rails shall be applied to the outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For Type A-1 and A-2 buses using chassis manufacturer's body, or Type B, C and D buses using rear luggage or engine compartment, rub rails need not extend around rear corners.

(32) Sanders: Where used, sanders shall:

(a) Be of hopper cartridge-valve type;

(b) Have metal hopper with all interior surfaces treated to prevent condensation of moisture;

(c) Be of at least 100 pound (grit) capacity;

(d) Have cover on filler opening of hopper, which screws into place, sealing unit airtight;

(e) Have discharge tubes extending to front of each rear wheel under fender;

(f) Have no-clogging discharge tubes with slush-proof, nonfreezing rubber nozzles;

(g) Be operated by electric switch with telltale light mounted on instrument panel;

(h) Be exclusively driver-controlled.

(33) Seat Belt:

(a) A Type 2 lap belt/shoulder harness seat belt shall be provided for the driver. Each belt section shall be booted to keep belt and the button or buckle type latch off floor when not in use. Shoulder belt assemblies on Type B, C, and D buses shall provide for a height adjustment of at least four inches at its upper point of attachment to the bus. Belt shall be anchored or guided in a manner at the seat frame to prevent the driver from sliding sideways when belt is in use. Locking retractors may be either an ELR (Emergency Locking Retractor) or an ALR (Automatic Locking Retractor). All ALR equipped buses received after July 1, 1989, must include an approved anti-cinching device;

(b) Seat belts for passengers: Passenger seat belts may be installed in school buses with a GVWR of more than 10,000 pounds. The attachments, belts and installation shall meet the requirements of Federal Motor Vehicle Safety Standard Nos. 208, 209 and 210 as they apply to school buses with a GVWR of 10,000 pounds or less.

(34) Seats and Crash Barriers:

(a) Seats and barriers shall meet requirements of Federal Motor Vehicle Safety Standard No. 222;

(b) All seats shall have minimum depth of 15 inches;

(c) In determining seating capacity of bus, the minimum allowable rump width shall be 13 inches;

(d) Seat, seat back cushion and crash barrier shall be covered with a material having a minimum 42-ounce finished weight, 54-inch width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold, and flex separation. Material shall meet or exceed the criteria contained in the School Bus Seat Upholstery Fire Block Test for all buses purchased after September 1, 1993 (see Appendix);

(e) All seats shall be forward facing and shall be securely fastened to that part(s) of bus that support them with a nut-and-bolt type of fastener. Each seat leg shall be secured to the floor by a minimum of two nut-and-bolt type fasteners of at least grade 5 SAE strength. Sheet metal screw-type fasteners without a nut are not acceptable, except in areas where it is not possible to install a nut-and-bolt type fastener. Type A-1 and A-2 bus seat fasteners shall meet the requirements of Federal Motor Vehicle Safety Standards 209 and 210;

(f) No bus shall be equipped with jump seats or portable seats. Flip-up seats at side emergency exit doors are allowed;

(g) Seat spacing shall not be less than 24 inches between the front of the back of each seat and the rear of the back of the seat immediately ahead. This shall be measured at cushion height on a plane parallel to the center line of the bus;

(h) Driver's seat shall be so located in relationship to the steering wheel that the driver may assume a natural position while driving, have a clear view of the road, and sufficient leg room to operate safely and effectively the brake and clutch pedals and accelerator without cramping or interference. Minimum distance between steering wheel and back rest of driver's seat shall be 11 inches. Driver's seat shall have a fore-and-aft adjustment of not less than four inches and shall on Type B, C, and D buses be capable of being raised and lowered at least three inches and shall be strongly attached to comply with acceptable installation procedures;

(A) Driver's seat supplied by the body company shall be a high back suspension seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile female anthropomorphic dummy as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts, and washers or flanged-headed nuts;

(B) Driver's seat positioning and range of adjustment shall be designed to accommodate comfortable actuation of the foot control pedal by 95 percent of the adult female population.

(i) Each passenger seat and driver's seat shall have a positive type retention system to prevent the seat cushion from disengaging from the seat frame at the front and rear in the event of an accident or rollover.

(35) Steering Wheel: (See OAR 581-053-0512(29), Steering Gear, also.) Steering wheel outside circumference shall have at least two inches of clearance at all points.

(36) Steps:

(a) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal and shall not exceed 10 inches in height. When plywood floor is used on steel, differential may be increased by thickness of plywood used;

(A) First step at service door shall be not less than 10 inches and not more than 14 inches from ground, based on standard chassis specifications;

(B) Type D buses shall be equipped with a three-step stepwell. First step at service door shall not be less than 12 inches and not more than 16 inches from the ground based on standard chassis specifications.

(b) Steps shall be enclosed to prevent accumulation of ice and snow;

(c) Steps shall not protrude beyond side body line;

(d) Steps (if any) on Type A-1 and A-2 buses not manufactured originally as school buses may be chassis manufacturer's standard;

(e) At least one grab handle not less than 20 inches in length shall be provided to assist passengers during entry or egress in unobstructed locations inside doorway. Grab handle shall be designed, installed and maintained to minimize the opportunity for entanglement of passenger clothing and belongings.

(37) Step Treads:

(a) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber;

(b) Metal back of tread, minimum 24-gauge cold roll steel, shall be permanently bonded to ribbed rubber;

(c) 3/16-inch ribbed step tread shall have a 1-1/2-inch white nosing as integral piece without any joint;

(d) Rubber portion of step treads shall have the following characteristics:

(A) Special compounding for good abrasion resistance and high coefficient of friction;

(B) Flexibility so that it can be bent around a 1/2-inch mandrel both at 130 degrees F and 20 degrees F without breaking, cracking or crazing;

(C) Show a durometer hardness 85 to 95.

(38) Steps, Windshield Access: There shall be at least one folding step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Standard does not apply to chassis not originally manufactured as school buses.

(39) Stop Signal Arms: All buses purchased after September 1, 1993 and all buses in service after August 1, 1995 shall be equipped with stop signal arms mounted in accordance with the following requirements:

(a) Shall meet all applicable requirements of the Federal Motor Vehicle Safety Standard 49 CFR 571.131;

(b) Shall be installed on the left side of the bus; the vertical center of the stop blade shall be at least seven inches but not more than 14 inches below the window line, on the first body post to the rear of the driver or as close as practicable;

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(c) Shall be a metal octagon shaped sign 18 inches wide and 18 inches long exclusive of the mounting bracket. A windguard shall be provided. All sheet metal parts shall be 16 gauge metal or heavier;

(d) Shall have the word "STOP" on both sides in white letters six inches high and of proportionate width on a red background. The outer edge shall have a white border one-half inch wide. All other parts of the assembly shall be painted black;

(e) Shall be equipped with two, four-inch, double faced alternating flashing red lamps to be mounted near the perimeter of the sign with a minimum of 12 inches spacing between lamp centers. The stop arm and lamps shall be wired to the circuit of the flashing red warning lamps mounted on the front and rear of the bus and shall operate simultaneously with the red bus safety lamps. Lamps shall be LED or strobe ORS 820.105;

(f) May be reflectorized:

(A) Reflectorized material shall be of automotive engineering grade or better;

(B) Reflectorized material may be retroreflective or reflective.

(g) Shall be either air, vacuum, or electrically operated:

(A) Air operated stop arms:

(i) Air may be supplied from an air accessory tank or from the first (wet) tank;

(ii) If source is from the first (wet) tank a pressure protection valve shall be installed to prevent the tank air supply from falling below 60 pounds;

(iii) Stop arm system must have a pressure regulating valve;

(iv) All fittings shall be brass.

(B) Vacuum operated stop arms:

(i) Vacuum shall be supplied from a separate accessory tank. Tank shall be protected by a check valve;

(ii) All fittings shall be brass.

(40) Sun Visor: Interior adjustable sun visor, not less than 6 by 30 inches in size, shall be installed above windshield in position convenient for use by driver. If transparent visor is used, it shall be of such material so as not to prevent distinguishing between the colors of red and green traffic signals. Vehicles not originally manufactured as school buses may be equipped with manufacturer's standard visor. Buses purchased after November 1, 1985, shall have visors with protected edges.

(41) Tail Pipe: (See OAR 581-053-0512, Bus Chassis, section (14) also.) Tail pipe shall extend to outside surface of the rear bumper but not more than two inches beyond the rear bumper. The tail pipe may be routed through the rear bumper. If tail pipe is routed to the left side of body, the tail pipe shall extend at least to body skirt, but not more than one inch beyond body skirt. Tailpipe shall exit in the rear of the vehicle or to the left side of the bus. Tailpipe shall not exit beneath any fuel filler location or beneath any emergency exit.

(42) Tool Compartment: A metal container of adequate strength and capacity for storage of tire chains, tow chains and such tools as may be necessary, may be provided. Container may be located inside or outside of passenger compartment. If inside, it shall have a cover and positive type latch to prevent opening in event of a severe impact or bus rollover, and shall be attached to the floor with a nut and bolt fastener, or may be securely attached to a seat frame under a seat.

(43) Tow Hooks:

(a) Type C buses shall be equipped with two rear tow hooks, or one center tow hook tied to both frame rails, that have sufficient strength to pull or be pulled by another vehicle of the same GVWR. Tow hooks shall be installed in order that no permanent distortion to the body or chassis will result if the bus must be towed. (See also OAR 581-053-0512, Bus Chassis, section (31), Tow Hooks);

(b) Type D vehicles shall be equipped with two rear tow hooks or tow eyes, and at least one front tow hook or eye, mounted or capable of immediate mounting. Hooks or eyes shall have sufficient strength to pull or be pulled by another vehicle of the same GVWR.

(44) Under carriage luggage compartments: Luggage compartments may be installed on the outside of the bus mounted below the floor level or in the rear of the bus. Access to compartments must be from the outside only. Compartment doors must have a positive retention to hold the doors open. Compartment doors must be lockable. These rule changes apply to buses ordered after July 1, 2004

(45) Undercoating:

(a) Entire underside of bus body, including floor sections, cross member and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal

Specification TT-C-520b using modified test procedures* for following requirements:

(A) Salt spray resistance — pass test modified to five percent salt and 1,000 hours;

(B) Abrasion resistance — pass;

(C) Fire resistance — pass.

(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film. *Test panels are to be prepared in accordance with paragraph 4 6.12 of TT-C-520a with modified procedure requiring that tests be made on a 48-hour air cured film at thickness recommended by compound manufacturer.

(46) Ventilation:

(a) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather;

(b) Static-type nonclosable exhaust ventilation shall be installed in low-pressure area of roof.

(47) Video surveillance cameras may be installed inside or on the forward bulkhead (header) above the windshield in compliance with the following requirements:

(a) Surface mounted camera/camera housing/video recording devices or those extending into the passenger compartment shall be mounted as close as practicable directly above the driver but not to extend into the area directly forward of the aisle beyond the existing 6" x 30" rear view mirror or the installation complies with all of the following:

(A) The camera/recorder/housing extends into the passenger compartment no more than 9 inches;

(B) Extends down from the ceiling no more than five inches;

(C) Is no wider than five inches; and

(D) Is located as close as practicable to the mid-point of the header at the highest possible position.

(b) If camera/camera housing or video receiving device extends into the passenger compartment all edges must be rounded and/or protected with enclosure of shatterproof construction;

(c) Flush mounted camera systems (no extension into passenger compartment) may be mounted in any desired position on the bulkhead;

(d) Camera/camera housing must be adequately secured to the bulkhead or ceiling in a manner to prevent separation from the vehicle in the event of a collision or mishap. Securement system shall be capable of withstanding a force of 5,672 Newtons applied from any direction without separation from the bus;

(e) Camera mounting design must allow ready access for camera and video recording medium removal;

(f) All electrical connections shall be made with UL approved wiring and protected by grommets any place it passes through metal panels.

(48) Weight Distribution:

(a) Weight distribution of fully loaded bus on level surface shall be such as to not exceed the manufacturer's front Gross Axle Weight Rating (GAWR) and rear Gross Axle Weight Rating;

(b) Weight distribution of fully loaded bus on level surface shall be such that not more than 75 percent of gross vehicle weight is on rear tires and not more than 35 percent is on front tires. Type B and D buses with engine inside front of body and entrance door ahead of front wheels shall have not more than 75 percent of gross vehicle weight on rear tires or more than 50 percent on front tires. If entrance door is behind front wheels, not more than 75 percent of gross vehicle weight shall be on rear tires not more than 40 percent on front tires. With engine in rear, not more than 75 percent of gross vehicle weight shall be on rear tires or more than 40 percent on front tires.

(49) Wheelhousing:

(a) The wheelhousing opening shall allow for easy tire removal and service;

(b) Wheelhousing shall be attached to floor sheets in such a manner as to prevent any dust, water or fumes from entering the body. Wheelhousing shall be constructed of 16-gauge steel, or other material of equal strength;

(c) The inside height of the wheelhousing above the floor line shall not exceed 12 inches;

(d) The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels;

(e) No part of a raised wheelhousing shall extend into the emergency door opening.

(50) Windshield and Windows:

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(a) All glass in windshield, windows and doors shall be of approved safety glass so mounted that its identification mark is visible and of a quality to prevent distortion in any direction. All glazing materials shall be on the approved list of the Oregon Department of Motor Vehicles;

(b) Windshield shall be of safety plate glass AS-1 grade as specified by American National Standards Institute Safety Code Z26.1-1966;

(c) Windshield glass may be heat absorbing and may have a horizontal gradient band starting slightly above the line of the operator's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield in compliance with Federal Motor Vehicle Safety Standard 205;

(d) Glass in all side windows, doors and rear windows shall be AS-2 or better grade, as specified in Z26.1-1966, or AS-4 coated abrasion resistant rigid plastic meeting requirements of Federal Motor Vehicle Safety Standard 205. Rigid plastic cannot be used for windshields or windows immediately to the left or right of the driver;

(e) Side windows shall conform to the following:

(A) Buses shall provide full drop or split sash windows which provide an unobstructed opening of at least 12 inches and not more than 14 inches in height, obtained by lowering the sash, and at least 22 inches in width. Type A-1 and A-2 buses may have a full drop or split sash windows which provide an unobstructed opening of at least 9 inches and not more than 13 inches in height, obtained by lowering the sash, and at least 22 inches in width, provided the bus has 2 swing-out windows.

(B) One window on each side of the bus may be less than 22 inches in width.

(51) Windshield Washers: Bus shall be equipped with electric or air operated windshield washers.

(52) Windshield Wipers: Bus shall be equipped with two windshield wipers of air or electric type that meets FMVSS 104 powered by motor or motors of at least two speeds and with sufficient power to operate wipers under severe weather conditions. Type A-1 and A-2 bus manufacturer's standard is permitted.

(53) Wind deflectors may be installed according to manufacturer's standards on the rear roof to deflect snow, dust and dirt from the rear window.

(54) Wiring:

(a) All wiring shall conform to current standards of Society of Automotive Engineers;

(b) Circuits:

(A) Wiring shall be arranged in circuits, as required, with a circuit protection system. A system of color or number coding shall be used for all buses purchased after September 1, 1993 and an appropriate identifying diagram shall be provided the end user along with the wiring diagram provided by the chassis manufacturer. The following interconnecting circuits shall be color coded as noted:

- (i) Left rear directional light — yellow;
- (ii) Right rear directional light — dark green;
- (iii) Stop lights — red;
- (iv) Back-up lights — blue;
- (v) Tail lights — brown;
- (vi) Ground — white;
- (vii) Ignition feed, primary feed — black;
- (viii) The color of cables shall correspond to SAE J1128.

(B) Wiring shall be arranged in at least seven regular circuits, as follows:

- (i) Head, tail, stop (brake) and instrument panel lamps;
- (ii) Clearance and stepwell lamps (stepwell lamp shall be activated when service door is opened);
- (iii) Dome lamp;
- (iv) Ignition and emergency door signal;
- (v) Turn signal lamps;
- (vi) School Bus Safety Lights;
- (vii) Heaters and defrosters.

(C) Any of above combination circuits may be subdivided into additional independent circuits;

(D) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

(e) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted;

(d) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices are to be done at an accessible location and noted as splices on wiring schematic;

(e) Each body circuit shall be coded by number or letter on a diagram of easily readable size and be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel;

(f) Body power wire is to be attached to special terminal on the chassis;

(g) All wires passing through metal openings shall be protected by a grommet;

(h) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors and shall be moisture and corrosion resistant.

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

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; EB 16-1987(Temp), f. 7-30-87, ef. 9-27-87; EB 30-1987, f. & ef. 12-9-87; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 16-2004, f. & cert. ef. 8-4-04; ODE 10-2005, f. & cert. ef. 11-15-05

581-053-0550

Type 20 Pupil Transporting Vehicle Standards

(1) Definitions of terms used in this rule:

(a) "Type 20 vehicle": Type 20 vehicles shall have a capacity of not more than 20 passengers, shall have a gross vehicle weight rating of not more than 14,500 pounds, and are used to transport students to and from authorized school activities. These vehicles shall not be marked with the words "school bus" and shall be determined by class in accordance with provisions of ORS 820.150 and are not exempted by ORS 801.455;

(b) "Pupil transporting vehicle": A pupil transporting vehicle is defined by OAR 581-053-0002(1)(b);

(2) Vehicles shall meet all minimum construction and equipment standards of a Type A-1 school bus except for the following:

(a) Identification required by OAR 581-053-0517(16)(a) and (b). The words "School Bus" may not appear on a vehicle, which does not comply with all school bus requirements provided for in ORS 820.100 and 820.110. Activity vehicles may have fleet identification;

(b) Color required by OAR 581-053-0517(5). The vehicle may be painted school bus yellow if desired;

(c) Lights required by OAR 581-053-0517(21)(k). Only vehicles described in ORS 816.350(8) may be equipped with and display bus safety lights;

(d) Public address systems required by OAR 581-053-0517(30)(c).

(3) An annual inspection shall be completed for each vehicle (all applicable items on Form 581-2255), and certification of inspection and repair (Form 581-2256) shall be returned to the Oregon Department of Education in accordance with OAR 581-053-0008(1) and (2).

(4) District shall immediately notify the Department of Education if they have reason to believe any change in the driver(s)' criminal or driving record has occurred which could effect the person(s)' ability to meet the licensing provisions listed in OAR 581-053-0006(8).

(5) No person shall transport pupils in a Type 20, unless such person has completed all requirements for a Type 20 certificate and meets the standards established by the Department for Type 20 activity drivers.

(6) Type 20 Original Certificate. The Oregon Department of Education shall issue a Type 20 certificate to qualified individuals who meet the following requirements:

(a) Be at least 18 years of age as required by ORS 820.190;

(b) Possess the required license as follows:

(A) A valid driver's license for vehicles with a passenger capacity of 14 or less, or:

(B) An Oregon commercial driver license with passenger endorsement for vehicles with a passenger capacity of 15 or more, provided the driver has

(i) A valid medical card, as defined in 735-074-0280

(ii) Been enrolled in a drug and alcohol screening requirements by the Federal Highway Administration for Commercial Drivers.

(C) The Oregon Department of Education may approve an out-of-state operator's license if it is consistent in provision with the required Oregon license;

(c) Has completed a minimum of two hours of approved behind-the-wheel training within one year of application by a trainer certified by the Oregon Department of Education. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Oregon Department of Education in actual operation of the vehicle or vehicles the applicant will be expected to drive. Training shall include

(A) Complete training for proper vehicle pretrip inspection;

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- (B) Demonstrate knowledge of laws and regulations applicable to the vehicle being used
- (C) Complete emergency procedure and evacuation training;
- (d) Demonstrate necessary vehicle operational skills (in the vehicle to be used) to an authorized official through a behind-the-wheel test, administered by a trainer certified by the Oregon Department of Education
- (e) Pass a driving and criminal records check by meeting current requirements of issuance for a school bus driver's license, as specified in OAR 581-053-0006(8).
- (f) Possess or obtain within 120 days of original use request a valid first aid card; i.e., A valid first aid card must then be maintained at all times;
- (g) Complete accident reports as required of school bus drivers by OAR 581-053-0015(7)(y);
- (h) Report to he/her employer(s) within 15 days, any conviction for driving or criminal offenses specified in OAR 581-053-0006(8) or any involvement in an accident as defined in OAR 581-053-0006(8)(G)(i);
- (i) Drivers who are transporting special education students should receive specialized training designed for this purpose;
- (j) Not operate a vehicle with more passengers than the manufacturers designed or equipped capacity;
- (k) Instruct passengers to use seat belts at all times the vehicle is in motion;
- (l) Maintain order in the vehicle at all times. The inside of the vehicle shall be kept clean;
- (m) See that all doors on the vehicle are kept closed while the vehicle is in motion;
- (n) Not permit anyone else to operate the vehicle except with the permission of authorized officials;
- (o) Make certain that all aisles and passageways are kept clear;
- (p) Make sure all rear doors (emergency exits) are unlocked during vehicle operation;
- (q) Not use tobacco in the vehicle or the vicinity and shall not permit passengers to use tobacco on the vehicle;
- (r) Not be under the influence of any alcoholic beverage or any drug likely to affect the person's ability to operate a vehicle safely while on duty;
- (s) Not consume any alcoholic beverage regardless of its alcoholic content or any drug likely to affect a person's ability to operate a vehicle safely while on duty or within eight hours before going on duty to operate or to have physical control of a pupil-transporting vehicle;
- (t) Not permit signs of any kind to be attached to the vehicle except those specifically permitted by law or regulation;
- (u) Not permit animals in the vehicle; however, guide dogs are allowed and assistance animals as well as guide/assistance animals in training that comply with OAR 581-053-0015(7)(j);
- (v) Not permit firearms, other weapons, or potentially hazardous materials to be carried in the vehicle;
- (w) Secure any article in the passenger compartment likely to cause injury to a passenger in the event of an accident;
- (x) Not fill the fuel tank while passengers are in the vehicle or while the motor is running;
- (y) Not leave the vehicle when passengers are aboard until the motor is shut off, the brakes set, a manual transmission put in gear and the key removed from the ignition;
- (z) Report as soon as possible to the proper official any deficiency or malfunction or any equipment or component of the vehicle;
- (aa) Not alter routes unless approved by school authorities;
- (bb) Shall inspect the following prior to each trip, unless the inspection is performed by other designated employees:
 - (A) Windshield and wipers;
 - (B) All outside lights;
 - (C) Service door, emergency door and buzzer;
 - (D) Tires and wheel lug nuts;
 - (E) Battery, belts, oil and coolant level;
 - (F) Horns;
 - (G) Brakes;
 - (H) Steering;
 - (I) Exhaust system;
 - (J) Emergency equipment; and
 - (K) See that lights, windshield and mirrors are clean.
- (cc) Shall use all securement straps and attachments for students with adaptive/assistive devices in a manner consistent with their design.
- (dd) Shall not tow a trailer with a gross vehicle weight rating of more than 3,000 lbs or longer than the towing vehicle.

(7) Type 20 Certificate Renewal. The Oregon Department of Education shall issue a Type 20 certificate to qualified individuals who meet the following requirements:

(a) Possesses or has possessed within the last 12 month period a valid Type 20 certificate.

(b) Possess the required license as follows:

(A) A valid driver's license for vehicles with a passenger capacity of 14 or less, or:

(B) An Oregon commercial driver license with passenger endorsement for vehicles with a passenger capacity of 15 or more, provided the driver has

(i) A valid medical card, as defined in 735-074-0280

(ii) Been enrolled in a drug and alcohol screening requirements by the Federal Highway Administration for Commercial Drivers.

(C) The Oregon Department of Education may approve an out-of-state operator's license if it is consistent in provision with the required Oregon license;

(8) Expiration:

(a) Type 20 certificates shall be valid for two years. Certificates will not be valid if:

(A) First Aid card has expired; or

(B) Medical Card has expired if applicable

(9) Driving hour limitations:

(a) Except as provided by subsection (5)(b) of this rule a driver shall not drive any pupil transporting vehicle more than a total of ten hours during any consecutive 15-hour period. At the end of ten hours of driving or a fifteen hour period, whichever occurs first, the driver shall not again drive any pupil transporting vehicle until at least eight hours have elapsed;

(b) The driver of any pupil transporting vehicle, after driving a regular morning route transporting pupils from home to school, may again operate any pupil transporting vehicle, but not more than eight hours in a consecutive ten hour period or until 12 midnight, whichever occurs first, provided the driver has at least four hours free from actual operation of a pupil transporting vehicle following the end of the morning route. To qualify under this provision, the driver shall have been free from pupil transporting vehicle driving duties for at least eight consecutive hours prior to the regular morning route;

(c) A driver shall not drive more than three hours continuously without taking at least a 15-minute break from driving duties;

(d) Emergency extension of driving hours: In the event of an unforeseen emergency, e.g., mechanical breakdown, accident or adverse road conditions, a driver may complete the trip without being in violation of the provisions of this rule if such trip could have reasonably been completed as originally scheduled without violation of this rule.

(9) Refusals and Suspensions:

(a) The Oregon Department of Education may refuse, suspend or revoke the certificate of a Type 20 driver for noncompliance with certification or license requirements, giving false or incomplete information on application forms, or failure to comply with laws, rules and regulations applicable to Type 20 drivers. Applications with obvious incomplete or inaccurate information will be returned to the employer with no action taken regarding denial or approval;

(10) These rules may be implemented prior to, but are mandatory by January 1, 2006.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 26-1986, f. 7-17-86, ef. 10-1-86; EB 45-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 31-2004, f. & cert. ef. 10-15-04; ODE 10-2005, f. & cert. ef. 11-15-05

Oregon Department of Education, Fair Dismissal Appeals Board Chapter 586

Adm. Order No.: FDAB 1-2005

Filed with Sec. of State: 10-21-2005

Certified to be Effective: 10-21-05

Notice Publication Date: 9-1-05

Rules Adopted: 586-030-0051

Rules Amended: 586-030-0050

Subject: The amendments to OAR 586-030-0050 will specify that the parties exchange exhibits at least 10 days prior to the beginning of a hearing in order to expedite the process. The new rule, OAR 586-030-0051, will expand the board's options should a witness in a hear-

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ing refuse to answer, rather than being able only to strike the witnesses testimony.

If you have a question regarding these rules, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of a rule, please contact Debby Ryan at (503) 378-3600, Ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

586-030-0050

Exhibits

(1) At the start of the hearing each party shall provide the panel the original and four copies of exhibits for their respective case-in-chief (a total of 5 sets) with an exhibit list. Witnesses shall use the original exhibits.

(2) Appellant shall designate and mark exhibits "A-1" et seq and the school district "D-1" et seq. The exhibit list shall provide identification by exhibit number, a brief description, and columns showing "pages" (filled out) "offered" and "received."

(3) Exhibits shall be arranged in a chronological or other logical order. Three ring binders to hold the exhibits shall be provided where the number make it difficult to retain.

(4) In addition to the District's requirements under ORS 342.905(4), the parties shall exchange exhibits for their respective case-in-chief and the exhibit list ten (10) calendar days prior to commencement of the hearing.

(5) The panel may take time at the beginning of the hearing to discuss preliminary admissibility of exhibits.

(6) Exhibits not pre-marked and distributed prior to the hearing will be excluded in that party's case-in-chief unless good cause is shown why they were not presented consistent with these rules.

(7) Exhibits that are used solely for impeachment or rebuttal may be submitted during the hearing without pre-marking and exchanging under this rule. The same total number shall be provided as specified above.

(8) All exhibits offered and not withdrawn shall remain in the record even if not received by panel.

Stat. Auth.: ORS 183 & 342
Stats. Implemented: ORS 864 & OL 2001
Hist.: FDA 1-1997(Temp), f. & cert. ef. 12-15-97 thru 6-13-98; FDAB 1-1998, f. & cert. ef. 6-4-98; FDAB 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; FDAB 2-2001, f. & cert. ef. 12-31-01; FDAB 1-2005, f. & cert. ef. 10-21-05

586-030-0051

Witnesses

(1) In addition to the District's requirements under ORS 342.905(4), the parties shall exchange witness lists ten (10) calendar days prior to the commencement of the hearing.

(2) All testimony to be considered at a hearing, except matters officially notices or entered by stipulation, shall be sworn or affirmed.

(3) Refusal of a witness to answer any question ruled to be proper shall, in the discretion of the panel, be grounds for excusing the witness and/or striking any or all testimony given by the witness.

Stat. Auth.: ORS 342.930
Stats. Implemented: ORS 342.905
Hist.: FDAB 1-2005, f. & cert. ef. 10-21-05

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 3-2005(Temp)

Filed with Sec. of State: 11-9-2005

Certified to be Effective: 11-9-05 thru 5-8-06

Notice Publication Date:

Rules Amended: 813-202-0020

Subject: Proposed changes clarifies the eligibility requirements for households to participate in the Oregon Energy Assistance Program. Added rule language was incorporated concerning exceptions to eligibility requirements will be granted by the State of Oregon Energy Assistance Program Coordinator.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-202-0020

Eligibility

(1) An eligible household includes homeowners and renters who have an income at or below 60 percent of the Oregon median income in effect at the start of the Program year, demonstrated energy costs on an account with an electric company or are a renter whose electric usage is measured and charged based on actual usage and where payment can be made to the organization and/or person responsible for the utility bill. Exceptions to

whom payment will be made may be granted by the state Oregon Energy Assistance Program Coordinator.

(2) Except as provided in the next sentence, the period for determining a household's income eligibility shall not be more than the 12 months preceding the date of application or less than the 30 days immediately preceding the date of application. A DHS income verification notification may be presented by a DHS client at the time of application as evidence of the household's verified income.

(3) A resident of government subsidized housing may be eligible for up to 50 percent of a regular energy assistance payment, depending on household size and income, and may be eligible to receive a crisis energy assistance payment assuming they meet eligibility requirements.

(4) A resident of an institution is not eligible for energy assistance under the Program. Institutions include hospitals, licenses domiciliary care facilities, intermediate care facilities, skilled nursing facilities or homes, alcohol and drug rehabilitation centers or treatment programs, dormitories, fraternities, sororities, and temporary protective facilities such as domestic violence shelters and homeless shelters.

Stat. Auth.: ORS 184, 456.555, 757.612 & 757.617

Stats. Implemented: ORS 456.555

Hist.: OHCS 6-2003, f. & cert. ef. 5-15-03; OHCS 3-2005(Temp), f. & cert. ef. 11-9-05 thru 5-8-06

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 6-2005

Filed with Sec. of State: 10-19-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 8-1-05

Rules Amended: 845-004-0120

Subject: This rule describes the authority the Commissioners retain, and the authority which is delegated to the agency Administrator and Assistant Administrator in regard to issuance of subpoenas and administration of oaths. We amended the rule to add references to such media as payrolls, accounts, papers, testimony, videotapes, DVDs, audiotapes and other media used to capture or record information and activities.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-004-0120

Investigative Subpoenas and Oaths

(1) Purpose. ORS 471.760 allows the Commissioners and any of their authorized agents to issue subpoenas and administer oaths. The Commissioners delegate authority to the Administrator and Deputy Administrator to issue investigative subpoenas, and authorize the Administrator to delegate that authority to selected staff. This rule defines the circumstances under which the Commission issues investigative subpoenas and administers oaths. This rule does not concern subpoenas issued and oaths administered by Administrative Law Judges in the contested case process. For purposes of this rule, the term "records" includes videotapes, DVDs, audiotapes, CDs, and other media used to capture or record information and activities.

(2) At any time during a license application, Service Permit application, or alleged liquor law violation investigation, the Administrator or Deputy Administrator may issue:

(a) An investigative subpoena for books, payrolls, accounts, papers, documents or records under the following circumstances:

(A) It appears to the Administrator or Deputy Administrator the information may be helpful to make a decision about a liquor license application, Service Permit application, or alleged liquor law violation; and

(B) The applicant, licensee or Service Permittee cannot or will not provide the book, payroll, account, paper, document or record; the investigation might be compromised by asking the licensee or applicant for the book, payroll, account, paper, document or record; or the person in possession of the book, payroll, account, paper, document or record requires a subpoena for its release.

(b) An investigative subpoena to any person requiring the person to give a sworn statement. The Administrator or Deputy Administrator may issue a subpoena whenever compelling a sworn statement may be helpful in making a decision about a liquor license application, Service Permit application, or alleged liquor law violation. Investigators, Inspectors, Regional Coordinators and Regional Managers may conduct interviews of subpoenaed witnesses under oath.

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(3) During a liquor license application, Service Permit application, or alleged liquor law violation investigation, an Investigator, Inspector, Regional Coordinator or Regional Manager may administer an oath to a person making a voluntary statement.

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

Stats. Implemented: ORS 471.760

Hist.: OLCC 16-1997, f. 7-24-97, cert. ef. 9-1-97; OLCC 6-2005, f. 10-19-05, cert. ef. 11-1-05

Adm. Order No.: OLCC 7-2005

Filed with Sec. of State: 10-19-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 3-1-05

Rules Amended: 845-005-0428

Subject: This rule describes the parameters and responsibilities when a Full On-Premises Sales licensee allows a distillery representative to be present on the Full licensee's premises for the purpose of participating in tasting events. We have amended the rule to add language allowing distillery representatives to be on Full premises to offer no more than 2 one-quarter ounce sized sample tastings of products they represent to the Full licensee's customers - this is a new concept in the rule. We also rewrote rule language regarding retailer-sponsored dinner tasting events currently allowed under this rule.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-005-0428

Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative

(1) Full On-Premises Sales licensees may allow a distillery with products approved for sale in Oregon (distillery) and its representatives, employees, contractors, and agents to participate in distilled spirits educational seminars and sample tasting events. These events must be sponsored by the Full On-Premises Sales licensee and be held on the Full On-Premises Sales licensee's permanently (not temporarily) licensed premises.

(2) Sample Tasting Events. These are events sponsored by the Full On-Premises Sales licensee where a distillery and its representatives, employees, contractors, and agents visit the Full On-Premises Sales licensee's permanently licensed premises for the purpose of offering free sample tastings of the distillery's product to customers of the Full On-Premises Sales licensee. At any event allowed by sections (2) through (7) of this rule, the Full On-Premises Sales licensee is responsible for ensuring that the distillery and its representatives, employees, contractors, and agents:

(a) Provide or pay for the person to serve the distilled spirit tasting. The server must be the distillery's representative, employee, contractor, or agent. The server may not be an employee or agent of the Full On-Premises Sales licensee where the tastings occur. All servers must have valid Oregon Service Permits;

(b) Do not compensate the Full On-Premises Sales licensee or its employees or agents in order to conduct the tasting event;

(c) Do not sell, serve, or coordinate the sale or service of alcohol for the Full On-Premises Sales licensee or its employees or agents;

(d) Do not advertise the tasting. The Full On-Premises Sales licensee may advertise the tasting event only inside its retail business;

(e) Do not provide any other service normally provided by the Full On-Premises Sales licensee (for example: taking orders for alcohol or food, serving drinks to customers, promoting alcohol beyond service of the sample tasting);

(f) Provide the product to be sampled, and remove any remaining product at the end of the tasting;

(g) Provide only product approved for sale in Oregon;

(h) Do not give anything prohibited by division 13 of chapter 845 of the Commission's administrative rules to a retailer or its customers;

(i) Comply with ORS 471.398, and division 13 of chapter 845 of the Commission's administrative rules.

(3) Tastings allowed under sections (2) through (7) of this rule are permitted only in premises or portions of premises where minors are not allowed, either due to an existing OLCC minor posting sign which prohibits minors, or because the event is not open to minor patronage.

(4) Sample tasting sizes, number of samples per customer. At sample tasting events allowed under sections (2) through (7) of this rule, sample tastings are limited to two free samples of one-quarter ounce each per customer per tasting session, or one free sample of no more than one-half ounce of alcohol per customer per tasting session. A distillery and its rep-

resentatives, employees, contractors, and agents may not provide more than one-half ounce total of distilled spirits samples per customer per day. For purposes of this rule, a day is from 7:00 a.m. until 2:30 a.m. on the succeeding calendar day.

(5) Number of sample tasting events allowed. Each Full On-Premises Sales licensee shall sponsor no more than eight sample tasting events (as described in sections (2) through (7) of this rule) per calendar year on its premises.

(6) Violations associated with sample tastings. In the case of a liquor law violation associated with a sample tasting allowed under sections (2) through (7) of this rule, the Full On-Premises Sales licensee will be held responsible. When the violation also involves a server (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the Full On-Premises Sales licensee will be held responsible.

(7) Record keeping. The Full On-Premises Sales licensee must keep a record of each tasting event it sponsors, including the date and location of each event, the products served, and the names of the servers. Records of tasting events must be retained for one year from the date of the tasting.

(8) Promotional Dinner Events. These are events sponsored by a Full On-Premises Sales licensee on its permanently licensed premises where it accepts assistance from the distillery and its representatives, employees, contractors, and agents, where meals are served, and multiple servings/samples ("flights") of distilled spirits accompany the meals. These are not considered sample tasting events as described in sections (2) through (7) of this rule. At all promotional dinner events the Full On-Premises Sales licensees must meet the Commission's food service standards as described in OAR 845-006-0460 through 845-006-0468. All distilled spirits consumed at promotional dinner events as described in this section must be purchased by the Full On-Premises Sales licensee from a retail sales agent of the Commission or from another Full On-Premises Sales licensee who has purchased the distilled spirits from a retail sales agent of the Commission. All advertising of the promotional dinner event must be purchased by the Full On-Premises Sales licensee.

(a) Each Full On-Premises Sales licensee may sponsor no more than eight promotional dinner events per calendar year on its premises.

(b) At events allowed under this section, the Full On-Premises Sales licensee is responsible for ensuring that the distillery and its representatives, employees, contractors, and agents:

(A) Provide only education to patrons and staff (the distillery and its representatives, employees, contractors, and agents may not pour, serve or sell alcoholic beverages);

(B) Participate in these promotional events only for the products they represent;

(C) Do not compensate any employee or agent of the retail licensee to participate in any promotional event as described in this section;

(D) Do not pay for advertising the event;

(E) Do not donate, give, pay for, underwrite, or otherwise compensate the Full On-Premises Sales licensee for the distilled spirits consumed at the promotional dinner event.

(c) The Full On-Premises Sales licensee must keep a record of each promotional dinner event it holds, including the date and location of each event, the proof of purchase of each product(s) served, the distillery or distilleries represented, and the name of each distillery representative, employee, contractor, or agent who participated in an educational capacity at the event. These records must be retained by the Full On-Premises Sales licensee for one year from the date of the promotional dinner event.

(9) Violation of sections (2) through (8) of this rule are Category III violations.

(10) A distillery and its representatives, employees, contractors, and agents may offer samples not exceeding one-quarter ounce of alcohol per sample by measured pour to those attending an industry trade show.

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

Stats. Implemented: ORS 471.398 & 471.750

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 3-2001(Temp), f. & cert. ef. 8-10-01 thru 2-6-02; OLCC 3-2002, f. & cert. ef. 2-15-02; OLCC 7-2005, f. 10-19-05, cert. ef. 11-1-05

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 18-2005(Temp)

Filed with Sec. of State: 10-26-2005

Certified to be Effective: 10-26-05 thru 4-19-06

Notice Publication Date:

Rules Amended: 459-007-0001, 459-007-0003, 459-007-0005, 459-007-0090

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Rules Suspended: 459-007-0095, 459-013-0300

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

In all of the rule modifications, an effective date is specified. These dates correspond to when the prior, now invalid, version of the rules became effective. These modifications will, by operation of these dates, supersede the non-conforming versions.

OAR 459-007-0001: The only change in this rule is the verb tense used in reference to the Deficit and Rate Guarantee reserves as they will now be ongoing accounts, not just reflections of prior deficits.

459-007-0003: This rule reflected the limitations on Tier One member regular account earnings crediting that were voided in Strunk. The rule modifications clarify that Tier One member regular accounts will be credited with no less than a pro-rate of the assumed interest rate. The rule also notes that such accounts cannot be credited with more than that rate until the conditions of ORS 238.255 are met. HB 2001 (2003 regular session) adopted limitations that prevent the PERS Board from crediting more than the assumed interest rate to Tier One member regular accounts. Those limitations were not challenged in the Strunk case, so the rule modifications acknowledge them.

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

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

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

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

Rules Coordinator: David K. Martin—(503) 603-7713

459-007-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms for purposes of this Division are defined as follows unless context requires otherwise:

(1) “Annual rate” means the rates determined by the Board for crediting earnings to Tier One regular accounts, Tier Two regular accounts and member variable accounts, effective as of December 31 of each year.

(2) “Assumed rate” means the actuarial assumed rate of return on investments as adopted by the Board for the most recent actuarial valuation.

(3) “Average annualized rate” means the monthly rate provided by the Oregon State Treasury representing the rate credited to cash accounts.

(4) The “Benefits-in-Force Reserve” or “BIF Reserve” means the reserve established under ORS 238.670(2).

(5) “Capital Preservation Reserve” means the reserve established under ORS 238.670(3).

(6) “Contingency Reserve” means the reserve established under ORS 238.670(1).

(7) The “date of distribution” is the date inscribed on the check, warrant, or electronic transfer issued to or on behalf of the member, the member’s beneficiary, or an alternate payee.

(8) “Date of payment” means the date a payment is received by PERS.

(9) “Earnings” means all income to the Fund from investments and other sources, but does not include member or employer contributions.

(10) “Tier One Member Deficit Reserve” and “Deficit Reserve” mean the deficit reserves established in ORS 238.255(1) that are used to fund crediting of the assumed rate to Tier One regular accounts and that are used to reflect losses attributable to Tier One regular accounts.

(11) “Tier One Member Rate Guarantee Reserve” and “Rate Guarantee Reserve” mean the reserve referenced in ORS 238.255(1) that enables the Board to credit earnings at or above the assumed rate under the conditions specified in ORS 238.255.

(12) “Year-to-date calculation” means the factor used to credit a pro-rata distribution of year-to-date earnings, allowing for reserves and expenses, to Tier One regular accounts, Tier Two regular accounts, or member variable accounts. These factors are calculated by staff on a monthly basis using the market value of investments in the Fund as supplied by the Oregon State Treasury. Year-to-date calculations for Tier One member regular accounts will be determined in accordance with OAR 459-007-0003.

(13) The provisions of this rule shall be applied retroactively to July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PER 1-1995, f. 9-12-95, cert. ef. 1-1-96; PER 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(1); PER 6-1998, f. & cert. ef. 5-22-98, Renumbered from 459-007-0010; PER 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PER 24-2003, f. & cert. ef. 12-15-03; PER 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

459-007-0003

Determination of Tier One Year-to-Date Calculation

(1) Any year-to-date calculation (“factor”) used to credit earnings to Tier One member regular accounts shall be a pro-rate of the assumed interest rate and cannot be greater unless and until the conditions in ORS 238.255 have been met.

(2) The provisions of this rule shall be applied retroactively to July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PER 24-2003, f. & cert. ef. 12-15-03; PER 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

459-007-0005

Annual Earnings Crediting

(1) For purposes of this rule, “remaining earnings” means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

(5) Administrative expenses.

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system’s remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) Contingency Reserve.

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One member regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the

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Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One member regular accounts.** All remaining earnings attributable to Tier One member regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One member regular accounts and the Tier One Member Rate Guarantee Reserve, then moneys in the Tier One Member Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Tier One Member Deficit Reserve has a zero balance, remaining earnings attributable to Tier One member regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238
Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

459-007-0090

Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments

Notwithstanding 459-007-0070, if a Tier One member retires and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) **Regular account.** Earnings shall be credited to the member's regular account as follows:

(a) **Prior year earnings.** If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) **Variable account.** If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) **Prior year earnings.** If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) **Initial installment.** Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) **Annual earnings — initial year.** Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) **Annual earnings — subsequent years.** Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) **Final installment.** The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

(7) The provisions of this rule shall be applied retroactively to April 1, 2004.

Stat. Auth.: ORS 238.305(3)(c) & 238.650
Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315
Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PER 1-1995, f. 9-12-95, cert. ef. 1-1-96; PER 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(10); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

459-007-0095

Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments

Notwithstanding 459-007-0070, if a Tier One member retires with an effective retirement date on or after August 1, 2003, and prior to April 1, 2004, and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) **Regular account.** Earnings shall be credited to the member's regular account as follows:

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(a) Prior year earnings. If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings for the calendar year of the effective retirement date shall be based on the greater of the assumed rate or the latest year-to-date calculation as of the effective retirement date.

(2) Variable account. If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) Prior year earnings. If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) Initial installment. Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) Annual earnings — initial year. Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The Tier Two annual rate for that year less the latest year-to-date calculation for Tier Two as of the effective retirement date.

(5) Annual earnings — subsequent years. Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the day before the date of distribution of the annual installment; multiplied by

(B) The Tier Two annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The Tier Two annual rate for that year, prorated from the date of distribution to December 31.

(6) Final installment. The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest Tier Two year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest Tier Two year-to-date calculation as of the date of distribution of the final installment.

(7) The provisions of this rule are effective on July 30, 2003.

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

Stats. Implemented: ORS 238.260, 238.300, 238.305, 238.315 & OL 2003 Ch. 625 (Enrolled HB 3020)

Hist.: PERS 24-2003, f. & cert. ef. 12-15-03; Suspended by PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

459-013-0300

HB 2003 Retirement Allowance Recalculations

(1)(a) The provisions of this rule apply to Tier One members, and the alternate payees and beneficiaries of Tier One members, who receive a service retirement allowance calculated under ORS 238.300(2)(b)(A) and who have an effective retirement date that is on or after April 1, 2000, and before April 1, 2004.

(b) The provisions of this rule do not apply to:

(A) Judge members and the beneficiaries or alternate payees of judge members.

(B) A member who receives a disability retirement allowance.

(2) Revised service retirement allowance. The "revised service retirement allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as amended by section 13, Enrolled HB 3020) shall be calculated as follows:

(a) An account balance for the member as of the member's effective retirement date shall be determined as though the balance in the member's regular account as of December 31, 1999, had been credited with 11.33 percent earnings for the calendar year 1999.

(b) The member's service retirement allowance shall then be calculated for that member as of the member's effective retirement date using the account balance established in subsection (a) of this section. This calculation shall be made under ORS 238.300; section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004); and any other provisions of ORS Chapter 238 that are applicable to the calculation or adjustment of the member's service retirement allowance.

(c) The retirement allowance calculated in subsection (b) of this section shall be converted to the form of benefit selected by the member under ORS 238.305, if any, and adjusted as required by section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004), or by any other provision of ORS Chapter 238.

(d) The allowance calculated under subsection (b) or, if applicable, subsection (c) of this section shall then be adjusted as if the cost of living adjustment provided for in ORS 238.360 had applied to that benefit for each calendar year after the member's effective retirement date.

(3) Fixed service retirement allowance. The "fixed service retirement allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as amended by section 13, Enrolled HB 3020) shall be the amount payable to or on account of the member on July 1, 2003, or on the member's effective retirement date, whichever is later. The fixed service retirement allowance includes any benefit increases such as those provided by ORS 238.375, 238.385, or 238.387, and cost of living adjustments that have been made to the member's actual retirement allowance prior to July 1, 2003.

(4) The service retirement allowance payable to or on account of members described in section (1) of this rule shall be the greater of the revised service retirement allowance calculated under section (2) of this rule or the fixed service retirement allowance calculated under section (3) of this rule.

(5) The provisions of this rule are effective July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: OL 2003 Ch. 67 & Ch. 625 (Enrolled HB 2003 & HB 3020)

Hist.: PERS 6-2003(Temp), f. 6-13-03 cert. ef. 7-1-03 thru 12-26-03; Suspended by PERS 7-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-26-03; PERS 17-2003, f. & cert. ef. 12-15-03; Suspended by PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

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Rules Amended: 459-005-0001, 459-005-0525, 459-010-0025, 459-010-0045, 459-011-0100, 459-011-0110, 459-045-0001

Subject: PERS staff undertook a comprehensive review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, and changes prompted by PERS-related 2005 legislation. This rulemaking is to incorporate these non-substantive rule modifications. SB 108, which goes into effect on January 1, 2006, prompts the changes in this rulemaking action. Therefore the effective date for these rule modifications is January 1, 2006.

Rules Coordinator: David K. Martin—(503) 603-7713

459-005-0001

Definitions, Generally

The words and phrases used in Chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750.

ADMINISTRATIVE RULES

Specific and additional terms used in Chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) "Casual worker" means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

(10) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(6).

(12) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS Chapter 238.

(13) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(14) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(15) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

(c) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(18) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(19) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(22) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(23) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(24) "Qualifying position" has the same meaning as provided in ORS 238.005(19).

(25) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(26) "Salary," "remuneration" and "compensation" have the same meanings as provided in ORS 238.005(21).

(a) For a Tier One member, the lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(b) For a Tier Two member, the lump sum payment for accrued vacation payment:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(27) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(28) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(29) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(30) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(31) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer

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has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(32) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(33) "Variable Annuity Account" means the account established in ORS 238.260(2).

(34)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(35) "Year" means any period of 12 consecutive calendar months.

(36) The provisions of this rule are effective January 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-005-0525

Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS Chapters 238 and 238A.

(2) Definitions:

(a) A "participant" shall mean an active or inactive member of PERS.

(b) An "eligible participant" shall mean a person who first becomes a member of PERS before January 1, 1996.

(c) A "noneligible participant" shall mean a person who first becomes a member of PERS after December 31, 1995.

(d) "Annual compensation" shall mean "salary," as defined in ORS 238.005(21) and 238.205 with respect to ORS Chapter 238 and in ORS 238A.005(16) with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

(e) For the purposes of this rule as it applies to ORS Chapter 238, an "employer" shall mean a "public employer" as defined in ORS 238.005(17). For the purposes of this rule as it applies to ORS Chapter 238A, an "employer" shall mean a "participating public employer" as defined in ORS 238A.005(11).

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$200,000 per calendar year beginning in 2002.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005(8) with respect to ORS Chapter 238 and under ORS 238A.130 with respect to ORS Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005(8) with respect to Chapter 238 and as defined in ORS 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in ORS 238.005(5), shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17). With respect to ORS Chapter 238A, retirement credit as determined in ORS 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 & 238A.005(16)(c)(l)

Stats. Implemented: ORS 238

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-010-0025

Student Employee

(1) Under ORS 238.015(4), student employees, inmates of a state institution, and aliens on a training or educational visa are not eligible for membership in the system. A participating employer is responsible for determining whether an employee is ineligible for membership in the system because the employee is a student employee, an inmate of a state institution, or an alien on a training or educational visa.

(2) As used in this rule:

(a) The term "school" includes an accredited or certified public or private elementary school, high school, community college, or institution of higher education, or an Oregon education service district, or the Oregon State School for the Deaf or the Oregon State School for the Blind; but

(b) The term "school" does not include:

(A) Private technical, trade or correspondence schools that do not grant educational degrees; and

(B) Course(s) offered by a school that are not applied toward a degree.

(c) The terms "half-time enrolled" or "enrolled half time" mean that a person is enrolled at least 50% of a full-time enrolled status in a school, as defined in subsection (a) of this section, and as determined by the school in which enrolled.

(3) A participating employer may reasonably designate an employee as a "student employee" if the employee is a person:

(a) Who is enrolled at least half time in a school and whose employment is principally for the purpose of furthering the person's education; or

(b) Whose employment is principally related to the employee's status as a student, e.g. a work-study program.

(4) An employee may be a student employee under the following circumstances:

(a) The employer is a school and the employed person's principal relationship to the school is as at least a half-time enrolled student.

(b) The employer is not a school, but the person employed is enrolled half time in a school and the work performed for the employer is primarily for the purposes of furthering the person's course of study at the school, or is otherwise related to the person's education. For example:

(A) A student intern at the Legislative Assembly who will receive academic credit for the internship is a student employee.

(B) If an employer requires, for reasons legitimately related to the employment of the person, that an employee be at least a half-time enrolled student; the employee is a student employee.

(5) An employee who is also a student shall be eligible for membership in the system if the employee's work for the employer is the principal basis for the employment relationship and is not related to the employee's course of study at a school. For example:

(a) A full-time employee who attends classes outside of working hours for purposes unrelated to the work performed for the employer is not a student employee, except as provided in section (3) of this rule.

(b) A full-time employee who is granted administrative time off to attend class and the course is recommended or authorized by the employer to maintain or improve the employee's job performance is not a student employee.

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(c) A full-time employee, or a part-time employee employed in a position which qualifies the employee for active membership in PERS who is taking a course or is enrolled less than half time in a school, is not a student employee, except as provided in section (3) of this rule.

(6) If an employee qualifies as a student employee under section (3) of this rule, the employee may be deemed a student employee during a break between semesters or quarters of study provided that the student employee has declared, or otherwise indicated, the intent to resume at least half-time enrolled status following the break, provided that the break does not exceed an academic quarter or semester, and the employer has a reasonable expectation that the employee shall resume at least a half time enrolled status following the break.

(7) For an employee whose employment relationship with the employer varies from time to time, from that as a student employee to not as a student employee, the majority employment relationship during a school year shall prevail in determining whether an employee is a student employee for that year.

(8) The employer's policy designating a position or an employment relationship as that of a student employee shall be in writing, and shall reflect the following:

(a) The designation is not primarily for the avoidance of PERS contributions; and

(b) The designation shall be in accordance with applicable laws and regulations pertaining to employment practices.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015(4)

Hist.: PER 8, f. 12-15-55; PERS 8-1998, f. & cert. ef. 5-22-98; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-010-0045

Substitution of Annuity

(1) A public employer participating in the Public Employees Retirement System may petition the Public Employees Retirement Board to substitute an annuity which an employee has already commenced to purchase as provided by ORS 238.015(7) for all benefits otherwise provided for in ORS Chapter 238.

(2) The benefit adequacy of the substitute annuity shall be determined by the employer. In determining the adequacy of the benefits, the employer shall assure that the substitute annuity provides no less than 80 percent of the total actuarial present value of what the system would provide, under a service or disability retirement or a death benefit, and vesting for the same period of employment.

(3) A petition for substitution of an annuity by a public employer shall include the following:

(a) A copy of the proposed contract between the employee and the employer for the substitution of an annuity;

(b) A complete description of the annuity to be substituted.

(4) PERS staff shall have PERS' consulting actuary review the public employer's petition to assure:

(a) The documentation that the benefit adequacy meets the standard in section (2) of this rule.

(b) The proposed contract between the employee and the employer is in compliance with state and federal laws and regulations.

(c) The public employer shall bear the costs of the actuarial review.

(5) The Board may require the public employer to provide additional information necessary to confirm the employer's determination of the actuarial present value of benefits to be provided by the substituted annuity.

(6) The retirement annuity provided by the Federal Retirement System is considered as an acceptable annuity for an employee participating in that plan and desiring to be exempted from contributing to PERS, provided the federal annuity is adequate in amount.

(7) In all cases, the agreement for substitution of an annuity must be executed by the employee, the employer, and the (Board) system.

(8) In the event an employee elects to no longer substitute an annuity, the employee, if otherwise eligible, shall become an active member in the system effective with the first of the calendar month following receipt of the employee's written election.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015(7)

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-011-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(b) "Employee contributions" means contributions made to the Fund.

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

(C) Initial active duty for training;

(D) Inactive duty training;

(E) Full-time National Guard duty;

(F) A period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform any of the above types of duty; or

(G) A period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(e) "Salary" means the rate of pay the employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(f) "Uniformed services" means the following:

(A) Armed Forces;

(B) Army National Guard;

(C) Air National Guard;

(D) Commissioned corps of the Public Health Service; and

(E) Any other category of individuals designated by the President in time of war or national emergency.

(g) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) Retirement credit under USERRA.

(a) Eligibility. An employee shall be eligible for the benefits of this section if:

(A) The employee leaves PERS-covered employment to perform military service;

(B) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(C) The employee initiates reemployment on or after December 12, 1994, with the same PERS-covered employer within the time limits specified in USERRA §4312; and

(D) All other eligibility requirements for benefits under USERRA are met.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, only to the extent that the employee contributions have been made.

(c) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(5) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Contributions to be made by the employer. If the employee was entitled to employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200(2) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of employee contributions that would have been made if the

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employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Contributions to be made by the employee. If the employee was entitled to only member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions, the employee may contribute part or all of the employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any individual, agency, or organization may pay the amounts specified in paragraph (5)(a)(B) on behalf of the employee.

(c) Contributions made under this section must be made during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Any contributions made under this section shall be added to the employee's regular account.

(e) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(6) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

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

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0115; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-011-0110

Credit for Military Service under ORS 238.156(3)

(1) Definitions. For purposes of this rule:

(a) "Armed Forces" means the:

- (A) Army;
- (B) Navy;
- (C) Air Force;
- (D) Marine Corps; and
- (E) Coast Guard.

(b) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the period during which the employee is in active duty service in the Armed Forces.

(e) "Salary" means the employee's rate of pay, for contribution and benefit calculation purposes, at the time the employee entered or reentered military service.

(2) Retirement credit under ORS 238.156(3).

(a) Eligibility. An employee shall be eligible for the benefits of this rule if:

- (A) The employee leaves employment to perform military service;
- (B) The employee returns to employment with the same employer after other than dishonorable discharge from military service and within the time limits specified in ORS 238.156(3)(b); and

(C) The employee is either not entitled to or would receive a lower benefit under the provisions of OAR 459-011-0100.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, provided that all required contributions have been made.

(3) Contributions for the period of military service. To receive credit for the period of military service, contributions must be made to the Fund in accordance with the following:

(a) Contributions must be made in a lump sum payment as specified in ORS 238.156(3)(c);

(b) Such lump sum payment must equal six percent of the salary that would have been paid to the employee had the employee remained in employment with the employer during the period of military service based on the employee's salary rate at the time the employee entered or reentered military service;

(c) Any individual, agency, or organization may pay the amount specified in this subsection on behalf of the employee; and

(d) Any contributions made under this section shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

(e) Contributions made under this rule shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(4) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0115; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

459-045-0001

Definitions

The words and phrases used in this Division shall have the same meaning given them in ORS Chapter 238. Specific and additional terms are defined as follows unless context requires otherwise.

(1) "Board" shall have the same meaning as the Public Employees Retirement Board as defined in ORS 238.630.

(2) "PERS" shall have the same meaning as the Public Employees Retirement System as defined in ORS 238.600.

(3) "Fund" shall have the same meaning as the Public Employees Retirement Fund in ORS 238.660.

(4) "Staff" means the employees of the Public Employees Retirement System as provided in ORS 238.645.

(5) "Member" means a person described in ORS 238.005(12) and 238.500(3), and who is the current or former spouse of an alternate payee.

(6) "Alternate payee" means a spouse or former spouse of a PERS member, who is awarded a portion of the member's PERS benefits by a court.

(7) "Member's PERS account" means:

(a) The member's individual account in the Fund as defined in ORS 238.250; and

(b) The member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(c) The accounts described in subsections (a) and (b) of section consist of:

(A) Member before-tax contributions paid to PERS under ORS 238.200;

(B) Member after-tax contributions paid to PERS under ORS 238.205; and

(C) Interest and earnings credited to each of the accounts described in paragraphs (A) and (B) of this subsection.

(d) Shall apply only to an active or an inactive member, and shall not apply to a retired member.

(8) "PERS funds" means the member's PERS account as defined in section (7) of this rule and the member's vested interest in employer contributions paid into the Fund in accordance with ORS 238.225, but shall not include:

(a) Employer contributions for police and fire benefit units pursuant to ORS 238.440.

(b) Employer contributions paid into the Fund that the member is not vested in pursuant to ORS 238.265.

(9) "Alternate Payee Account" means a court-ordered separate account created under ORS 238.465 in the name of an alternate payee, and established as of the award date stated in the court order. The award date shall be before, or at the time refund, death, service or disability retirement benefits become payable to the member or the member's beneficiary.

(10) "Alternate payee's award" is the portion of a member's PERS account or of the member's PERS funds awarded to an alternate payee by a court order, and may include the creation of a separate account in the Fund in the name of the alternate payee.

(11) "Member Release" means a written statement that is signed by a member and received by staff authorizing the release of information, and directing to whom and where information is to be sent:

(a) Pertaining to the member's PERS account;

(b) Pertaining to the member's interest in the Fund; or

(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this section.

(d) Pertaining to award information contained in any draft or final court order in regard to the member on record with PERS.

(12) "Alternate Payee Release" means a written statement that is signed by the alternate payee and received by staff authorizing the release

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of information, and directing to whom and to where the information is to be sent:

(a) Pertaining to the alternate payee's interest in the member's PERS account or member's vested interest in the Fund;

(b) Pertaining to the alternate payee's account and benefit information if a separate account has been created in the name of the alternate payee; or

(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this section.

(d) Pertaining to award information contained in any draft or final court order in regard to the alternate payee on record with PERS.

(13) A "Member Release" and an "Alternate Payee Release" shall include a valid subpoena or court order requiring PERS to provide information to someone other than the member or the alternate payee.

(14) "Vested" has the same meaning as provided in ORS 239.005(24). Whether or not a member is considered to be vested shall be determined solely by ORS 238.265 regardless of any language that may be contained in any type of court order received by PERS.

(15) "Separation from service" means the member separates from PERS covered employment due to death, service retirement, disability retirement, or termination of employment for which the requirements set forth in ORS 238.265 have been met.

(16) "Service retirement" shall have the same meaning as provided in ORS 238.300.

(17) "Disability retirement" shall have the same meaning as provided in ORS 238.320.

(18) "Joint and survivor annuity" shall mean any retirement annuity option under which a monthly lifetime annuity is payable to a surviving beneficiary of a member. The current joint and survivor annuities payable under PERS are Options 2, 2A, 3, and 3A described in ORS 238.305, and 238.325.

(19) "Integration" shall have the same meaning as provided in ORS 238.035, 238.680 and 238.690.

(20) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable and PERS is not bound by any estimates it provides.

(21) "The earliest date the member would be eligible to receive retirement" shall have the same meaning as provided in ORS 238.005(6), or 238.280, or the date the member is approved for disability retirement prior to reaching earliest service retirement eligibility.

(22) "PERS Plan Year" means a calendar year beginning January 1, and ending December 31.

(23) "PERS Administrative Fee" means the fee, not to exceed \$300, that shall be charged in accordance with ORS 238.465(9) to the member and/or alternate payee for actual and reasonable administrative cost incurred by PERS for establishing benefits for an alternate payee.

(24) "Fraction of the benefit" used to allocate expenses and costs under ORS 238.465(9) means the percentage or ratio of a member's PERS account or member's vested interest in the Fund that is awarded by court decree or order to the alternate payee and the member as of the date of divorce, separation or annulment.

(25) "Court Order" means a court decree or judgment of dissolution of marriage, separation, or annulment, or the terms of any court order or court approved marital property settlement agreement, incident to any court decree or judgment of dissolution of marriage, separation, or annulment.

(26) "Final Court Order" means a court order or judgment that has been signed by a judge, and which shows the stamp of the court clerk or trial court administrator indicating the order is a certified copy of the original record that is on file with the court.

(27) "Draft Court Order" means an order for dividing a PERS account or benefits has been prepared but not approved or signed by the court or filed with the court clerk that contains proposed language on how PERS benefits are to be divided.

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06

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Rules Amended: 459-007-0530, 459-009-0070, 459-009-0084, 459-009-0085, 459-009-0350, 459-010-0175, 459-013-0260, 459-050-0070

Subject: PERS staff undertook a comprehensive review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, and changes prompted by PERS-related 2005 legislation. This rulemaking is to incorporate these non-substantive rule modifications. HB 3262, which goes into effect on November 4, 2005, prompts the changes in this rulemaking action. Therefore the effective date for these rule modifications is November 4, 2005.

Rules Coordinator: David K. Martin—(503) 603-7713

459-007-0530

Crediting Earnings To Employer Lump Sum Payments

(1) Definitions.

(a) "Employer lump sum payment" means any employer payment that:

(A) Is not regularly scheduled;

(B) Is not paid as a statutorily fixed percentage of salary; and

(C) The contributor has control over whether to make the payment.

(b) "UAL factor" represents actual earnings or losses from investments and is not subject to funding requirements of the Contingency or Capital Preservation Reserves.

(2) Subject to OL 2005 Ch. 808 Sec. 13(4), the employer lump sum payment shall first be applied to liabilities attributable to creditable service by employees of the employer before the participating public employer was grouped with other public employers. Earnings on these amounts shall be credited based on the following:

(a) For the month in which the employer lump-sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the final Tier Two annual earnings rate and the Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings or losses shall be credited to the employer lump sum payment in accordance with OAR 459-007-0005(14).

(3) Earnings on an employer lump sum payment held in a separate account subject to ORS 283.225(9) shall be credited based on the following:

(a) For the month in which the employer lump sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the annual UAL factor and the UAL factor in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings shall be credited to the employer lump sum payment on an annual basis in accordance with OAR 459-007-0005(4).

(4) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 27-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-009-0070

Actuarial Pooling of Employer Liability

(1) Definitions. Definitions as used in this rule:

(a) "Pooled" or "pooling" means the combining or grouping of public employers participating in PERS for the purposes of determining employer liability for retirement or other benefits under ORS Chapter 238.

(b) "Political subdivision" means any city, county, municipal or public corporation, any other political subdivision as provided in Oregon Law, or any instrumentality thereof, or an agency created by one or more political subdivisions to provide themselves governmental service. Political subdivision does not mean a school district or a community college.

(c) "Local government" shall have the same meaning as in subsection (1)(b) of this rule.

(d) "School district" means a common school district, a union high school district, or an education service district, including chartered schools authorized under Oregon law.

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(e) "Liability" or "Liabilities" means any costs assigned by the Board to a specific employer or to a pool of employers to provide PERS benefits.

(f) "Actuarial Surplus" means the excess of the fair market actuarial value of assets over the actuarial liabilities.

(g) "Unfunded Actuarial Liabilities" or "UAL" means the excess of the actuarial liabilities over the fair market actuarial value of assets.

(h) "Transition Unfunded Actuarial Liabilities or Surplus" means the unfunded actuarial liability or actuarial surplus, attributed to an individual employer for the period of time the employer was not participating in a pool, prior to entry into the Local Government Rate Pool or the State and Local Government Rate Pool.

(i) "Consolidation" means the uniting or joining of two or more political subdivisions into a single new successor political subdivision.

(j) "Merger" means the extinguishment, termination and cessation of the existence of one or more political subdivisions by uniting with and being absorbed into another political subdivision.

(2) Two employer pools. In accordance with ORS 238.225 and only for the purposes of determining the amounts that are actuarially necessary to adequately fund the benefits provided by the contributions of PERS participating employers, employers will be pooled as a single employer as follows:

(a) The State and Local Government Rate Pool, which consists of the following employers:

(A) The State of Oregon, excluding the state judiciary under ORS 238.500;

(B) All community colleges; and

(C) All political subdivisions which elect to join the pool; or

(b) The School District Pool, which consists of all school districts of the state.

(3) The Local Government Rate Pool established as of January 1, 2000, and certified by the Board on June 12, 2001, for political subdivisions was dissolved as of December 31, 2001.

(4) Political subdivision participation. Political subdivisions may elect to participate in the State and Local Government Rate Pool by the adoption of a resolution or ordinance by the governing body of the political subdivision and submitting a copy of the resolution or ordinance to the Board. The effective date of the election is established as follows:

(a) If the election is received, in accordance with OAR 459-005-0220, by December 31, 2001, the political subdivision will join the pool effective January 1, 2002. Its liability as a member of the pool, from the effective date of entering the pool, will be based on the actuarial valuation period beginning on January 1, 2002; or

(b) If the election is received, in accordance with OAR 459-005-0220, on or after January 1, 2002, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of receipt of the election.

(c) Prior to entering the pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (9) of this rule.

(d) Participation in the pool, as provided in section (4) of this rule, is irrevocable by the employer.

(e) Political subdivisions that do not elect to participate in the State and Local Government Rate Pool, as provided in section (4) of this rule, shall be regarded as individual employers for actuarial purposes.

(5) Employer rates. The basis for any actuarial computation required under ORS 238.225 or this rule will be the actuarial report on PERS prepared in accordance with ORS 238.605.

(6) In determining the amounts to be paid to PERS by a public employer pooled as provided in section (2) of this rule, the PERS consulting actuary will express those amounts as a rate or percentage of PERS covered payroll.

(7) In determining the amounts to be paid to PERS by employer participants in the Local Government Rate Pool, the State and Local Government Rate Pool, and the School District Pool, the PERS Board will issue rate(s) representing the amount necessary to provide benefits as provided in ORS 238.225, for all members of that pooled group. The rates, at a minimum, shall include:

(a) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two police officer and firefighter members of that pooled group.

(b) Rates representing the amount necessary to provide benefits as provided in ORS 238.225, for all Tier One and Tier Two general service members of that pooled group.

(c) In addition to the rate(s) in this section, the State of Oregon will be charged the additional amount necessary to fund the Retiree Health Insurance Premium Account as provided in ORS 238.415(5).

(8) For each participant in the State and Local Government Rate Pool:

(a) Each employer's police officer and firefighter payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(a) of this rule;

(b) Each employer's general service payroll as reported for the actuarial valuation will be multiplied times the rate described in subsection (7)(b) of this rule.

(c) By dividing the sum of the amounts in subsections (a) and (b) of this section by the employer's total payroll as reported for the actuarial valuation, a composite employer contribution rate is derived, which will be the basis for the employer contributions.

(9) Unfunded actuarial liabilities or surplus.

(a) If a political subdivision elected to join the Local Government Rate Pool described in section (3) of this rule, any transition unfunded actuarial liabilities or surplus as of December 31, 1999, will remain part of the actuarial calculation of employer costs for the individual political subdivision, until fully amortized, and will not be pooled with other public employers. However, the political subdivision will continue to be pooled for the purpose of funding the resulting unfunded actuarial liabilities associated with the Local Government Rate Pool from January 1, 2000 to December 31, 2001.

(b) If a political subdivision elects to join the State and Local Government Rate Pool as provided in section (4) of this rule, any transition unfunded actuarial liabilities or surplus as of the day immediately preceding the effective date of entering the pool will remain part of the actuarial calculation of employer costs for each individual political subdivision, until fully amortized, and will not be pooled with other public employers in the State and Local Government Rate Pool.

(c) The pooled unfunded actuarial liability or surplus for the community colleges and the State of Oregon as of December 31, 2001, will remain part of the actuarial calculation of employer costs for community colleges and the State of Oregon combined until fully amortized, and will not be pooled with any political subdivision.

(d) Any unfunded actuarial liability or surplus for the State and Local Government Rate Pool that accrues during a valuation period occurring after December 31, 2001, will become part of the actuarial calculation of employer costs for only those employers who participated in the pool during that valuation period.

(e) Any unfunded actuarial liabilities or surplus of individual employers being amortized as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, will be amortized based on the Board's adopted assumed earnings rate and amortization period. If at the end of the amortization period a surplus remains, the surplus will continue to be amortized as determined by the Board.

(f) If the PERS Board should change the assumed earnings rate, as it applies to ORS 238.255, in effect at the time of the amortization provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, the actuary will recalculate the remaining liability or surplus being amortized using the new assumed earnings rate. The amortization period provided in subsection (9)(e) will not change due to this recalculation.

(10) Employer UAL lump-sum payment. If an employer elects to make a UAL lump-sum payment to offset the unfunded actuarial liabilities under section (9)(a), (9)(b), (9)(c) or (9)(d) of this rule, or as provided under ORS 238.225(8), the payment shall be made in accordance with ORS 238.225 and OAR 459-009-0084.

(11) New employers and integrations. Political subdivisions entering PERS, as provided in ORS 238.015(3), 238.035, or 238.680, will be pooled upon election to join the State and Local Government Rate Pool as follows:

(a) To join the pool upon entering PERS, the election as well as the methods and effective date of entry, must be included in the coverage agreement or contract of integration. If the election is made after the effective date of joining PERS, the political subdivision will join the pool effective the first day of the next actuarial valuation period following the date of receipt of the election.

(b) An election completed by an integrating employer or a partially integrated employer will apply to all current and future groups of employees who are integrated into PERS by the employer. Upon entering the respective pool, any unfunded actuarial liabilities or surplus of such employers will be actuarially accounted for as provided in section (9) of this rule.

(12) Dissolution of an employer or non-participating employer. In the event a public employer is dissolved, no longer has PERS eligible employ-

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ees, or is no longer eligible to participate in PERS, the employer or its successor will be required to make the contributions necessary to fund any remaining unfunded actuarial liability, as provided for in subsection (9)(a), (9)(b) or (9)(c) of this rule, for PERS benefits. The Board will determine the method and amount of funding this unfunded actuarial liability or the return of any surplus, as well as the determination of the employer's successor.

(13) Consolidation of political subdivisions. In the event a political subdivision consolidates with another political subdivision, the succeeding employer will determine the status in the pool by election into the pool.

(a) If the succeeding employer has not elected to join the pool as of the effective date of the consolidation, the following will occur:

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the consolidation;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer;

(C) New hires will not be pooled; and

(D) If the succeeding employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.

(E) At any time after the consolidation, the succeeding employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.

(b) If the succeeding employer elects to join the pool as of the effective date of the consolidation, the following will occur:

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer and provided for as in subsection (9)(a) or (9)(b) of this rule; and

(C) New hires will be pooled.

(c) The succeeding employer must join the pool as of the effective date of the consolidation if it consists of only pooled employers. Any unfunded actuarial liability or surplus of the former employers as of the effective date of the consolidation will be combined and assumed by the succeeding employer.

(14) Merger of political subdivisions. In the event a political subdivision merges with another political subdivision, the status of the surviving employer in the pool depends on its status prior to the merger.

(a) If the surviving employer was not in the pool and has not elected to join the pool as of the effective date of the merger, the following will occur:

(A) The pooled and non-pooled assets, liabilities, and employees of the former employers will continue as they were prior to the merger;

(B) Any unfunded actuarial liability or surplus of the former employers as of the date of the merger will be transferred to the surviving employer;

(C) New hires will not be pooled; and

(D) If the surviving employer consists of pooled and non-pooled employees, separate payrolls must be maintained for each and reported to PERS.

(E) At any time after the merger, the surviving employer may elect to join the pool and the effective date will be the first day of the next actuarial valuation period following the date of receipt of an election.

(b) If the surviving employer was in the pool as of the effective date of the merger, the following will occur:

(A) Any non-pooled assets, liabilities, and employees of the former employers will be added to the pool as of the effective date of the merger;

(B) Any unfunded actuarial liability or surplus of the former employers as of the effective date of the merger will be transferred to the surviving employer and provided for in subsection (9)(a) or (9)(b) of this rule; and

(C) New hires will be pooled.

(15) In the event of any legal mandates or changes adopted by the Board:

(a) If the change provides for an increased or decreased benefit to police officer and firefighter members, but is not applicable to general service members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(a) of this rule.

(b) If the change provides for an increased or decreased benefit to general service members, but is not applicable to police officer or firefighter members, the PERS Board will direct the actuary to attribute the cost or savings of the change to the rate indicated in subsection (7)(b) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: 2005 OL, Ch. 808, Sec. (12), (13), (14), ORS 238.225 & 238.605

Hist: PERS 1-2001, f. & cert. ef. 2-21-01; PERS 3-2001(Temp), f. & cert. ef. 4-19-01 thru 9-30-01; PERS 5-2001 f. & cert. ef. 9-21-01; PERS 6-2001(Temp), f. & cert. ef. 9-24-01 thru 12-31-01; PERS 8-2001, f. & cert. ef. 12-14-01; PERS 10-2002, f. & cert. ef. 7-15-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-009-0084

Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer participating in an actuarial group.

(1) Definitions. For the purposes of this rule:

(a) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(b) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(c) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair value of assets rather than the smoothed actuarial value of assets used in the most recent actuarial valuation of PERS.

(e) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period prior to entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(2) Lump-sum payment amount. If an individual employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the individual employer's UAL calculated under section (5) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the individual employer's UAL calculated under section (5) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must enter into an agreement with PERS for pre-payment of actuarial services and comply with the process described in sections (4) through (9) of this rule.

(4) Initiating UAL lump-sum payment process. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Actuarial Services Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the individual employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Calculation of the individual employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request the PERS consulting actuary to calculate:

(a) 100 percent of the employer's share of the UAL for the actuarial group in which the employer is participating. This calculation shall be:

(A) Based on the fair value UAL of the actuarial pool in which the employer participates from the most recent actuarial valuation;

(B) Based on the PERS-covered salary, as a proportion of the pool, reported by the employer for the year of most recent actuarial valuation; and

(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended dates of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the individual employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

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(A) 100 percent of the individual employer's UAL calculated in subsection (5)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(6) Notification of calculation. PERS staff shall notify the employer in writing of the results of the individual employer's calculation in section (5) above, including the effective dates for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(7) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Actuarial Services Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(8) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(9) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (6) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (7) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (7) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (7) of this rule, the employer's contribution rate shall be adjusted to that rate in which the payment amount fully funds using the actuarial calculation in subsection (5)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (6) of this rule; or

(B) Taking action pursuant to ORS 228.225.

(10) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS Chapter 238, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a UAL Lump-Sum Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the UAL Lump-Sum Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the UAL Lump-Sum Account to the Employer Contribution Account of the actuarial group in which the employer is participating.

(11) Crediting earnings or losses. For the purposes of this rule, UAL Lump-Sum Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(12) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public

Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

(13) Effective date of rule. This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-009-0085

Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer not participating in an actuarial group.

(1) Definitions. For the purposes of this rule:

(a) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(b) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(c) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(d) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair value of assets rather than the smoothed actuarial value of assets used in the most recent actuarial valuation of PERS.

(e) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period prior to entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the employer's UAL calculated under section (5) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the employer's UAL calculated under section (5) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must enter into an agreement with PERS for pre-payment of actuarial services and comply with the process described in sections (4) through (9) of this rule.

(4) Initiating UAL lump-sum payment process. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Actuarial Services Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Calculation of an employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request the PERS consulting actuary to calculate:

(a) 100 percent of the employer's UAL. This calculation shall be:

(A) Based on the fair value UAL from the most recent actuarial valuation; and

(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended dates of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the employer's UAL calculated in subsection (5)(a) of this rule;

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Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(6) Notification of calculation. PERS staff shall notify the employer in writing of the results of the employer's calculation in section (5) above, including the effective dates for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(7) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Actuarial Services Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(8) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(9) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (6) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (7) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (7) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (7) of this rule, the employer's contribution rate shall be adjusted to that rate in which the payment amount fully funds using the actuarial calculation in subsection (5)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (6) of this rule; or

(B) Taking action pursuant to ORS 228.225.

(10) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS Chapter 238, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a UAL Lump-Sum Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the UAL Lump-Sum Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the UAL Lump-Sum Account to the Employer Contribution Account.

(11) Crediting earnings or losses. For the purposes of this rule, UAL Lump-Sum Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(12) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

(13) Effective date of rule. This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

459-009-0350

Allocation of PERS Employer Actuarial Assets and Liabilities

Purpose. The purpose of this rule is to provide guidance in the drafting of agreements by employers involved in transfers of PERS-covered employees regarding the allocation of PERS employer actuarial assets and liabilities; to provide guidance to the Board in determining the allocation of such assets and liabilities when such allocation is not acceptably addressed based on the criteria of this rule in agreements between the employers involved in the transfers; to provide guidance to the Board in determining the allocation of PERS employer actuarial assets and liabilities if dissolution of an employer occurs and the allocation of these assets and liabilities is not otherwise acceptably addressed according to this rule in the dissolution; and to provide guidance to the Board when an employer is unable to amortize its PERS employer actuarial assets and liabilities as directed by the Board. All the provisions of this rule shall be applied at the discretion of the PERS Board to achieve sound actuarial funding of the system as well as full funding of the individual benefits accrued by members. This rule does not address whether or not PERS is required to pay benefits that are unfunded.

(1) Definitions. For the purposes of this rule:

(a) "Actuarial Funded Percentage" means the ratio, expressed as a percentage, of actuarial liabilities to actuarial assets as determined by a PERS-approved actuary.

(b) "Actuarial Surplus" means the excess of the actuarial value of assets over the actuarial liability.

(c) "Actuarial Valuation" means the determination by the PERS-approved actuary, as of an actuarial valuation date, of the normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for a pension plan.

(d) "Actuarial Valuation Date" is the date approved by the Board for which demographic and economic data has been captured and used in an actuarial valuation.

(e) "Dissolution" means voluntary or involuntary corporate dissolution, extinguishment, or termination of the existence of an employer.

(f) "PERS-Approved Actuary" means an actuary employed by PERS for ongoing actuarial advice or any other actuary approved in writing by the PERS executive director or designee.

(g) "PERS Employer Actuarial Assets" means the assets contributed to PERS by an employer and by employees for service to that employer plus attributed earnings as determined by a PERS-approved actuary. Such assets include Benefits in Force reserve assets as determined by a PERS-approved actuary.

(h) "PERS Employer Actuarial Liabilities" means the liabilities of a particular employer determined by a PERS-approved actuary that represent the actuarially determined amounts necessary to fund benefits due PERS-covered members and their beneficiaries.

(i) "Receiving Employer" means an employer to which PERS-covered employees are transferred from a participating employer.

(j) "Transfer" means the movement of one or more PERS-covered employees and their designated position(s) from the payroll of one employer to the payroll of another employer as the result of an agreement between the two employers.

(k) "Transferring Employer" includes the following:

(A) A participating employer from which PERS-covered employees are transferred;

(B) A participating employer that forms one or more separate governmental entities that employ PERS-covered employees transferred from the participating employer.

(1) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(2) Documented and Acceptable Transfer Agreements. Transferring employers that transfer PERS-covered employees to receiving employers may address the allocation of PERS employer actuarial assets and liabilities associated with the transferring employees in a written transfer agreement. The allocation of PERS employer actuarial assets and liabilities under such an agreement must be acceptable to PERS. To be acceptable to PERS, the allocation must meet the following standards or be approved by the PERS Board:

(a) Actuarial Funded Percentage. The transfer may not result in the transferring or receiving employer having an actuarial funded percentage after the transfer that is lower than the lesser of either:

(A) The lowest actuarial funded percentage as determined by a PERS-approved actuary of such transferring or receiving employer as of the val-

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uation date of the most recent PERS-adopted actuarial valuation for that employer promulgated prior to the effective date of the transfer; or

(B) The PERS system-wide actuarial funded percentage as of the valuation date of the most recent PERS-adopted actuarial valuation promulgated prior to the effective date of the transfer.

(b) Effective Date. The effective date of the allocation of the PERS employer actuarial assets and liabilities shall be the date of the transfer.

(c) Upon petition of either the transferring or receiving employer, the Board may grant an exception to these standards if the employer can demonstrate that the transfer agreement will achieve full funding of the individual benefits accrued by the transferring employees without undue administrative burden.

(d) Review of staff determination. If the transfer agreement does not meet the standards in paragraphs (2)(a) and (2)(b) above, a review of the staff determination of acceptability may be requested pursuant to OAR 459-001-0030.

(3) Undocumented Transfers or Unacceptable Transfer Agreements. If an allocation of PERS employer actuarial assets and liabilities associated with the transferring employees is not documented among the transferring and receiving employers or if a transfer agreement is found by PERS to be unacceptable under the provisions of this rule, the PERS employer actuarial assets and liabilities of the transferred employees shall remain the responsibility of the transferring employer and shall be amortized under section (9) of this rule.

(4) Effective Date of Allocation of PERS Employer Actuarial Assets and Liabilities in the Transfer of Employees. PERS shall allocate assets and liabilities for transferred employees as of the date of the transfer. The transferring and receiving employer's accounts will be adjusted to reflect the effective date of the allocation of assets and liabilities. Contributions received, including earnings on those contributions, before and after the effective date will be credited to the appropriate employer and member accounts in accordance with PERS policy, statutes and rules.

(5) Pooled Employers. If a participating employer participates in either of the actuarial pools described in OAR 459-009-0070(2) or 459-009-0070(4) and transfers PERS-covered employees to a receiving employer that participates in either of these pools, this rule will apply only to the unfunded liabilities or surpluses accrued prior to entry into these pools.

(6) Non-Participating Employer. A change in an employer's status, whether prior to or following the effective date of this rule, from a participating to a non-participating employer, will not exempt the employer from the provisions of this rule.

(7) Dissolution of an Employer. If dissolution of an employer has occurred and there is no acceptable transfer agreement for any transferred employees, the dissolved employer's PERS actuarial assets and liabilities will be amortized under section (9) of this rule.

(8) Mergers and Consolidations. Any employer that is a succeeding, surviving, or successor employer following a combining of entities, regardless of the name given to that combination, including but not limited to mergers and consolidations, shall, to the extent permitted by law, be required to assume all PERS actuarial assets and liabilities from the other affected entities that took part in the combination which are related to the employees whose positions are part of the new combined entity.

(9) Amortization of All PERS Employer Actuarial Liabilities and Assets.

(a) Amortization of Employer Actuarial Liabilities. To amortize the PERS unfunded actuarial liabilities of any employer, PERS may take one or more of the following actions as directed by the Board, until the amortization is complete. They include but are not limited to the following:

(A) PERS will adjust the contribution rate of the employer as necessary either at the next date of adjustment for all PERS-covered employers or, if approved by the PERS Board, at an earlier or later date.

(B) PERS will seek to obtain and recover assets of the employer other than PERS Employer Actuarial Assets, as a creditor, through a mutual agreement with the employer, or, if an agreement cannot be reached, through other legal means, as approved by the PERS Board.

(C) PERS will allocate the employer actuarial liabilities:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the liability; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the liability was created.

(D) PERS will allocate the employer actuarial liabilities to the Contingency Fund as established by ORS 238.670(1).

(b) Amortization of Employer Actuarial Assets. To amortize the PERS employer actuarial surplus of an employer, the following steps will be taken, in order, until the amortization is complete or the final step has been concluded:

(A) PERS will allocate the employer actuarial surplus:

(i) Consistent with any applicable law; and

(ii) Consistent with any acceptable agreement between the receiving employer and transferring employer whose employee's service generated the surplus; or

(iii) Consistent with any acceptable agreement among employers which through such agreement formed the employer under which the surplus was created.

(B) PERS will adjust the contribution rate of the employer either at the next date of adjustment for all other employers of the system or, if so approved by the board, at an earlier or later date.

(C) PERS will allocate the employer actuarial assets as general assets of the Fund.

(10) Retroactive Application. The provisions in this rule will apply to all transfers, regardless of whether they occur prior to or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225, 238.605, 238.670, 238.705 & 2005 OL, 808, Sec. (12), (13), (14)

Hist.: PERS 1-2003, f. & cert. ef. 1-15-03; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-010-0175

Computation of Prior Service Credit for Accumulated Seasonal Employment

In computing prior service credit for accumulated seasonal employment, the total days of seasonal employment worked by the employee, as certified by the employer, shall be divided by 260 to obtain the number of years of prior service credit. A remainder of more than 130 days shall constitute a major fraction of a year. An employee who in such seasonal employment worked more than 260 days in any one fiscal year shall be credited with only one year of prior service for that year, and the extra days shall not be added to other seasonal employment.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005, 2005 OL, Ch. 808, Sec. (12), (13), (14) & ORS 238.225

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. 12-17-98; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-013-0260

Effective Date Used in the Establishment of Service Retirement Benefits

(1) A member's service retirement allowance under ORS 238.300 and 238.305 will be established as of the member's effective date of retirement.

(2) A member's effective date of retirement is the first day of the calendar month specified by the member, who is eligible for retirement under the provisions of ORS 238.280 or 238.005(5), on their service retirement application.

(3) The effective date of retirement will be no earlier than:

(a) The first of the calendar month in which an application is received by the Public Employees Retirement System (PERS); or

(b) The first of the calendar month following the date of separation from all employers participating in PERS and in the same controlled group.

(4) For the purpose of this rule, "controlled group" is a group of employers required to be treated as a single employer for the purpose of satisfying the requirements for qualified retirement plans under federal law.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.300 & 238.305

Hist.: PERS 10-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

459-050-0070

Catch-Up Programs

The purpose of this rule is to establish the criteria and process to allow an eligible employee to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account in the Deferred Compensation Plan.

(1) Definitions. Subject to subsections (a) and (b) below, for purposes of this rule, "normal retirement age" means the normal retirement age defined in the plan sponsor's retirement plan.

(a) "Normal retirement age" for members of the Public Employees Retirement System shall have the same meaning as ORS 238.005(14), 238.280(3), and for judge members, ORS 238.535.

(b) If an eligible employee continues to work beyond normal retirement age, "normal retirement age" shall be that date or age designated by the eligible employee but not later than 70-1/2 years of age.

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(2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible employees who are 50 years of age and older may elect to contribute an additional amount under section 414(v) of the Internal Revenue Code in excess of the maximum regular contribution allowed.

(a) Conditions for enrollment: An eligible employee must be 50 years of age or older on December 31 of the calendar year in which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) An eligible employee may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program in section (3) below, but may not participate in both during the same calendar year.

(B) An eligible employee may participate in the 50-Plus Catch-Up during the calendar year containing the employee's retirement date.

(b) Application for enrollment. Subject to the conditions in subsection (2)(a) above, an eligible employee may participate in the 50-Plus Catch-Up Program. An eligible employee choosing to participate must enroll, by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the amount of the additional annual deferral, that the additional deferral will be divided equally by the available months for the calendar year, and that the amount is in addition to the eligible employee's regular maximum deferral.

(A) Subject to the conditions and requirements of these rules and applicable law, an eligible employee may enter into a written agreement to participate in the 50-Plus Catch-Up Program on or before the first day of employment or anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 50-Plus Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program.

(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program conditions of enrollment in subsection (2)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment form is received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) 50-Plus Catch-Up Program deferral begin date. Salary reduction for the 50-Plus Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional deferral amounts. The additional deferral may be in an amount elected by an eligible employee, but shall not exceed the maximum additional deferral allowed in section 414(v) of the Internal Revenue Code, 26 USC 414(v). An eligible employee may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible employee may cancel participation in the 50-Plus Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An eligible employee may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) 3-Year Catch-Up Program. Eligible employees may elect to contribute an additional amount under section 457 of the Internal Revenue Code, 26 USC 457, in excess of the maximum regular contribution allowed for one or more of the three consecutive calendar years of employment prior to attaining normal retirement age, if in previous years the full amount of the eligible employees' deferral allowance was not used.

(a) Conditions for enrollment. The earliest date to participate in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year an eligible employee reaches normal retirement age.

(A) The increase over the maximum allowable regular contribution limit is available only to the extent of unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable or did not choose to make contributions to the Deferred Compensation Program.

(B) Previous calendar years during which deferrals were made to the 50-Plus Catch-Up shall not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.

(C) An eligible employee may not participate in the 3-Year Catch-Up Program and the 50-Plus Catch-Up in section (2) above during the same calendar year.

(D) An eligible employee may not participate in the 3-Year Catch-Up during the calendar year containing the eligible employee's retirement date, unless the last day worked is the last working day of that calendar year.

(E) Pursuant to section 457(b) of the Internal Revenue Code, 26 USC 457(b), an eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

(F) An eligible employee may participate only once in the 3-Year Catch-Up Program, regardless of whether the 3-Year Catch-Up is used in less than three calendar years and the eligible employee or former eligible employee rejoins the plan or participates in another eligible plan after retirement.

(b) Application for enrollment. Subject to the conditions in subsection (3)(a) above, an eligible employee may enroll to participate in the 3-Year Catch-Up Program by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the eligible employee's proposed retirement date and the month in which to begin the 3-Year Catch-Up deferrals.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 3-Year Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. In addition, wage or salary information must be submitted for the previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not use the full amount of deferral. An eligible employee must submit either:

(i) Legible copies of W-2 Wage and Tax Statement forms for each calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is not legible, or if application does not comply with the 3-Year Catch-Up Program conditions of enrollment in subsection (3)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) 3-Year Catch-Up Program deferral effective date. Salary reduction for the 3-Year Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional Deferral Amount. After receipt of the properly completed 3-Year Catch-Up Program enrollment form and required salary information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum contributions that may be deferred.

(A) The amount of the Catch-Up salary reduction may not be less than the minimum amount established by the plan sponsor that is over the maximum regular deferral and may not exceed the maximum allowable contribution to a Deferred Compensation Plan as defined in section 457(b)(3) of the Internal Revenue Code, 26 USC 457(b)(3).

(B) An eligible employee may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible employee may cancel participation in the 3-Year Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An election to cancel participation is irrevocable.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 12-2002, f. & cert. ef. 7-17-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05

ADMINISTRATIVE RULES

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Subject: PERS staff undertook a comprehensive review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, and changes prompted by PERS-related 2005 legislation. This rulemaking is to incorporate these non-substantive rule modifications.

Rules Coordinator: David K. Martin—(503) 603-7713

459-001-0015

Conduct of Meetings of the Board

(1) Meetings of the Board shall be conducted by and shall be under the control of the Chair of the Board. In the Chair's absence, the Vice Chair shall preside. In the absence of both the Chair and the Vice Chair, the Board shall designate, by a majority vote, one of its members to preside.

(2) At the commencement of the Board meeting, any member of the public wishing to be heard on an item on the agenda shall advise the Chair of that person's name, address, and affiliation. Such person(s) may be heard at the discretion of the Chair.

(3) The Chair may set reasonable time limits for oral presentation by members of the public, and may exclude or limit cumulative, repetitious, or immaterial matter.

(4) The Chair, or any member of the Board, shall have the right to question or examine any member of the public making a presentation at the board meeting. The Chair may permit others to examine such persons.

(5) No rebuttal or additional statements by any member of the public shall be permitted by the Chair, unless allowed by the Chair.

(6) If the number of persons wishing to be heard on a scheduled agenda item exceeds the number the Chair believes can be reasonably accommodated during the time available to the Board for the meeting, the Chair may require persons wishing to be heard to submit their views by written statements rather than orally. With the approval of the majority of the Board, the Chair may also schedule a special hearing on the subject at a future time and date before a Hearings Officer designated by the Chair. If such special hearing is scheduled by the Chair, the designated Hearings Officer shall reduce witness statements to a condensed written report and provide it to members of the Board on or before a date set by the Chair.

(7) The Chair may, where practicable, receive all physical and documentary evidence presented by members of the public permitted to be heard at a Board meeting. Exhibits shall be marked and shall identify the person offering the exhibit. Exhibits shall be preserved by the System for one year, or at the discretion of the Chair, returned to the person offering the exhibit.

(8) A verbatim oral, written, or mechanical record shall be made of all meetings of the Board, or, in the alternative, a record in the form of minutes of the Board.

(9) Members of the public wishing to be heard by the Board on subjects not scheduled on the agenda may be heard at the discretion of the Chair.

(10) The Board may exclude members of the public from an executive session of a meeting of the Board to the extent permitted by ORS 192.660.

(11) No final action may be taken by the Board in an executive session. When an executive session is held in conjunction with a public session, the Board shall return to public session before taking a final action.

(12) A notice of an executive session that is not held in conjunction with a public session shall inform the public and interested persons of time and place at which a public session will be held to make a final or formal decision.

(13) Representatives of the news media shall be allowed to attend an executive session of a Board meeting other than those held under ORS 192.660(1)(d). The Board requires that all discussion and information provided in an executive session be undisclosed unless disclosure is specifically authorized by the Board.

(14) No person shall smoke any cigar, cigarette, or tobacco in any form in any meeting of the Board.

Stat. Auth.: ORS 192.610 - 192.710 & 238.650

Stats. Implemented:

Hist.: PER 1-1978, f. & ef. 9-1-78; PERS 5-1994, f. & cert. ef. 5-10-94; PERS 21-2005, f. & cert. ef. 11-1-05

459-001-0025

Delegation to Director and Staff

(1) The Director is hereby authorized to take all action necessary or desirable to administer the system including but not limited to:

(a) Design application and other forms;

(b) Act on any application for refund of contributions; crediting service, correction of records, retirement for disability or service, and death benefits and allowances;

(c) Calculate and authorize payment of refunds, allowances or benefits except as provided in OAR chapter 459, division 15;

(d) Require medical, vocational or other professional examinations of disability retirement benefits applicants and recipients;

(e) Reinstate persons from disability retirement upon the Director's determination that disability does not exist; and

(f) Initially review, grant or deny petitions for reconsiderations. The Director may deny any petition:

(A) Which does not contain the information required in OAR 459-001-0040(2); or

(B) Regarding which there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts and there was no material administrative error.

(g) Define and settle administrative and court litigation.

(2) The Director may refer any matter to the Board or to an administrative law judge for a contested case or other hearing.

(3) The Director is hereby authorized to delegate to subordinates the authority to take any action on the Director's behalf.

Stat. Auth.: ORS 237.263 & 183.600 - 183.690

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 21-2005, f. & cert. ef. 11-1-05

459-001-0035

Contested Case Hearing

(1) Request for a contested case hearing. To obtain review of any determination by the Director, for which a contested case hearing has not been held, the party shall file with the Board a petition for a contested case hearing. The petition shall be filed within 45 days following the date of the Director's determination. Late petitions may be considered only if facts constituting a good cause are alleged in the petition.

(2) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not relieve a person of the requirements for timely filing of a request for a contested case hearing.

(3) Criteria for request. The petition for a contested case hearing shall be in writing and set forth:

(a) A description of the determination for which review is requested;

(b) A short statement of the manner in which the determination is alleged to be in error;

(c) A statement of facts that are the basis of the petition;

(d) Reference to applicable statutes, rules or court decisions upon which the petitioner relies;

(e) A statement of the action the petition seeks; and

(f) A request for a hearing.

(4) Contested case hearing. The Board shall respond to a petition for a contested case hearing within 15 days of filing and shall order the staff to schedule a formal contested case hearing.

(5) The hearing shall be conducted in accordance with the Attorney General's Model Rules of Procedure.

(6) Proposed order. The administrative law judge's proposed order becomes final 90 days following service upon the petitioner, the Director and the Board through the Director. Exceptions to the proposed order by the Director or the petitioner must be filed with the Hearing Officer administrative law judge within 45 days of service. If the Board determines additional time is necessary to review a proposed order and issue an amended order, the Board may extend the time after which the proposed order will become final in accordance with ORS 183.464(3).

(7) In accordance with the Attorney General's Model Rules of Procedure, the Board may reject the order and direct the Hearings Officer to conduct further proceedings and prepare an amended order within the time specified by the Board.

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(8) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days. Additional time may be requested, but shall only be granted upon approval by both parties.

Stat. Auth.: ORS 237.263 & 183.600 - 183.690

Stats. Implemented:

Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0010

Public Employees Retirement Fund, A Trust

(1) The purpose of ORS 238.660 is to ensure that the Public Employees Retirement Fund (PERF) is for the exclusive benefit of PERS members and the members' beneficiaries. If any other provision of an OAR imposes a requirement upon the PERF contrary to ORS 238.660, ORS 238.660 and this rule shall prevail and be the controlling factor for any Board or staff action.

(2) Pursuant to ORS 238.660, the PERF is a trust fund, separate and distinct, for the sole and exclusive use of the members and their beneficiaries as set forth in ORS 238.005 to 238.750 and ORS 237.950 to 237.980, unless otherwise specifically provided by law. All moneys, regardless of source, paid into the PERF, are to be used exclusively for the purposes set forth in ORS 238.005 to 238.750 and 237.950 to 237.980, unless otherwise specifically provided by law. All moneys and income earned thereon shall remain in the PERF except:

(a) As otherwise provided in ORS 238.005 to 238.750 and 237.950 to 237.980; or

(b) For any laws of the State of Oregon specifically authorizing the investment of moneys from the PERF for the purposes enhancing the value of the PERF.

(3) The State of Oregon, any political subdivision of the State of Oregon, any municipal or public corporation, any instrumentality thereof, and any agency created by two or more political subdivisions shall have no proprietary interest in PERF or any contributions made to PERF and may not claim or reclaim any contributions other than provided for in ORS 238.660.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.660

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0150

Effective Date of Power of Attorney Rules

OAR 459-005-0100 to 459-005-0140 shall be effective on the date they are adopted by the Public Employees Retirement Board (Board), and shall govern any documents submitted to PERS on or after the date these rules are adopted by the Board for the purpose of effecting the appointment of an Attorney-in-Fact or revoking a power of attorney after such date, or until amended or repealed by the Board.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 7-1996, f. & cert. ef. 11-12-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0210

Transmittal of Reports and Documents

Except for the transmission of a remittance, a payment, a remittance advice or a payment advice as provided in OAR 459-005-0215, reports and documents sent to PERS shall be transmitted as follows:

(1) Unless otherwise provided for in this rule, reports or documents may be transmitted to PERS or the Deferred Compensation Program in person or by use of:

- (a) The United States Postal Service (USPS);
- (b) A private express carrier as defined in ORS 293.660(2);
- (c) Telephonic facsimile communication (fax);
- (d) Electronic mail through the Internet (e-mail); or
- (e) By use of the PERS web site on the Internet;
- (f) Other sources approved by the Director for the transmission of reports or documents.

(2) The following original documents shall be accepted by PERS or the Deferred Compensation Program only if transmitted in person, by use of USPS or by private express carrier:

(a) Contracts and Agreements pertaining to the merger or integration of other retirement systems into PERS.

(b) Any request by a member for confidential information under provisions of ORS 192.502(12).

(c) Subpoenas, garnishments, summons, and other legal documents that require service on PERS. These documents will not be accepted unless they are served in accordance with applicable law.

(3) The following standards shall be observed when transmitting any report or document to PERS or the Deferred Compensation Program by fax or e-mail. Failure to comply with these standards shall result in the PERS or the Deferred Compensation Program not accepting the report or document:

(a) The quality of the original hard copy shall be clear and dark enough to transmit legibly.

(b) Any report or document requiring signature shall be signed prior to being transmitted.

(c) Any report or document transmitted shall be on forms furnished by PERS or the Deferred Compensation Program or substitute forms previously approved by PERS or the Deferred Compensation Program, respectively.

(d) Any PERS or Deferred Compensation Program report or form shall be completed as required in PERS instructions.

(e) The entire text of the report or document must be transmitted. Both sides of any two-sided PERS or Deferred Compensation Program form are to be transmitted.

(f) For a report or document that requires accompanying documentation, all components shall be transmitted together as one transmission.

(g) The first sheet of the transmission shall indicate the number of pages being transmitted, and shall contain a telephone number to call if there are problems with the transmission.

(h) Neither the original nor any additional copies of the facsimile filings should be filed with PERS.

(i) The sender shall maintain the original of the document with the original notarization or signature affixed, as well as proof of fax transmission.

(4) PERS or the Deferred Compensation Program may require the original, or a certified copy of the original, where a question of authenticity arises.

(5) Only requests for information regarding PERS or the Deferred Compensation Program, not otherwise protected under provision of 192.502, may be transmitted by e-mail through the Internet.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 20-2004, f. 9-22-04 cert. ef. 10-14-04; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0215

Transmittal of Remittances or Payments

(1) For the purpose of this rule:

(a) A "remittance" means the transfer of funds from a participating employer to the Public Employees Retirement Fund (PERF) which includes:

(A) The contributions of both employer and employee members required in ORS 238.200 to 238.230 used to fund PERS benefits;

(B) A PERS invoice for employee and/or employer contributions and associated late penalties;

(C) Any lump sum transfer of funds in satisfaction of an employer liability; and

(D) Other contributions to the PERF.

(b) An "employer payment" means the transfer of funds from an employer to PERS for other than the PERF which includes, but is not limited to:

(A) Contributions to the Deferred Compensation Program;

(B) Administrative fees; or

(C) Other employer liabilities.

(c) A "member payment" means the transfer of funds from a member to the PERF for the purchase of service credit in PERS, restoration of a member's account or the satisfaction of an invoice for over payment of PERS benefits, other than administrative fees associated with a purchase or invoice.

(d) A "remittance advice" means an itemized statement on PERS-approved form(s) that describes a remittance.

(e) An "employer payment advice" means an itemized statement approved by PERS that describes an employer payment.

(f) A "member-payment advice" means the copy of a PERS-prepared itemized statement of the member cost(s) for a purchase of service credit, the restoration of a member's account or an invoice for over payment of PERS benefits.

(g) An "advice document" means the document referred to in subsections (d), (e) or (f) of this section.

(2) The transmission of a remittance, an employer payment or a member payment shall be accompanied by a remittance advice or a payment advice, respectively.

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(3) The transmission of a remittance, an employer payment or a member payment to PERS shall be as follows:

- (a) The United State Postal Service (USPS);
- (b) A private express carrier as defined in ORS 293.660(2);
- (c) Other electronic funds transfer methods approved in advance by PERS.

(4) A remittance or an employer payment shall be returned to the employer and shall be subject to late penalties, when applicable, if transmitted, without the corresponding advice document.

(5) A remittance or an employer payment shall be returned to the employer and shall be subject to late penalties, when applicable, if transmitted, with or without the corresponding advice document, to any PERS office or other address not currently designated by PERS.

(6) An advice document that is not accompanied by the transfer of funds, such as a corrected or supplemental remittance advice, may be transmitted as provided in section (3) of this rule or by use of:

- (a) Telephone facsimile communication (fax);
- (b) Electronic mail (e-mail) through the Internet; or
- (c) By use of the PERS web site on the Internet.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0220

Receipt Date for Reports, Documents, and Remittances

(1) As used in this rule, "private express carrier" shall have the same meaning as in ORS 293.660(2).

(2) If the due date of a report, document, remittance, or payment falls on a weekend or a legal holiday, the due date is deemed to be the next regular business day following.

(3)(a) Except as provided for in sections (3), (4), and (5) of this rule, any report or document required by PERS shall be deemed filed and received based on the receipt stamp affixed to the report or document when received by PERS.

(b) A remittance or payment and a remittance advice or a payment advice, as described in OAR 459-005-0215, shall be deemed filed and received as provided in sections (4), (5) and (6) of this rule.

(4) Any report, document, remittance or payment required by PERS which is:

(a) Transmitted through the United States Postal Service (USPS) or by private express carrier, shall be deemed filed or received on the date shown by the post office cancellation mark or other record of transmittal;

(b) Lost in transmission through USPS or by a private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmittal if the sender:

(A) Can establish by evidence satisfactory to PERS, which includes but is not limited to documentation provided by USPS or the private express carrier, that the report, document or remittance was deposited in the USPS or with a private express carrier on or before the date due for filing, and was correctly addressed to PERS;

(B) Files with PERS a duplicate of the lost report, document, or remittance, in accordance with the requirements specified in OAR 459-005-0210; and

(C) Satisfies the requirements of paragraphs (A) and (B) of this subsection within 30 days after PERS notifies the sender in writing of its failure to receive the report, document, or remittance.

(5) For purposes of this rule:

(a) "Settlement date" is the date on which the participating Depository Financial Institution (DFI) or its correspondent is scheduled to be debited or credited by the Federal Reserve.

(b) "Pay date" means the date inscribed on a pay check or settlement date if paid by EFT, whichever is the later.

(6) An electronic funds transfer (EFT) shall be deemed received on the settlement date of the transfer. A settlement date specified by an employer for an EFT shall be no later than the due date specified by PERS for a remittance or a payment.

(7) Any report or document that PERS will accept by telephonic facsimile communication (fax) as provided in OAR 459-005-0210 or 459-005-0215 which is:

(a) Transmitted by a fax device to any office of PERS shall be deemed filed or received on the date of transmission as inscribed by PERS fax device.

(b) Lost in transmission through a fax communication shall be deemed filed and received when originally transmitted if the sender can establish by affidavit the proof of sending and correct addressing, together

with a copy of any activity report from the sender's fax device, and a duplicate of the original report or document.

(8) A fax shall be accepted on weekends and holidays as long as the fax is otherwise in compliance with due dates specified in law and administrative rule.

(9) A report, document, remittance, or payment shall be transmitted in accordance with the provisions of this rule and OAR 459-005-0215 prior to midnight of the date due to be considered by PERS as received timely.

(10) Any report or document that PERS will accept by e-mail transmission as specified in OAR 459-005-0210(5) which is:

(a) Transmitted by e-mail to any office of PERS shall be deemed received as of the date the transmission is received by PERS.

(b) Lost in transmission by e-mail shall be deemed filed and received when originally transmitted if the sender can establish by affidavit the proof of sending and correct addressing, together with a copy of any activity report from the sender's electronic device, and a duplicate of the original report or document.

(11) When transmitting a document or report by use of fax or e-mail, the sender bears the risk of failure of the transmission.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.750

Hist.: PERS 6-1999, f. & cert. ef. 11-22-99; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0560

Required Minimum Distributions, Generally

(1) Applicable Law. Distributions under the Public Employees Retirement System (PERS) shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), including IRC Section 401(a)(9)(G), and the Treasury Regulations and Internal Revenue Service rulings and other interpretations issued thereunder, including Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9. The provisions of this administrative rule and any other statute or administrative rule reflecting the required minimum distribution requirements of IRC Section 401(a)(9) shall override any distribution options that are inconsistent with IRC Section 401(a)(9).

(2) Distributions to Members. Each member's entire benefit under PERS shall be distributed to the member, beginning no later than the required beginning date, over the member's lifetime (or the joint lives of the member and a designated beneficiary), or over a period not extending beyond the member's life expectancy (or the joint life expectancies of the member and a designated beneficiary).

(a) Required Beginning Date. For purposes of this section, the "required beginning date" is April 1 of the calendar year after the later of the following:

- (A) The calendar year in which the member reaches age 70 1/2; or
- (B) The calendar year in which the member retires.

(b) Designated Beneficiary. For purposes of this section, a "designated beneficiary" means any individual designated as a beneficiary by the member. If the member designates a trust as a beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirements set forth in Treasury Regulation Section 1.401(a)(9)-4.

(c) Calculation of Life Expectancies. For purposes of this section and Chapter 238 benefits and the Pension Program, which are part of the DB component of PERS, life expectancies shall not be recalculated after the initial determination, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-4 and Q&A-5. For purposes of this section and the Individual Account Program, life expectancies shall be recalculated but no more frequently than annually, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-5.

(d) Limitations on Benefit Changes. A retired member who has had a required beginning date shall not change a beneficiary designation, benefit option election, or any other designation or election except as permitted under Treasury Regulation Sections 1.401(a)(9)-4 and 1.401(a)(9)-6.

(e) Limitations on Conversion of Joint Annuity to Single Life Annuity Following Divorce. A retired member who has had a required beginning date may elect to convert a joint and survivor annuity under Option 2A or 3A under Chapter 238 to a single life annuity by reason of the member's divorce from the joint annuitant, subject to the provisions of Treasury Regulation Section 1.401(a)(9)-6. This section applies to ORS Chapter 238 benefits notwithstanding ORS 238.305(5) and 238.325(3).

(f) Limitations on Survivor Annuity Elections. Except as otherwise required by a domestic relation order under ORS 238.465, if a member elects a 100 percent (100%) joint and survivor annuity (Option 2 or 2A under ORS 238.305(1) and under 238A.190(1)(a)) and designates a non-spouse beneficiary who is more than ten years younger than the member as

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calculated under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity benefit to the extent necessary to comply with federal requirements for qualified retirement plans.

(g) Limitation on Period-Certain Annuity Election (Chapter 238 only). If a member elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 85 or older during the calendar year in which the benefits commence, the benefit shall be actuarially adjusted to provide for a shorter payout period to the extent necessary to comply with federal requirement for qualified retirement plans.

(h) Limitation on Selection of IAP Benefit Options. Benefit payment options selected under the Individual Account Program shall be considered as payment options under a DC plan and must comply with the requirements of Treasury Regulation Section 1.401(a)(9)-5.

(3) Distributions to Beneficiaries of Retired Members. If a retired member dies after annuity benefit payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) of this rule, any death benefits shall be distributed at least as rapidly as under the distribution method being used at the member's death.

(4) Distributions to Beneficiaries of Active and Inactive Members. If an active or inactive member dies before annuity payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) of this rule, any death benefits shall be distributed by December 31 of the calendar year that contains the fifth anniversary of the member's death, except as provided in the following:

(a) Distributions to Designated Beneficiaries. The five-year rule shall not apply to any death benefit that is payable to a member's designated beneficiary, if:

(A) The benefit is distributed over the designated beneficiary's lifetime or over a period not extending beyond the designated beneficiary's life expectancy; and

(B) The distributions begin no later than December 31 of the calendar year that contains the first anniversary of the member's death.

(b) Distributions to Spouse Designated Beneficiaries. Notwithstanding subsection (a) of this section, if the designated beneficiary is the member's surviving spouse as defined by the Internal Revenue Code:

(A) The commencement of distributions under subsection (a)(B) of this section may be delayed until December 31 of the calendar year in which the member would have reached age 70 1/2; and

(B) If the surviving spouse dies after the member's death but before the distributions to the spouse have begun, the rules of this section shall apply to any death benefit payable to any contingent beneficiary as if the spouse were the member. Notwithstanding the foregoing, however, this subsection shall not apply to any death benefit payable to a surviving spouse of the deceased member's surviving spouse.

(5) The provisions of this rule are effective on January 1, 2003.

Stat. Auth.: ORS 238.630, 238.650, 238A.130, 238A.170 & 238A.410

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 21-2005, f. & cert. ef. 11-1-05

459-005-0599

Election Procedures — Direct Rollovers

(1) PERS staff shall provide each distributee with a written explanation of the direct rollover rules for any eligible distribution, as required by Code Section 402(f). In addition to the general explanation required by Code Section 402(f), the written explanation shall include the following information:

(a) A statement that the distributee has the right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided;

(b) An explanation of the default rule set forth in section (5) of this rule;

(c) An explanation of the notice and election rules for periodic payments that are eligible rollover distributions.

(2) Except as otherwise provided in sections (4) and (6) of this rule, an eligible rollover distribution shall not be paid, either to the distributee or to a recipient plan, less than 30 days or more than 90 days after the distributee has been provided with the written explanation described in section (1) of this rule.

(3)(a) Any direct rollover election shall be in writing and must be signed by the distributee or by his or her authorized representative pursuant to a valid power of attorney as described in OAR 459-005-0100 to 459-005-0140. The direct rollover election may be on forms furnished by PERS, or on forms submitted by recipient plan which shall include:

(A) Member's full name;

(B) Member's social security number;

(C) Percentage of amount eligible for transfer (whole percent), or the dollar amount (in whole dollars);

(D) The distributee's account number with recipient plan, if available;

(E) Name and complete mailing address of recipient plan.

(b) The election shall include or be accompanied by a statement by the recipient plan's plan administrator that the plan will accept the direct rollover for the benefit of the distributee.

(4) If a distributee affirmatively elects a distribution after having received the written election described in section (1) of this rule, PERS may make the distribution even if the initial 30-day period described in section (2) of this rule has not expired.

(5) If a distributee fails to affirmatively elect to make or not to make a direct rollover within at least 30 and no more than 90 days after notice is provided as described in section (1) of this rule, PERS shall pay the eligible rollover distribution directly to the distributee.

(6) Any series of payments that are eligible rollover distributions shall be governed by the provisions of sections (1), (2), (3), (4), and (5) of this rule for each payment made.

(7) For the purposes of this rule, "effective date of payment" means:

(a) The date inscribed on check or warrant; or

(b) The date of an electronic transfer/transaction.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 21-2005, f. & cert. ef. 11-1-05

459-007-0050

Crediting Earnings for a Deceased Tier One Active or Inactive Member

Upon the death of an active or inactive Tier One member, earnings from the date of death to the date of distribution shall be credited as specified in this rule.

(1) Definitions. For purposes of this rule:

(a) "Death benefit amount" means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) "Effective date of request" means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For a member whose date of death is on or after January 1, 2000:

(a) If the member's death is prior to July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the greater of the assumed rate, prorated from January 1 to the first of the month of the member's death, or the latest year-to-date calculation as of the first of the month of the member's death.

(b) If the member's death is on or after July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(c) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member's variable account as follows:

(A) If earnings or losses for the calendar year prior to the calendar year of the member's death have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings or losses for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(d) After earnings have been credited in accordance with subsections (a), (b) and (c) of this rule, the value of the member's variable account shall be added to the value of the member's regular account and the sum shall constitute the death benefit amount as of the first of the month of the member's death.

(e) If the effective date of request occurs within the same year as the date of death, earnings from the first of the month of the member's death to the effective date of request shall be credited based on the latest year-to-

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date calculation for Tier Two regular accounts as of the effective date of request less the latest year-to-date calculation for Tier Two regular accounts as of the first of the month of the member's death, and subsections (f) through (h) of this section do not apply.

(f) Earnings on the death benefit amount from the first of the month of the member's death to the end of the calendar year shall be credited based on the Tier Two annual rate less the latest year-to-date calculation for Tier Two as of the first of the month of the member's death.

(g) Earnings on the death benefit amount for calendar years following the year of the member's death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(h) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the latest year-to-date calculation for Tier Two regular accounts.

(i) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate.

(3) If a member's date of death is prior to July 1, 2003, and the effective date of request is prior to December 31, 2004, earnings shall be credited as follows:

(a) Earnings from the date of death through December 31, 1999, shall be credited to the member's regular account as of December 31, 1999, in accordance with the provisions of this rule in effect from the date of death through December 31, 1999.

(b) Earnings from January 1, 2000, to the date of distribution shall be credited in accordance with ORS 238.390 as simple interest prorated for that period based on the assumed rate.

(4) If a member's date of death is prior to January 1, 2000, but the effective date of request is on or after December 31, 2004:

(a) Earnings shall be credited in accordance with the version(s) of OAR 459-007-0050 in effect up to January 1, 2000.

(b) As of January 1, 2000, the deceased member's account(s) shall be converted to a death benefit amount under subsection (2)(d) of this rule.

(c) Earnings on the death benefit amount from January 1, 2000, to the date of distribution shall be credited in accordance with subsections (2)(e) through (2)(h) of this rule.

(5) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 238.430 & 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(6); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 16-2004, f. & cert. ef. 6-15-04; PERS 21-2005, f. & cert. ef. 11-1-05

459-007-0060

Crediting Earnings to the Tier One Employer Death Benefit

(1) Upon the death of a Tier One member who is entitled to an employer death benefit under ORS 238.395, the amount of the employer benefit shall be added to the death benefit amount, as defined in OAR 459-007-0050(1), as of the first of the month of the member's death.

(2) Earnings shall thereafter be credited to the death benefit amount in accordance with OAR 459-007-0050(2)(e) through (g).

(3) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, 238.430 & 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(7); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 21-2005, f. & cert. ef. 11-1-05

459-009-0020

Public Employer

(1) A "public employer" shall have the same meaning as that term is given in ORS 238.005(17) and shall include all public school districts and educational service districts.

(2) The employing entity (public employer) is that entity having the final authority to direct and control an individual in the performance of assigned work or duties. This authority may be active or reserved; expressed or implied. In determining who is the employing entity, the following factors shall be used:

(a) Who has or had the authority to select and engage the employee;

(b) Who has or had the power of dismissal; and

(c) Who has or had the authority and responsibility for directing and/or supervising the individual's work and for controlling the individual's conduct at work.

(3) The source of payment for labor or services is not of itself a controlling factor in deciding the identity of the employer.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005(9) & 238.205

Hist.: PERS 7-1992, f. & cert. ef. 11-9-92; PERS 1-1996, f. & cert. ef. 3-26-96;

Renumbered from 459-010-0034; PERS 21-2005, f. & cert. ef. 11-1-05

459-009-0120

Employer Recordkeeping for Multiple Qualified Retirement Plans

(1) The purpose of this rule is to implement ORS 238.630(5) by establishing the record retention and reporting requirements of employers participating in the Public Employees Retirement System (PERS) that are necessary to assure PERS continued compliance with the limitations on contributions and benefits in Section 415 of the Internal Revenue Code (IRC).

(2) For purposes of this rule:

(a) A "qualified retirement plan" is an employees' trust as described in IRC Section 401(a) which is exempt from federal taxation under IRC Section 501(a).

(b) "Wages" means remuneration paid by the employer in a calendar year for federal income tax withholding purposes under IRC Section 3401.

(c) "Annual benefit payable" means the benefit, funded by employer contributions, an employee is entitled to receive by virtue of the employee having attained the age at which the employee is eligible to receive a retirement benefit under the terms of a qualified defined benefit plan other than PERS, which is payable annually in the form of a straight life annuity. Notwithstanding ORS 238.205, employer contributions shall include all employee contributions picked up by an employer under IRC, Section 414(h).

(d) The "projected annual benefit" is the annual benefit payable, as defined in subsection (c) of this section, with the exception that it is determined by using the following assumptions:

(A) The member will continue employment with the PERS participating employer until reaching the age when eligible to begin full retirement benefits, under the terms of a plan other than PERS;

(B) The member's compensation will remain unchanged in determining the full retirement benefit under paragraph (A) of subsection (d) of this section; and

(C) All other relevant factors used to determine retirement benefits under a plan other than PERS for the calendar year under consideration will remain constant/static for all future calendar years.

(3) All PERS participating employers that have ever offered one or more qualified retirement plans other than PERS shall maintain the following records:

(a) For a qualified defined contribution retirement plan(s), an employer participating in PERS who has ever offered one or more qualified defined contribution retirement plans shall maintain the following records for each employee who is a PERS member for such plan(s) the employee has ever been enrolled in:

(A) A copy of the periodic actuarial valuation report(s) and a copy of the annual statement, given to each PERS member who is also participating in another qualified retirement plan sponsored by the employer, which reflects:

(i) The employer contributions to the employee's account in that plan;

(ii) The employee's contributions to the employee's account in that plan, exclusive of rollover contributions and payment of previously withdrawn contributions; and

(iii) Any addition to the employee's account in that plan of forfeitures from other participants of the plan.

(B) A copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b) of this rule, for each PERS member who is also participating in another qualified retirement plan sponsored by the employer.

(b) For a qualified defined benefit retirement plan(s), an employer participating in PERS who has ever offered one or more qualified defined benefit retirement plans other than PERS shall maintain the following records for each employee who is a PERS member for each plan the employee has ever been enrolled in:

(A) The plan document with all amendments, actuarial reports, and payroll and personnel records that are used to determine and substantiate the amount of the annual benefit payable as defined in subsection (2)(c) of this rule.

(B) The plan document with amendments, actuarial reports, and payroll and personnel records that are used to determine and substantiate the amount of the projected annual benefit, as defined in subsection (2)(d) of this rule.

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(C) A Copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b) of this rule, for each PERS member who is also participating in another qualified retirement plan sponsored by the employer.

(4) Unless otherwise agreed upon:

(a) The records identified in subsection (a) of section (3) of this rule shall be retained indefinitely beginning with calendar year 1989.

(b) The records identified in subsection (b) of section (3) of this rule shall be retained for the current year and three consecutive years immediately preceding the current year.

(c) A staff request for a copy of records or information retained by the employer shall be transmitted to PERS on forms furnished by PERS or in the format required by PERS within 30 working days of the postmark of the request.

(5) For all members who file an application for a service retirement allowance, staff may request the employer transmit to PERS a copy of or information from one or more of the records specified in section (3) or (6) of this rule as required in section (4) of this rule.

(6) Notwithstanding OAR 459-009-0110 and sections (4) and (5) of this rule, all PERS participating employers shall report annually on forms furnished by PERS or in a format required by PERS the following information pertaining to a calendar year, not later than March 1 of the succeeding calendar year:

(a) Each PERS member's wages, as defined in subsection (2)(b) of this rule;

(b) Any other information requested by staff pertaining to the records that are required to be maintained by this rule.

(7) Notwithstanding OAR 459-009-0100 and sections (4) and (5) of this rule, all PERS participating employers who have ever offered one or more qualified retirement plans other than PERS shall report annually on forms furnished by PERS or in the format required by PERS the following information pertaining to a calendar year, not later than March 1 of the succeeding calendar year:

(a) The amount of the employer contributions on behalf of each PERS member made to another qualified defined contribution retirement plan, as described in paragraph (3)(a)(A)(i) of this rule;

(b) The amount of employee contributions made to another qualified defined contribution retirement plan, as described in paragraph (3)(a)(A)(ii) of this rule;

(c) The amount of forfeitures added to each PERS member's account in another qualified defined contribution retirement plan(s), as described in paragraph (3)(a)(A)(iii) of this rule;

(d) The amount of employee after-tax contributions made to another qualified defined benefit retirement plan, as described in subsection (3)(b) of this rule;

(e) The amount of annual benefit payable to each PERS member from another qualified defined benefit retirement plan in the form of a straight life annuity, as described in paragraph (3)(b)(A) of this rule, and the present value (lump sum) amount to fund that straight life annuity;

(f) The amount of projected annual benefit for each PERS member from another qualified defined benefit retirement plan in the form of a straight life annuity, as described in paragraph (3)(b)(B) of this rule, and the present value (lump sum) amount necessary to fund that straight life annuity; and

(g) Any other information requested by staff pertaining to the records that are required to be maintained by this rule.

(8) Participating employers shall be informed of the annual reporting format(s) not later than September of each calendar year for the report(s) due for that calendar year in the succeeding year.

(9) Any participating employer negligent in retaining documents and records, or delinquent in making records or information available, as required by this rule shall be subject to the sanctions provided for in ORS 238.705.

Stat. Auth.: ORS 238.630(5), 238.705 & 238.650

Stats. Implemented: ORS 238.630

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-005-0505; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0010 Leave of Absence

(1) Employer/Employee Agreement. An official leave of absence without pay for any purpose must have the following in order to be considered bona fide:

(a) An agreement in writing;

(b) Accordance with the applicable law, rules and regulations;

(c) The duration specifically stated at the time of granting; and

(d) Certification to PERS by the employer granting such leave.

(2) Creditable Service. A leave of absence without pay which constitutes the major fraction of a calendar month:

(a) Shall not be used to calculate "years of membership" under ORS 238.300; and

(b) Shall not be used to determine "creditable service" under ORS 238.005(5) or "retirement credit" under ORS 238.005(19).

(3) Reporting Requirement. Unless otherwise agreed upon by PERS, the employer shall report the following in a format acceptable to PERS:

(a) Any period of leave of absence without pay, which constitutes the major fraction of a calendar month, for each member at the time the leave begins. The reported period of leave of absence without pay must include an end date.

(b) Any amendment or extension to a previously reported period of leave of absence without pay.

(c) All members on a leave of absence without pay, which constitutes the major fraction of a calendar month, at the time the employer provides an itemized statement of all employee contributions, such as in the annual or pre-annual report.

(4) A PERS member on an official leave of absence without pay is not considered terminated from service with a participating employer.

(5) An employee on an official leave of absence without pay on the date the employer begins to participate in PERS, shall be considered to be an employee on such date for the purpose of determining eligibility for participation in PERS.

(6) A layoff from employment does not constitute a leave of absence without pay.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.300

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 12-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0011 Authorized Paid Leave of Absence

(1) Definition of "remuneration in return for services to the public employer." For purposes of ORS 238.005(20)(a), remuneration in return for services to the public employer means:

(a) The employee must be paid by the participating employer for their services;

(b) The employer and employee must lawfully agree, expressly or implicitly, that the payment is for services to the employer; and

(c) The payment must in fact be remuneration for services to the participating public employer.

(2) Paid Leave. For purposes of creditable service as defined in ORS 238.005(5), payments to employees during paid leave shall be considered salary, as defined under ORS 238.005(20)(a), if:

(a) Prior to leave being taken, the employer and employee have lawfully agreed to the terms and conditions of paid leave either through an agreement or pursuant to the employment policies of the employer that are expressly or implicitly accepted by the employee; and

(b) The agreement or policy governing paid leave provides that such leave is:

(A) For a specified period, including a period that may be extended by the employer, which period may be either a specified time or determinable based on the character of the services to be performed;

(B) Subject to approval by the employer; and

(C) Subject to an express, reasonable expectation that the employee will return to the employee's regular duties.

(3) 600 Hour Requirement. For the purposes of ORS 238.005(12)(c), a member is not "inactive" when:

(a) The member is absent from service while on authorized paid leave; and

(b) The member's employment position normally requires 600 or more hours of service to the public employer in a 12-month period.

(4) IRS Requirements. The proposed rule must be consistent with IRS requirements and the agreements specified in this rule are governed by ORS 238.618.

(5) Effective Date. The provisions of this rule shall be prospective and effective on January 1, 2002. Employers shall maintain a record that past employment practices and agreements have been changed to comply with the provisions of this rule. Past employment practices, with respect to paid leaves of absence occurring prior to the effective date of this rule, are recognized as complying with the then requirements, statutes and rules governing PERS.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005, 238.015, 238.025 & 238.200

Hist.: PERS 9-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05

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459-010-0012

Membership of Community College Employees

(1) For purposes of establishing membership in the system, effective July 1, 1988, an academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed to be employed 600 hours or more in a year. For an academic employee of a community college, a year shall be the 12-month period beginning July 1 and ending the following June 30.

(2) For an academic employee of a community college, an FTE shall be measured against an academic year beginning July 1 in a given year and ending June 30 of the year following.

(3) An academic employee of a community college is an instructor who teaches classes offered for college-approved credit or on a non-credit basis. Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of ORS 238.074; but are subject to the membership requirements under ORS 238.015.

(4) Each community college shall determine who is an academic employee in its employ under this rule. In making that determination, a community college shall consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(5) For persons concurrently employed in academic positions in two or more community colleges, the combined FTE shall be used in determining eligibility for membership. If the combined FTE is less than the criteria in section (1) of this rule, the combination of hours of service shall be considered in determining eligibility for membership pursuant to ORS 238.015.

(6) For academic employees concurrently employed in an academic and a non-academic position in one or more community colleges, the combination of academic and non-academic duties shall be considered in determining eligibility for membership pursuant to ORS 238.015. For the purposes of this section, a year shall be any consecutive 12-month period.

(7) Employment of retired members of the system in academic or non-academic positions is subject to the limitations in ORS 238.082.

Stat. Auth.: ORS 238.650

Stats. Implemented:

Hist.: PERS 3-1992, f. & cert. ef. 5-4-92; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0030

Determination of Employee Status

(1) The term "employee" shall have the same meaning as provided in ORS 238.005(7) and OAR 459-005-0001(11).

(2) Determination of whether an individual is an employee is made under common-law rules. Under common-law rules, every individual who performs labor or services subject to the direction and control of an employer, both as to what must be done and how it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the labor or services, resulting in an employee/employer relationship.

(3) If, under the common-law rules, there is an employee/employer relationship, it makes no difference how it is described. It is not controlling whether the employee is called an employee. It is not controlling how the payments are measured, how they are made, or what they are called. It is not controlling whether the individual is employed full time or part time. There is no distinction made between classes of employees. Superintendents, executives, managers, supervisors, and other supervisory personnel are all employees.

(4) In applying the common-law rules, the 20-factor test as described in Internal Revenue Service Ruling 87-41 shall be used in determining whether or not an individual is an employee. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed. The 20 factors are:

- (a) Instructions;
- (b) Training;
- (c) Integration;
- (d) Services Rendered Personally;
- (e) Hiring, Supervising, and Paying Assistants;
- (f) Continuing Relationship;
- (g) Set Hours of Work;
- (h) Full Time Required;
- (i) Doing Work on Employer's Premises;
- (j) Order of Sequence Set;
- (k) Oral or Written Reports;
- (l) Payment by Hour, Week, Month;
- (m) Payment of Business and/or Traveling Expenses;

- (n) Furnishing of Tools and Materials;
- (o) Significant Investment;
- (p) Realization of Profit or Loss;
- (q) Working for More than One Employer at a Time;
- (r) Making Service Available to General Public;
- (s) Right to Discharge; and
- (t) Right to Terminate.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005(7)

Hist.: PER 8, f. 12-15-55; PERS 7-1992, f. & cert. ef. 11-9-92; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0165

Transfer into a New Classification

(1) An employee who transfers from one classification of employment in the Public Employees Retirement System to another classification shall be considered, for the purpose of contribution rate, compulsory retirement, voluntary retirement, disability retirement or withdrawal, as are all others in the same classification in which the employee is employed at the time of his termination, except that an employee who at the time of his termination was temporarily employed in a classification other than his usual one during a time when he was not required to work in his regular employment, shall be considered as though in his usual classification.

(2) A policeman or fireman who works in the police or fire classification until age 55 or over, then transferring to a miscellaneous classification, shall retain all rights and benefits earned as a policeman or fireman. He shall contribute at the miscellaneous rate applicable to the age at which he last established membership. Benefits earned thereafter as a miscellaneous employee shall be payable in addition to those earned as a policeman or fireman and shall be computed as are the benefits of any miscellaneous employee.

(3) A miscellaneous employee who works in a miscellaneous classification until age 55 or over, then transferring to a policeman or fireman classification, shall retain all rights and benefits earned as a miscellaneous employee. He shall contribute at the policeman and fireman rate applicable to the age at which he last established membership. Benefits earned thereafter as a policeman or fireman shall be payable in addition to those earned as a miscellaneous employee and shall be computed as are the benefits of any policeman or fireman.

Stat. Auth.: ORS 238.650

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

459-010-0205

Retention of Membership by School Employees

Any school employee who completes a school year, who is then absent the next five school years, but returns to school employment at the beginning of the sixth school year, or reaches early voluntary retirement age prior to the beginning of the sixth school year, shall be deemed to have retained membership in the Public Employees Retirement System, provided, however, that this preservation of membership is contingent upon the confirmation of this rule by the 49th Legislative Assembly.

Stat. Auth.: ORS 238.650

Stats. Implemented:

Hist.: PER 8, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

459-011-0200

Re-Establishment of Membership

No employee of the Federal Cooperative Extension Service or any other service for an employer participating in the system which mandates participation in the federal Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS), who cancels membership in the Public Employees Retirement System pursuant to ORS 238.015(9)(b) or (c) may thereafter repay into the retirement fund the amount withdrawn upon cancellation, or in any other manner re-establish a right to benefits canceled by the withdrawal.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015(9)

Hist.: PER 8, f. 12-15-55; PERS 6-1992, f. & cert. ef. 11-9-92; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0020; PERS 21-2005, f. & cert. ef. 11-1-05

459-013-0060

Payment of Retirement Benefits

Retirement benefits shall be payable in equal monthly payments as of the last day of each month:

(1) A member's retirement allowance shall accrue from the effective date of his retirement. Should he die during a calendar month for which he would have received a service or disability retirement allowance had he lived that entire month, and after the first payment was normally due, ben-

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efits computed to the date of his death on the basis of 30 days constituting a month shall be payable as follows (ORS 238.390(3)):

(a) Under the non-refund plan, accrued benefits are payable to the administrator or executor of the estate of the deceased member;

(b) Under the Refund Annuity plan, accrued benefits other than the annuity portion of the allowance are payable to the administrator or executor of the estate of the deceased member. When electing payment of benefits under the Refund Annuity plan, a retiring member of the system may designate any person to receive any balance remaining in his account at the time of death;

(c) Under options No. 2 and 3, accrued benefits are payable to the administrator or executor of the estate of the deceased member, and benefits to the member's beneficiary, if surviving, shall accrue from the date of the death of the member. Retirement allowances payable to the surviving beneficiary of a deceased member under options No. 2 and 3 shall cease with the allowance payable for the last full calendar month of such beneficiary's life.

(2) At any time before the first payment on account of his service allowance becomes normally due, a member of the system who has retired under option No. 2 or 3 may designate new beneficiaries or revoke previous designations by giving written notice to the Retirement Board, but no revocation or new designation shall be effective until received by the Public Employees Retirement Board. A beneficiary named under option No. 2 or 3 must have an insurable interest in the life of the member.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.300 & 238.305
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0070; PERS 21-2005, f. & cert. ef. 11-1-05

459-014-0030

Designation of Beneficiary

(1) No person may be designated as a beneficiary to receive the balance in a member's account in the Retirement Fund in the event of the member's death before retirement, unless facts show that such person has an insurable interest in the life of the member.

(2) An insurable interest in the life of a member is an interest whether pecuniary, or one of affection or dependency based on reasonable grounds for expectation of benefit or advantage from continuation of the life of the member and arising out of the relationship between the member and the possessor of such interest, whether the relationship be one of affinity, consanguinity, or debtor and creditor. It is not necessary that the insurable interest continue until the death of the member in order to qualify the beneficiary to receive such payments as may otherwise be due to him.

(3) A member may designate a new beneficiary or revoke a previous designation by giving written notice to the Retirement Board, but no revocation or new designation shall be effective until received by the Public Employees Retirement Board. (Forms will be furnished by the Board upon request.)

(4) When a member designates a new beneficiary or beneficiaries, such action shall annul and revoke all prior designations.

(5) The right of a beneficiary to receive the balance in a member's account in the Retirement Fund shall not be deemed nullified or waived by any agreement or property settlement between the member and the beneficiary, or on behalf of either of them, which does not specifically mention such right and waive it on the part of the beneficiary or vacate and set aside the designation of said beneficiary by such member.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.390
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0075; PERS 21-2005, f. & cert. ef. 11-1-05

459-015-0030

Hearings on Denial or Discontinuance of Disability Retirement Allowances

(1) A final denial of an application for disability benefits, or any decision discontinuing a previously granted disability retirement allowance may be reviewed in a contested case hearing.

(2) A contested case hearing may be requested by a member by filing with the Board a written request as provided for in OAR 459-001-0035.

(3) The contested case hearing shall be heard before an administrative law judge designated by the Office of Administrative Hearings and conducted in accordance with the Attorney General's Model Rules of Procedure as adopted by OAR 459-001-0005. The member may represent himself or be represented by legal counsel. An Assistant Attorney General will appear at the hearing to assist the staff in presenting its position, and to assist in the development of a complete hearing record.

(4) Following the hearing, the hearings officer shall prepare or direct one of the parties to prepare a Proposed Findings of Fact, Conclusions of Law and Order and serve it on the parties. The administrative law judge's proposed order will become final 90 days following service upon the petitioner, the Director and the Board through the Director, unless objections are filed as provided in this rule. Objections may be filed by the Director or the petitioner within 45 days of service. If the Board determines additional time is necessary to review a proposed order and issue an amended order, the Board may extend the time after which the proposed order will become final in accordance with ORS 183.464(3).

(5) In accordance with OAR 459-001-0040, prior to initiating any judicial review of a final order, an applicant may file with the Board a petition for reconsideration.

(6) Any disputed claim concerning a disability retirement allowance or discontinuance of such allowance may be voluntarily settled on a lump-sum basis subject to recommendation of the assigned Assistant Attorney General and final approval of the Board. Settlements approved by the Board shall be paid upon receipt of a "Release and Covenant Not to Sue" signed by the applicant and his or her attorney, if any.

Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690 & 238.650
Stats. Implemented: ORS 238.320 - 238.345
Hist.: PER 6-1979(Temp), f. & ef. 11-21-79; PER 3-1980, f. & ef. 5-8-80; PERS 2-1992, f. & cert. ef. 1-14-92; Renumbered from 459-001-0020; PERS 9-2003, f. & cert. ef. 8-4-03; PERS 21-2005, f. & cert. ef. 11-1-05

459-015-0035

Evidence — Contested Case Hearings

(1) Applicant's documentary evidence:

(a) At least 30 days before the scheduled hearing, the applicant shall file with the administrative law judge and serve upon the assigned Assistant Attorney General a copy of each document proposed to be introduced in evidence. Failure to comply may constitute grounds to deny admission of the document at hearing. Unless cross-examination is requested of the document preparer or custodian, within 20 days prior to hearing, a timely served and filed document may be offered subject to the same standards and received with the same effect as oral testimony;

(b) To develop a record that is necessary and appropriate and to achieve fairness, the administrative law judge has the discretion to admit documents/reports not filed and served within 30 days of a hearing unless the party opposing the admission demonstrates that the admission is prejudicial. The administrative law judge will also have the discretion to allow for cross-examination and rebuttal evidence not requested precisely in accordance with the rules.

(2) If cross-examination is requested of the document preparer or custodian as provided in subsection (1)(a) of this rule, and the requestor is informed within ten days prior to the hearing that the requested witness will not appear for cross-examination, the document may be received in evidence if the administrative law judge determines that it does not prevent the creation of a complete and accurate record upon which the Board will be able to make a well informed determination in the matter.

Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 237.171, 237.191 & 237.263
Stats. Implemented:
Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 21-2005, f. & cert. ef. 11-1-05

459-015-0040

Proof of Case — Contested Case Hearings

(1) Burden of Proof in Hearings: The burden of proof for entitlement to a disability retirement allowance is upon the applicant. The Board is not required to prove that the applicant is entitled to a disability retirement allowance.

(2) Standards of Proof:

(a) An order granting entitlement to a disability retirement allowance shall be supported in the record by sufficient evidence demonstrating that the applicant suffers from a physical or mental/emotional injury or disease, and that the applicant is unable to perform any work for which he or she is qualified;

(b) An order denying entitlement to a disability retirement allowance need not be supported by medical or vocational evidence presented by the Board. An order may deny entitlement to a disability retirement allowance if the applicant fails to present sufficient proof of disability and inability to work. An order may deny entitlement to a disability retirement allowance on the basis of medical or vocational evidence presented by the Board.

(3) Professional opinions:

(a) A physician may express an opinion regarding whether the injury or disease was caused by the performance of job duties;

(b) A physician may express an opinion regarding the applicant's ability to perform any work, related tasks, or functions;

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(c) The administrative law judge shall have the discretion to give more weight to the testimony (findings and opinions) of the treating, the examining, or the consulting physician as the facts indicate.

Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 237.171, 237.191 & 237.263
Stats. Implemented:
Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 21-2005, f. & cert. ef. 11-1-05

459-020-0015

Collection of Pro Rata Share of Expenses

The Board shall collect from each participating public agency its respective pro rata share of expenses incurred in administering this Act (ORS 237.410 to 237.520, inclusive). For purposes of this recovery of expenses, the fiscal period shall be the calendar quarter and all expenses paid during a calendar quarter shall be prorated to each employer on the basis of the number of employees reported on the employer's quarterly report form for the quarter. For this purpose, the scheduled payments for amortizing the amounts loaned to the department from the general fund of the State of Oregon and from the Public Employees Retirement System shall be considered to have been made during a quarter.

Stat. Auth.: ORS 238.650
Stats. Implemented:
Hist.: PER 9, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

459-020-0050

Governmental Unit Contracting with Board Must Have Legal Status

A political subdivision, instrumentality, or agency, as to which an agreement with the Department of Health and Human Services may be executed by the Public Employees Retirement Board, is an entity that has legal being and exercises some of the governmental powers or discharges some of the governmental functions of the State of Oregon.

Stat. Auth.: ORS 238.650
Stats. Implemented:
Hist.: PER 9, f. 12-15-55; PER 6-1981, f. & ef. 3-5-81; PERS 21-2005, f. & cert. ef. 11-1-05

459-020-0055

All Prior Rules Superseded

These rules supersede all rules of the Public Employees Retirement Board, relating to the Old-Age and Survivors Insurance Division, heretofore filed with the Secretary of State.

Stat. Auth.: ORS 238.650
Stats. Implemented:
Hist.: PER 9, f. 12-15-55; PERS 21-2005, f. & cert. ef. 11-1-05

459-035-0150

Continuation of Insurance Coverage Under COBRA

(1) This rule relates to the continuation of PERS-sponsored health insurance coverage under the federal Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA) and ORS 743.600 to 743.602. PERS-sponsored health insurance plans shall provide for continuation of coverage to the extent required by COBRA and ORS 743.600 to 743.602. Nothing in this rule is intended to expand any person's continuation coverage rights under those provisions or any other applicable provision of law.

(2) Any person who is on continuation of coverage under COBRA and/or ORS 743.600 to 743.602 shall pay the entire premium for that coverage and shall not be entitled to any contributions from the RHIA or RHIPA. Premium payment shall be made only by check or money order, and the check or money order must be physically received by the Third Party Administrator on or before the due date. Subject to the grace periods required by COBRA, failure to make the premium payment by the due date shall result in termination of a person continuation coverage.

Stat. Auth.: ORS 238.410 & 238.650
Stats. Implemented: 238.410
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-045-0000

Authority and Purpose

(1) In accordance with ORS 238.465(3), the provisions of ORS 238.465 (Oregon Laws 1993, Chapter 715) shall be administered by the Public Employees Retirement System and under the policies and procedures established by the Public Employees Retirement Board. To this end, the Board and the staff shall:

(a) Provide for the administration of a separate account in PERS in the name of an alternate payee when so ordered by the court.

(b) Establish criteria to determine whether or not domestic relations orders, judgments of dissolution, divorce decrees, and marital property agreements comply with ORS 238.465.

(c) Establish definitions and procedures for the effective and efficient administration of ORS 238.465.

(2) The rules of this Division are intended to provide a clear and complete description of the division of benefits payable under PERS and on how those divided benefits may be paid as provided for in ORS 238.465.

(3) PERS is a defined benefit plan and benefits are attributable to both employee and employer contributions.

(4) The rules contained in Division 045 pertain to PERS benefits covered in ORS Chapter 238, and not to the State's Deferred Compensation plan addressed in ORS Chapter 243.

Stat. Auth.: ORS 238.465(3) & 238.650
Stats. Implemented: ORS 238.465
Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-045-0010

Division of Benefits

The purpose of this rule is to describe methods for determining an alternate payee's award from a member's PERS account and PERS Funds, which are administrable by PERS.

(1) Pre Retirement Division Method: A final court order or judgment which establishes a separate account in the Fund in the name of the alternate payee at the time of the award.

(a) The court order must be received by the Divorce Decree Unit at the PERS Portland Headquarters office prior to the issue date of any payment to, or on behalf of a member, of a service or disability retirement, refund, or death benefit.

(b) The Pre Retirement Division Method shall not be used if a court order allows any option for a member to subsequently buy out the alternate payee's interest in the member's PERS funds.

(c) The court order must include a specific percentage or dollar amount, either directly or pursuant to a formula resulting in a percentage or dollar amount to be awarded to the alternate payee.

(d) The court order must direct PERS to transfer the amount of the award from the member's account and to deposit it in a separate account in the Fund in the name of the alternate payee as of a court provided date.

(e) The court order shall specify a date between January 1, and through December 31, on which to base the transfer of the alternate payee's award from the member's PERS account. If a court order directs PERS to transfer a certain percentage to the alternate payee, it shall be converted into a dollar amount. The converted dollar amount or the dollar amount stated in the court order that is awarded to the alternate payee shall be applied against the last audited PERS member account balance on record as of the end of the plan year (December 31) on or immediately preceding the award date specified in the court order and then it shall be deposited into a separate account in the name of the alternate payee.

(f) If a date is not given in a court order on which PERS is to base the transfer of an alternate payee's award from a member's PERS member account then PERS shall use the date the court order was signed by the court and base the transfer as of the end of the plan year (December 31) immediately preceding the date the order was signed by the court. If the date the order was signed by the court is December 31 then the last audited account balance as of December 31 of the plan year in which the order was signed shall be used.

(g) A percentage award that is due an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund. Specific dollar amounts awarded to an alternate payee shall be applied against the member's individual account, and in the Variable Annuity Account in the Fund on a pro-rata basis.

(h) Once the value of the alternate payee's award is established, the portion of the award that is attributable to the member's account in the Variable Annuity Account in the Fund shall be transferred to the separate account established in the name of the alternate payee, which shall earn a regular or fixed interest rate as established by the Board, from the transfer date to the date benefits are effective for the alternate payee.

(i) Interest on a separate alternate payee account after the division and transfer takes place shall be credited in accordance with OAR chapter 459, division 007.

(j) Under the Pre Retirement Division Method an alternate payee would be eligible for benefits based on the member's eligibility for benefits regardless of whether or not the member elects to begin receiving benefits.

(2) At Time of Payment Division Method: a court order that awards an alternate payee a portion of future benefits that become due and payable by PERS to a member, expressed as a percentage:

(a) The court order awards an alternate payee a percentage of the total PERS funds that were accrued during the marriage.

(b) The award is computed using either formula (A) which uses years and months, or formula (B), which uses member contributions and interest credited to the member's PERS account. Each of these formulas is then

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multiplied by a subsequent percentage as described in sub-paragraph (C). Any court order that PERS receives that utilizes the ratio method must spell out in full the formula that is to be used for determining the alternate payee's award.

(A) The numerator is the creditable service time accrued as an active member during the marriage, (MCS). The denominator is the total of the member's total creditable service, (TCS) as defined in ORS 238.005(5), at the time benefits become due and payable to either the member or the alternate payee, expressed as the equation:

$$\frac{MCS}{TCS} = \text{Ratio of benefits accrued during the marriage.}$$

(i) Example: Assume a member had 12 years and 3 months of creditable service accrued during the marriage, the numerator would equal 147 months.

(ii) Assume further that the member has 25 years and 8 months of total creditable service as of the date the member and/or alternate payee applies for payment, then the denominator would equal 308 months.

(iii) 147 divided by 308 equals 47.7273 percent.

(B) The numerator is the amount of the contributions and the interest credited to the member's PERS account during the marriage, (married account = MA). The denominator is the total of the member's PERS account (total account as determined by PERS = TA) at the time benefits become due and payable to either the member or the alternate payee, expressed as the equation:

$$\frac{MA}{TA} = \text{Ratio of benefits accrued during the marriage.}$$

(i) Example: Assume a member has a PERS member account of \$23,511.82 as of the end of the plan year (December 31) immediately preceding the date of marriage then the numerator would equal \$23,511.82.

(ii) Assume further that the total member PERS account as of the end of the plan year (December 31) immediately preceding the date of divorce or date an alternate payee elects to begin receiving payment, equals \$45,650.33. The denominator then would equal \$45,650.33.

(iii) \$23,511.82 divided by \$45,650.33 equals 51.5042 percent.

(C) Court orders may direct that the ratio in either paragraphs (A) or (B) of this subsection be multiplied by another percentage and the result equals the alternate payee's award, expressed as the equation:

(i) Ratio from paragraphs (A) or (B) multiplied by (C) of this subsection equals amount of alternate payee's award.

(ii) 147 months divided by 308 months equals 47.7273 percent multiplied by court awarded percentage of 50 percent equals 23.8637 percent due the alternate payee when benefits become payable.

(c) The alternate payee's award is not computed until the member or member's beneficiaries elect to receive funds due to refund, service or disability retirement, or death.

(3) A court order that uses the Division Methods described in Sections (1) and (2) of this rule may include language that would allow:

(a) An alternate payee to elect to receive his or her award in the form of retirement payment option on or after the member's earliest eligibility for service retirement benefits, regardless of whether or not the member actually retires, and/or the member or the member's beneficiaries elects to begin receiving benefits.

(b) An alternate payee to elect to have a separate account established in the Fund in the name of the alternate payee.

(c) If an alternate payee elects to have a separate account established in the fund in his or her name regular or fixed interest shall be credited and posted up until the alternate payee elects to receive his or her award in accordance with OAR chapter 459, division 007.

(d) When an alternate payee exercises the election under paragraph (2)(d)(A) or (B) of this rule pursuant to a court order that utilizes the formula described in paragraph (2)(b)(A) of this rule, the total creditable service that shall be used for the denominator shall be based as if a member who is active had terminated as of the date payments are effective for the alternate payee. If a member is inactive and has already terminated on some other date prior to the alternate payee's election, then the inactive member's total actual creditable service time shall be used as the denominator.

(e) When an alternate payee exercises the election under paragraph (2)(d)(A) or (B) of this rule pursuant to a court order that utilizes the formula described in paragraph (2)(b)(B) of this rule, the denominator that shall be used for an active or an inactive member shall be the total member's PERS account as of December 31 of the year prior to the date payments are effective for the alternate payee. If a member is retiring at the same time an alternate payee is exercising an election under paragraph (2)(c)(A) of this rule, then the actual total member PERS account shall be used as the denominator.

(4) The Payment Division Deduction Method: This method can be used in regard to a member prior to retirement, or in regard to a member who has retired and has started receiving payment. A court order provides an award, which is stated as a flat or set dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be paid to an alternate payee from the service or disability retirement benefit that shall be paid in the future to a member, or that is presently being paid by PERS to a retired member.

(a) The flat or set dollar amount or percentage that is awarded to the alternate payee shall be deducted out of the retired member's gross monthly benefit.

(b) Under this method an alternate payee's award shall not be based on the alternate payee's age or life expectancy.

(c) A court order may direct that a member select a specific payment option and designate the alternate payee as the primary beneficiary, if the member has not retired as of the date PERS receives a final court order. If a court order provides for this type of an award, payment to the member at the time the member retires shall be based on the age difference between the member and the alternate payee. The alternate payee award shall then be deducted from the member's gross monthly benefit, at the time the member retires.

(d) If a member has retired and has been receiving payment for more than the time period allowed in ORS 238.305(1) PERS shall not allow a change of payment option from what was originally selected by the member, regardless of any direction to the contrary that may be contained in a court order.

(e) If a member has retired and been receiving payment for more than the period allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary designation if the option originally selected by the member allows for a change of beneficiary, regardless of any direction to the contrary that may be contained in a court order.

(f) An alternate payee cannot convert their award to their own separate payment option independent from the member's.

(g) PERS shall continue to send a separate check in the name of the alternate payee for as long as there is a benefit being paid by PERS to a member or a member's beneficiary.

(5) A division of benefits must be in accordance with one of the methods described in this rule.

(6) For the purposes of this rule, benefits paid by PERS to a member are:

(a) "Retirement benefits" means benefits payable on retirement under PERS law for service or disability.

(b) "Refund" means a refund of a member's PERS account, and includes payment made due to loss of membership under ORS 238.095.

(c) "Death benefits" means benefits that are payable to a beneficiary pursuant to ORS 238.390 and 238.395.

Stat. Auth.: ORS 238.465(3) & 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-060-0000

Purpose

This division of chapter 459, Oregon Administrative Rules, provides information concerning the disclosure of information from the records of individual members of the Public Employees Retirement System (PERS). The purpose of the rules of division 060 is:

(1) To protect the members of PERS from unreasonable invasion of their privacy;

(2) To give members of PERS access to their individual records, unless otherwise prohibited by statute; and

(3) To identify and clarify the circumstances where disclosure of information from a PERS member's records without the member's consent is permissible.

Stat. Auth.: ORS 192.502 & 238.650

Stats. Implemented: ORS 192.410 - 192.505, 237.410 - 237.520, 237.610, - 237.620, 237.950 - 237.980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 21-2005, f. & cert. ef. 11-1-05

459-080-0150

Employee Contributions into the IAP Account

(1) Definition. For the purposes of this rule: "Forfeiture account" means the account set up by PERS to administer overpayments of employee contributions.

(2) Employee contributions under the OPSRP Individual Account Program ("IAP") are required from all eligible employees who qualify as members, as established under OAR 459-080-0010, who:

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(a) Are working in a position designated as a "qualifying position" as defined in OAR 459-070-0001(13); or

(b) Perform a total of 600 or more hours in a calendar year with one or more participating employers in one or more classes the participating employer has designated as a participating class.

(3) Contributions for current members.

(a) For a member who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(b) Once a member meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted following the member's performance of 600 hours in the calendar year. Contributions are due for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(4) Contributions for new employees.

(a) For an eligible employee who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(b) Once an eligible employee meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted from the date of membership in the IAP, as established under OAR 459-080-0010.

(5)(a) If contributions are submitted on behalf of an eligible employee who does not meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of those contributions will be returned after the end of the calendar year during which the pay period triggering those contributions ended.

(b) Any net earnings, losses, or administrative fees attributable to the returned contributions will be applied to the forfeiture account.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.330

Hist.: PERS 13-2004(Temp), f. 5-19-04, cert. ef. 6-21-04 thru 12-1-04; PERS 21-2004, f. & cert. ef. 9-22-04; PERS 21-2005, f. & cert. ef. 11-1-05

459-080-0250

IAP Account Installments

(1) Definitions. "Payout Period" means the span of years over which the member elects to receive installment payments under section (2) of this rule.

(2) Upon retirement, a member of the individual account program who elects to receive the amounts in the member's employee and employer accounts in installments under ORS 238A.400(2) shall designate the number of years over which the installments are to be paid, selecting a period of 5, 10, 15, or 20 years. The member may also request that installments be made on a monthly, quarterly, or annual basis.

(3) Installments will be adjusted annually to reflect investment gains and losses on the unpaid balance. The member's balance, so adjusted, will be divided by the number of years left in the member's Payout Period to determine the amount to be paid to that member for the next year, which will then be paid over the monthly, quarterly, or annual basis selected by the member or as modified pursuant to sections (4) or (5) of this rule.

(4) If a member requests monthly or quarterly installments under section (2) of this rule, but the amount of the installment would be less than \$200 as determined at the time of the initial request, the frequency of the installment payment will be extended from monthly to quarterly, or quarterly to annually, until the amount of the installment is at least \$200. If monthly or quarterly installments would not exceed \$200, the member will be paid annually.

(5) Notwithstanding the Payout Period selected by the member under section (2) of this rule, any distribution will be adjusted to comply with the required minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect August 29, 2003.

(6) Members who elect a five year Payout Period or a lump sum payment may elect to directly roll over any portion of their IAP installment or lump sum payment to an eligible retirement plan, subject to the following limitations:

(a) Members will not be permitted to directly roll over any IAP installment payments if the total annual distribution from their IAP account is reasonably expected to total less than \$200.

(b) If members elect to have a portion of their IAP installment or lump sum payment paid directly to them and a portion directly rolled over, the portion to be rolled over cannot be less than \$500 or that portion will be paid directly to the member.

(7) Members who elect a 10, 15, or 20 year Payout Period cannot elect to have any portion of their installment payments rolled over.

(8) Members who are subject to the required minimum distribution requirements referenced in section (5) of this rule may only roll over that portion of their installment or lump sum payments that exceeds required minimum distribution requirements.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.400

Hist.: PERS 23-2003(Temp), f. & cert. ef. 9-22-04 thru 3-15-05; PERS 30-2004, f. & cert. ef. 11-23-04; PERS 21-2005, f. & cert. ef. 11-1-05

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 10-2005(Temp)

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

Certified to be Effective: 11-2-05 thru 4-28-06

Notice Publication Date:

Rules Amended: 177-046-0020, 177-046-0110, 177-050-0025, 177-050-0027, 177-070-0025, 177-070-0035, 177-200-0020

Subject: The amendments clarify that the Lottery may pay winning tickets and shares with cash at its own retail locations. Payments by cash will be limited to \$50 per person per day. All payments to multiple owners of a winning ticket or share will be by check only. Other amendments clarify that the Lottery's policy on a dishonored check issued by a retailer for a prize payment is applicable to prize payments for all Lottery tickets and shares, not just winning Scratch-it tickets.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-046-0020

Sale of Lottery Tickets and Shares

(1) **General:** The Director shall contract with retailers for the sale of Lottery tickets and shares. Only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed to prevent a person who lawfully purchases or possesses a Lottery ticket or share from making a gift of such ticket or share to another.

(2) **Retailer Sales Locations:** Unless authorized by the Lottery, Lottery tickets or shares may only be sold by a Lottery retailer at the location listed in the retailer contract.

(3) **Lottery Sales:** The Lottery may designate its agents or employees to sell Lottery tickets or shares directly to the public, either in person or through electronic means.

(4) **Sales Are Final:** Unless otherwise provided in OAR chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(5) **Distribution:** The Director is authorized to arrange for the direct distribution of on-line terminals, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer.

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

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-046-0110

Payment of Prizes

(1) **General:** All winning Lottery tickets or shares may be presented to the Oregon Lottery for payment. Winning tickets or shares for prizes under \$600 may also be presented for payment to the appropriate Lottery retailer specified in the applicable game rule.

(2) **Mailing Address:** Winners who mail a winning Lottery ticket or share to the Lottery must sign the back of the Lottery ticket or share, write the claimant's mailing address on the back of the Lottery ticket or share, and mail it to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended.).

(3) **Headquarter's Address:** Winners who present a claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Oregon Lottery, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) **Retailer Validation and Payment of Prizes of \$600 or Less:** To determine whether a ticket or share presented for payment entitles the holder to a prize, a retailer shall validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back

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of each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(a) A retailer is authorized to pay a prize of \$600 or less and shall pay that prize in cash or check, or any combination thereof.

(b) If a retailer's prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(c) A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Prize Payment:** Upon validation of a winning ticket or share presented to the Lottery for payment, the Director may pay the amount of the prize to the player less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the Director shall deny the claim and inform the player.

(a) **Lottery Prize Payment of \$600 or Less:** Payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to \$50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(b) **Lottery High Tier Prize Payments:** For prize payments valued at \$600 or more, the Lottery will pay a winning ticket or share by check, or subject to OAR 177-010-0050, may pay the prize in merchandise if the prize is merchandise.

(6) **Claiming Tickets or Shares Jointly:** If more than one name appears on a Lottery ticket or share or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) **General:** All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery's request and release form. Each of the persons signing the form must indicate each person's proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person's signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) **Deceased Signatories:** A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may place a hold on payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling.

(c) **Relinquishment of Interest:** When a person who has signed a Lottery ticket or share wishes to relinquish the person's ownership interest in the Lottery ticket or share, that person must sign the Lottery's release of ownership form relinquishing the person's ownership interest. In no event, will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attachment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) **Issuance of Prize Checks to Multiple Owners:** If a validated winning ticket is claimed by multiple owners who are sharing a single prize, the Director will issue to each person claiming a share of the prize amount, a check for the portion of the prize amount claimed by each multiple owner, the total not to exceed the total prize amount. No cash payments will be made to multiple owners. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than \$50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of a Lottery prize only through the Salem Lottery office. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) **Conflicting Information or Discrepancies:** If there is conflicting information or discrepancies between the names on a winning ticket or share and the names on a claim form, the Lottery may hold payment until the winners resolve the conflicting information. Discrepancies include but are not limited to: Names or addresses scratched out or erased, unreadable or altered names or addresses.

(f) **Investigations:** In the exercise of its discretion, the Director may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(g) **Determinations:** The Director's decisions and judgments in respect to the determination of a winning ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final.

(7) **Payment of Prizes Donated Anonymously to a Charitable Institution and Others:**

(a) **General:** The Director may pay a prize according to written anonymous instructions received with a winning ticket or share. The recipient must be a natural person or a charitable institution as defined by Section 501(c)(3), Internal Revenue Code.

(b) **Adult Recipient:** If the intended recipient is a natural person of majority, the Director will contact them and make payment to them in accordance with the anonymous written instructions.

(c) **Minor Recipient:** If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Gifts to Minors Act, Chapter 126.

(d) **Charitable Institution as Recipient:** If the intended recipient is a charitable institution as defined by Section 501(c)(3), Internal Revenue Code, the Director will make payment only as follows:

(A) The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) The agent shall appear in person at the Lottery headquarters to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent shall sign the agent's own name on the back of the winning ticket or share in the presence of a duly authorized Lottery official and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable taxes.

(D) If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery's office in Salem upon the presentation of acceptable proof of identification.

(e) **Win for Life Prize:** If the winning ticket received is a Win for Life top prize of \$1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) **Forfeiture of Unclaimed Prize:** In the event that the Director is unable to locate the intended recipient or the anonymous donor, the winning ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) **Discharge of Lottery from Liability:** The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between the intended recipient and the agent. The Lottery's decisions and judgment in respect to the determination of a winning ticket or share donated anonymously or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may hold payment until the controversy is resolved, or the Lottery, or the intended recipient, or the agent for the intended recipient may petition a court of competent jurisdiction for instructions and a resolution of the matter.

(8) **Social Security Numbers:** Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the Lottery the information required on the Internal Revenue Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be

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used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) **Payment Decisions:** The final decision on whether any prize is paid is made by the Director. All prizes shall be paid within a reasonable time after they are validated. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments will be brought up to date immediately upon the Director's validation and continue to be paid on each original anniversary date thereafter.

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

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-050-0025

Payment of Prizes

This rule provides procedures for a player to claim Scratch-it ticket prizes and for payment of prizes on validated winning tickets.

(1) **Prizes of \$600 or Less:** Scratch-it ticket prizes of \$600 and less shall be claimed by one of the following methods:

(a) **Retailer Payment:** The player may present the Scratch-it ticket to a Lottery retailer. The retailer shall determine whether a ticket entitles the holder to a prize, validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back of each ticket into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due. A retailer that is authorized to pay a prize of \$600 or less shall pay that prize in cash or by check, or any combination thereof.

(b) **Lottery Prize Payment:** The player may submit a winning ticket in person to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon. A winning ticket may be submitted to the Lottery by mail. If mailed the player must sign the back of the ticket, write the player's mailing address on the back of the ticket, and mail it to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended). Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay the amount of the prize to the player, less any applicable tax withholding. Payment may be made by check or in cash, or a combination thereof. Cash prize payments are limited to \$50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(2) **Prizes Greater than \$600:** A player must claim a Scratch-it ticket prize of more than \$600 by:

(a) **Claiming in Person:** Bringing the ticket to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket to the Oregon Lottery; or

(b) **Claiming by Mail:** Signing the back of the ticket, writing the player's mailing address on the back of the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended). The winner claim form may be obtained from any Lottery retailer offering traditional games or from the Lottery at the addresses listed above.

(c) Upon validation of the winning ticket under OAR 177-050-0027, the Lottery will pay by check the amount of the prize to the player, less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(3) **Validation and Payment of Lost, Damaged, or Destroyed Tickets for Prizes Greater than \$600:** If a player of a Scratch-it prize of more than \$600 cannot submit an intact winning ticket because a Scratch-it game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(a) To claim a prize based on a lost, damaged, or destroyed ticket, the player shall obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with any other evidence of the validation attempt that is in the player's possession (including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt)

to the Lottery at the addresses listed in section (1)(b) of this rule, either by mail (registered mail recommended) or in person at the Lottery office during Lottery business hours.

(b) The evidence submitted by the player must corroborate the validation attempt including, but not limited to, identification of the Lottery game retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket validation number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) A retailer who is the subject of an investigation conducted under this section is required to complete and provide to the Lottery a retailer affidavit form explaining the events in question.

(e) Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized.

(f) Upon the Director's determination that the ticket submitted under this section is a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(g) Payments of claims submitted under this section are restricted to the prize amount.

(h) The Director may sanction a Lottery game retailer for the loss, damage, or destruction of a winning Scratch-it game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(i) If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(4) **Time Limit:** A prize claim must be made under this rule within the time limit specified in OAR 177-046-0150(1).

(5) **Invalid Tickets:** Any ticket not passing all applicable validation checks is invalid and void for claims made under OAR 177-050-0025(3). A player submitting an invalid or void ticket is ineligible for any prize and no prize shall be paid for such a ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; SLC 4-1986, f. & ef. 2-25-86; SLC 27-1986, f. & ef. 11-24-86; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 8-1993, f. 9-22-93, cert. ef. 10-18-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-050-0027

Ticket Validation Requirements

(1) **General:** Besides meeting all of the other requirements in OAR chapter 177 and as may be printed on the back of each ticket, the following validation requirements shall apply with regard to Scratch-it game tickets.

(2) **Requirements:** Except as provided in section (3) of this rule and OAR 177-050-0025(3), to be a valid Scratch-it game ticket, all of the following requirements must be met:

(a) Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption.

(b) Each of the play symbols and captions must be present in its entirety and be legible.

(c) Each of the play symbols and its play symbol caption must be printed according to game specifications.

(d) The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information shall correspond with the Lottery's computer records.

(e) The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner.

(f) The ticket must have exactly one pack-ticket number.

(g) The VIRN number of an apparent high-tier winning ticket shall appear on the Lottery's official record of winning ticket VIRN numbers; and a ticket with that VIRN number shall not have been paid previously.

(h) Each of the following must correspond precisely to the artwork on file at the Lottery: play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code; and ticket VIRN number.

(3) **Lost, Damaged, or Destroyed Tickets for Prizes Greater than \$600:** If a player of a Scratch-it prize of more than \$600 cannot submit an

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intact winning ticket because a Scratch-it game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated as set forth in OAR 177-050-0025(3), provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(4) **Damaged Tickets:** Notwithstanding OAR 177-046-0090 and section (2) of this rule, the Director may pay the prize on a winning Scratch-it ticket that is inadvertently or accidentally damaged so that it cannot be validated either through the Lottery's central computer system or because it is missing information required under section (2) of this rule, if the ticket is readable and is validated as a winning ticket by the Lottery's Security Section. For purposes of this rule, a Scratch-it ticket is unreadable if there is insufficient information remaining on the ticket for the Lottery's Security Section to reconstruct and validate the ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250

Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 13-2004(Temp), f. & cert. ef. 11-29-04 thru 5-27-05; LOTT 3-2005, f. 4-27-05, cert. ef. 4-28-05; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-070-0025

Payment of Prizes

(1) **Prizes of \$600 or Less:** To claim an On-Line game prize of \$600 or less, the claimant may present the winning On-Line ticket to any On-Line retailer, or to the Oregon Lottery headquarters in Salem, Oregon:

(a) **Retailer Payment:** If the claim is presented to an On-Line retailer, the On-Line retailer shall validate the claim and, if determined to be a winning ticket, shall make payment of the amount due the claimant during the prize redemption hours agreed upon between the retailer and the Lottery. The retailer may pay prizes in cash or check, or any combination thereof. If the On-Line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person.

(b) **Lottery Payment:** The claimant may submit a winning ticket, either by mail or in person to the Lottery for payment at the addresses listed in section (2)(a) below. Upon validation that the ticket is a winning ticket under OAR 177-070-0035, the Lottery shall pay the amount of the prize to the claimant, less any applicable tax withholding. Payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to \$50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the claimant notified.

(2) Prizes Greater than \$600:

(a) **Winner Claim Form:** To claim an On-Line prize of more than \$600, the claimant shall obtain and complete a "Winner Claim Form." The claimant may submit the Winner Claim Form with the winning ticket in person to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon. A claimant may mail a winning ticket and Winner Claim Form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended).

(b) **Prize Payment:** Upon validation of a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. The amount due shall be calculated according to the rules adopted for the particular On-Line game. If the ticket is determined to be a non-winning ticket or invalid, the claim shall be denied and the claimant notified. Non-winning or invalid tickets will not be returned to the claimant.

(c) Prize Payment of Lost, Damaged, or Destroyed Tickets:

(A) When a prize payment is authorized by the Director under OAR 177-070-0035(4), the prize payment shall be validated through the Lottery's central computer system on the last day of the eligible prize claim period. If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the expiration period will be extended to the end of the next working day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

(B) Prize payments made under this subsection shall be restricted to the prize amount under the prize structure for the On-Line game in which the ticket was purchased.

(3) **General Time Limitation:** All prizes must be claimed within one year of the drawing in which the prize was won. In the event the final day of the one-year period falls on a weekend or a Lottery holiday, the claim period will be extended to end on the next business day. Any prize not

claimed within the specified period shall be forfeited and thereafter placed into the Economic Development Fund established by ORS 461.540. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds allocated for economic development is made.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.260

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 20-1987, f. 10-26-87, ef. 11-2-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 7-1995, f. & cert. ef. 7-7-95; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-070-0035

Validation Requirements

(1) **General:** To be a valid winning On-Line ticket, all of the following conditions must be met:

(a) The ticket data must have been recorded in the Lottery's central computer system prior to the drawing and the information appearing on the ticket must correspond with the computer record;

(b) The ticket must be intact to the extent that all information appearing on the ticket corresponds with the Lottery's computer records;

(c) The ticket must not be altered or tampered with in any manner;

(d) The ticket must not be counterfeit or a duplicate of another winning ticket;

(e) The ticket must have been issued by an authorized On-Line retailer or dispensed by a player-activated terminal in an authorized manner;

(f) The ticket must not have been stolen or canceled;

(g) The ticket must not have been previously paid;

(h) The ticket is subject to all other confidential security checks of the Lottery.

(2) **Ticket as Receipt:** Except as provided in section (4) of this rule, a ticket is the only valid receipt for claiming a prize. A copy of a ticket or a play slip has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

(3) **Validation Process:** A ticket shall be validated through the Lottery's computer system.

(4) **Validation of Lost, Damaged, or Destroyed Tickets Greater than \$600:** Notwithstanding the requirement that a winning On-Line game ticket be submitted to the Oregon Lottery for validation and prize payment, in the event that a Lottery retailer attempted to validate a winning On-Line game ticket with a prize of more than \$600 and in the course of the validation process the retailer or an employee of the retailer lost, damaged, or destroyed the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may be validated.

(a) The claimant shall obtain, complete, and sign an Oregon Lottery "Winner Claim Form" and Oregon Lottery "Claim Affidavit." The claimant shall submit the "Winner Claim Form" and "Claim Affidavit" along with any other evidence of the validation attempt in the claimant's possession including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt, to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon by mail or in person.

(b) To be validated, the information supplied on the winner claim form, the claim affidavit, and other evidence submitted by the claimant must agree with the data recorded in the Lottery's central computer system including, but not limited to: Corroboration of the criteria set forth in section (1) of this rule except those specific criteria related to the physical properties of the lost, damaged, or destroyed game ticket; and corroboration of the validation attempt including, but not limited to, identification of the Lottery retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket serial number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) The Director shall, based on all the facts and information available, make a determination whether prize payment is warranted and authorized.

(e) The Director may assign sanctions to a Lottery retailer for the loss, damage, or destruction of a game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(f) A retailer who is the subject of an investigation conducted under this section is required to complete an Oregon Lottery retailer affidavit form explaining the events in question.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

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Stats. Implemented: ORS 461.250
Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1991, f. & cert. ef. 9-25-91; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

177-200-0020

Payment of Video Lottery Game Cash Slips

(1) **Original Cash Slip:** Except as set forth in sections (5) and (6) of this rule, an original cash slip is the only valid receipt for claiming prizes or for redeeming credits remaining on a terminal. A copy of a cash slip has no pecuniary or prize value and does not constitute evidence of a cash slip.

(2) **Retailer Validation Requirements:** A retailer shall pay a cash slip only if:

(a) The player presents the cash slip for payment at the retailer location that issued the cash slip.

(b) The player is a person 21 years of age or older and authorized to play under these rules or Oregon statutes.

(c) The cash slip is presented to the retailer within 28 days of the date it was properly issued.

(d) It is intact and legible and meets all the Lottery's security requirements.

(e) It is not stolen, counterfeit, fraudulent, lacking the correct captions, altered, or tampered with in any manner.

(f) The information appearing on the cash slip corresponds with the computer record of the cash slip data recorded in the Lottery's central computer system.

(g) It has not been previously paid.

(3) **Retailer Validation Exception:** If a cash slip is presented for payment, and the cash slip meets the requirements of sections (1) and (2) of this rule, except the cash slip is not intact or legible, the cash slip may nevertheless be paid by the retailer as follows:

(a)(A) **Software Validation:** Upon notification by a player that a video lottery terminal issued a cash slip that is not intact or legible, the retailer shall request a validation number from the terminal. If the retailer is able to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player, then the retailer shall validate the cash slip through the validation terminal and pay the player.

(B) **Software Validation Report:** If the retailer pays the player pursuant to section (3)(a) of this rule, the retailer must complete a Retailer Software Validation Report signed by the player and the retailer. The retailer must retain the report for one year. The retailer must group the reports by month and must make them available for audit by the Lottery immediately upon request. The retailer must retain and attach the damaged or illegible cash slips to the reports.

(b) **Validation Number Unavailable:** If the retailer is unable to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player as required by subsection (3)(a), the player may request payment of the cash slip from the Lottery as provided in section (5) of this rule.

(4) **Retailer Payment of Cash Slip:** Upon validation of a cash slip as set forth in sections (2) and (3) of this rule, a retailer may pay the amount due in cash or check, or any combination thereof.

(a) If a retailer's check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the cash slip is authorized, the retailer has not paid the cash slip, and it is unlikely that the retailer will pay the cash slip, the Lottery may then issue a check to the claimant in the amount of the cash slip.

(b) A retailer that pays a cash slip with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Payment of Cash Slips:** Payment of a cash slip may be made at the Oregon Lottery, Player Services, 500 Airport Road SE, Salem, Oregon. The cash slip presented for payment must meet all of the requirements in sections (1) and (2) of this rule and must be delivered to the Lottery in person or by mail at P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended) before 5:00 P.M. within one year of the date that the cash slip was issued. If the final day of the one-year claim period falls on a weekend or an official Lottery holiday, the claim period shall be extended to the next Lottery business day at 5:00 P.M. Upon validation of a cash slip, the Lottery will pay the amount of the credits showing on the cash slip. For cash slips of \$600 or less, payment may be made

by check or in cash, or any combination thereof. Cash prize payments are limited to \$50 per person per day. For cash slips of more than \$600, payment will be made by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(6) **Lack of Cash Slip or Validation Number:** If a player does not have a cash slip, or a retailer was unable to obtain a validation number, the Lottery will conduct an investigation of a claim presented for payment to the Lottery. The investigation will determine the reasons or causes for the failure of the terminal to produce a cash slip or to print an intact and legible cash slip, and why the retailer was unable to obtain a validation number.

(a) **Payment:** The Lottery may pay the claim if the Lottery can determine from its investigation that the credit was on the terminal identified by the player at the time claimed, and that no cash slip has been paid on the claim.

(b) **Signed Statement:** The Lottery will not pay any such claim without a signed statement by a player. The player's statement must contain game play information that can be compared to data in the Lottery's central computer system that substantiates that the player won a prize in the amount and at the time claimed, and information from which the Lottery reasonably can determine that the claim has not been paid.

(7) **Lottery Validation Exceptions:** If a cash slip cannot be validated because the cash slip data is not recorded on the Lottery's central computer system, the Director may still authorize payment if:

(a) The Lottery conducts an investigation of the claim; and

(b) The Director concludes that the claimant was an authorized player and that the absence of a record of the cash slip data in the Lottery's central computer system was the result of either a technical problem in the video lottery terminal or a communications problem that prevented the recording of the credits in the Lottery's central computer system.

(8) **Subsequent Claims:** If a cash slip paid by a retailer is later submitted for payment to the Lottery, the Lottery may pay the cash slip and debit the retailer's account for the amount of the cash slip. The Lottery will conduct an investigation in accordance with section (6) of this rule to determine that the Lottery properly may make payment.

(9) **Withholding of Payment:** The Lottery may withhold payment of any cash slip claim presented to it until the expiration of the 28-day prize claim period at the retailer's location or until the completion of any investigation by the Lottery to determine if payment is proper.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LC 9-1993, f. 11-18-93, cert. ef. 12-1-93; LC 9-1994, f. 8-19-94, cert. ef. 9-1-94; LC 1-1995, f. 1-25-95, cert. ef. 3-1-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 4-1997, f. & cert. ef. 4-25-97; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06

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Subject: OAR Division 35 is the Lottery's existing contracting rules. These rules are being suspended (and ultimately repealed) and being replaced with a new Division 36 - Lottery Procurement Rules, and a new Division 37 - Lottery Vendor Disclosure Rules, which are being filed separately from this filing.

Rules Coordinator: Mark W. Hohl—(503) 540-1417

177-035-0000

Definitions

(1) "Contractor" means a Person with whom the Lottery has awarded a contract for the purpose of providing goods or services to the Lottery.

(2) "Control Person" of a Lottery Vendor means a person described in ORS 461.410.

(3) "Invitation to Bid" means the solicitation of competitive offers in which specifications, price, and delivery (or project completion) will be the predominant award criteria.

(4) "Lottery Vendor" or "Vendor" means any person who submits a bid, proposal, or offer that is accepted by the Lottery to provide goods or services to the Commission or Lottery.

(5) "Major Procurement Subcontractor" means any third party not in the employment of a Contractor, who is performing a substantial portion of

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the work in the Contractor's Agreement with the Lottery under a separate contract with the Contractor. "Substantial" means the work performed would give the subcontractor access to or knowledge about security sensitive information or revenue generating systems or the amount of work to be subcontracted, as compared to the amount of work to be performed under the prime contract, as measured either by the value of the work or the effort required, exceeds 25% of the contract.

(6) "Request for Proposal" means the document used for soliciting competitive proposals or offers for an acquisition or purchase when price or specifications are not the sole determining factors for contract award.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 46

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0110

General Policy

(1)(a) It shall be the policy of the Oregon Lottery to conduct its procurement efforts so as to maximize revenue for the public purposes set forth in ORS 461.200. The purpose of this rule is to provide a framework for Lottery procurement processes. The Director will, every three years, evaluate and report to the Commission on the procurement processes and day-to-day procurement decisions that have been delegated to others to ensure they are consistent with the Lottery's objectives of maximizing revenue and the efficient and effective operation and administration of the Lottery. Considerations for procurement and contracting decisions may include, but are not limited to: The appropriate legal and ethical method for obtaining goods, services, and equipment; the time required to complete the solicitation process; and the specific business objective or objectives of the procurement effort. In all procurement decisions the Director shall consider the particularly sensitive nature of the Lottery and promote and ensure the integrity, security, honesty, and fairness of the State Lottery. The security and integrity of the Lottery's games shall be the fundamental and overriding consideration in all procurement decisions.

(b) It shall be the policy of the State Lottery, to the extent that is reasonable given the objective of maximizing the net revenues of the Lottery, to conduct its contracting affairs in an open, competitive manner in accordance with ORS 461.440. As a general rule, the State Lottery will implement this policy by soliciting contracts for the acquisition or leasing of systems, equipment, materials, supplies, services other than personal, personal services, information technology, and for the acquisition of interests in real property and for projects for improvements to real property, in the following manner:

(A) When the contract is reasonably anticipated not to exceed \$15,000, the Director may, for efficiency, directly award contracts or otherwise acquire or lease without competitive quotes;

(B) When the contract is reasonably anticipated to exceed \$15,000 but not to exceed \$75,000 for information technology and personal services, or \$100,000 for goods and services other than personal, the Director should, when reasonable, secure and document three competitive quotes;

(C) When the procurement or contract is reasonably anticipated to exceed \$75,000 for information technology and personal services or \$100,000 for goods and services other than personal the Director shall generally issue a request for proposal (RFP) or, where the product to be procured can be reasonably identified and its characteristics described by relatively precise specifications, the Director shall generally issue an invitation to bid. The Director shall ensure that when using the request for proposal or invitation to bid, preestablished evaluation criteria will be contained in the solicitation document. The Director shall ensure that an objective and impartial selection process is instituted to consider responses to requests for proposal or invitations to bid. The Assistant Director for Security will normally be one of the appointees to evaluate the responses for any project involving the security of the State Lottery. The process for selecting vendors shall be based upon the evaluation criteria and result in a selection recommendation to the Director. The Director, after reviewing the recommendation, shall award the contract, or if required by these rules, refer the Director's recommendation to the Commission for consideration.

(c) Because of the specialized character of many State Lottery procurements, the Lottery will not normally publish requests for proposals or invitations to bid. Rather, the Lottery may circulate requests for proposals and invitations to bid to Vendors known to specialize in the specific type of procurement or to those the Lottery may reasonably expect to have an interest in the procurement specified in the solicitation announcement. The Lottery may provide notice of such solicitations through the use of electronic media.

(2) Although the Lottery Commission is exempt from ORS Chapter 279, which governs public contracts and purchasing, in implementing this policy the State Lottery reserves the right to use, as guidelines to govern its procurement actions, relevant provisions of ORS Chapter 279, the Attorney General's Model Public Contracting Rules (OAR 137, divisions 30 and 40) and the Public Contract Exemption Rules published by the Oregon Department of Administrative Services (OAR 125, divisions 300 to 360).

(3)(a) Notwithstanding sections (1) and (2) of this rule, the State Lottery reserves the right and the Director is authorized to use an alternate procurement method if, in the Director's opinion, that method will be more likely to:

(A) Maximize net revenue;

(B) Achieve the specific business objective or business objectives of the procurement; or

(C) Aid the Director in fulfilling the statutory mandate to operate and administer the Lottery.

(b) Alternative procurement methods may include, but are not limited to, specialized Vendor prequalifications, single Vendor negotiations, competitive negotiations between two or more Vendors, performance incentives and disincentives, solicitations emphasizing the request for proposal process, brand name solicitations, cooperative procurements, single source procurements, or sole source procurements.

(c) The Director shall include as part of the procurement record a concise statement explaining the rationale leading to the selection of a procurement method other than a method described in subsections (1)(b)(B) and (C) of this rule.

(4) The selection of the proposal submitted by a Vendor shall be based upon the qualifications, past performance, and the content of the response from the Vendor. Considerations may include, but are not limited to: Vendor credentials, background, responsiveness, experience, historical performance, and references; product or service quality, applicability, fitness, and adherence to specifications; the likelihood of timely performance; demonstrated experience in comparable projects; financial reliability and stability; the qualifications of personnel; price, cost savings, and cost avoidance; scheduling; the level of specialized expertise; and other special considerations as may be applicable.

(5)(a) Notwithstanding section (1) of this rule, upon the presentation of a written justification by the Director and approval of the Commission, the Director may undertake field-test procurements of Video Lottery terminals and similar devices or of Video Lottery games. After consideration of the results of the field tests and other applicable factors, the Director may, upon approval of the Lottery Commission, select contractors for the leasing or acquisition by the Lottery of Video Lottery terminals and similar devices and Video Lottery games (including the equipment and services necessary to operate and maintain the devices or games). If a contractor is selected based upon the results of field tests, such results will be documented and be made part of the procurement record.

(b) The Director will establish the level of Vendor disclosure required when testing and evaluating Video Lottery terminals, components, systems, or software. These items are not a Major Procurement as defined in OAR 177-035-0210 when such items are isolated from active Lottery gaming systems and are offered by the Vendor at no cost to the Lottery.

(6) The Director may purchase samples and undertake testing of products to assess the likelihood that such devices, concepts, or strategies would enhance the Lottery's ability to meet its business objectives. Based on the results of these tests, the Director may initiate procurement of such devices following subsection (3)(c) of this rule.

(7) The Director may take reasonable steps to ensure that information related to the procurement of products, services other than personal, or personal services that is deemed to be proprietary or confidential be so protected.

Stat. Auth.: ORS 461.120

Stats. Implemented: ORS 461.410 & 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0115

Vendor Contract Award

(1) Unless otherwise provided in the solicitation document, the Lottery shall provide notice of the Lottery's intent to award a contract to all Vendors who submitted a responsive bid or proposal. The Lottery's notice of intent to award a contract shall not be final until the later of either:

(a) Unless otherwise provided in the solicitation document, ten (10) working days after the date of the notice; or

(b) A written response has been issued to any timely filed protest of the contract award, and the response denies the protest.

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(2) Unless otherwise provided in the solicitation document, a Vendor (i) who submitted a bid or proposal to the Lottery, and (ii) is eligible for award of the contract as the best proposer or the lowest bidder, and (iii) is next in line to receive the contract award, has ten (10) working days after the date the Lottery's intent to award the contract was issued to submit to the Director a written protest of the contract award. The written protest of the contract award must be timely and must specify and substantiate the grounds for protest. The protest of the contract award must claim that all higher scored proposers or all lower bidders are ineligible to receive the contract award (i) because their proposals or bids were non-responsive, or (ii) because the Lottery committed a material violation of a provision in the solicitation document or of an applicable statute or administrative rule, and but for the alleged material violation the protestor would have been the highest ranked proposer or the low bidder.

(3) Upon receipt of a protest of the contract award from a proposer or bidder qualified to make such a request under section (2) of this rule, the Director will issue a written decision addressing its timeliness and those grounds for protest that merit consideration. If, after consideration by the Director the protestor still disputes the contract award decision, the protestor may submit a subsequent written protest of the contract award to the Lottery Commission no more than ten (10) working days after the date of the Director's written decision. The Lottery Commission will not consider grounds or arguments in favor of the protest that were not first presented to the Director. The Commission's decision shall be final.

(4) All avenues of administrative review under this rule must be exhausted before seeking judicial review of the Lottery's contract award decision.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461.120(2)
Stats. Implemented: ORS 461.210, 461.220, 461.230, 461.240 & 461.250
Hist.: LOTT 4-1999, f. 4-2-99, cert. ef. 4-4-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0120

Delegation of Purchasing Authority

(1)(a) The Director is authorized to initiate procurements and, except for major procurements described by ORS 461.410 and OAR 177-035-0210, to enter into contracts that exceed the delegated authority granted the Director in subsections (2)(a) and (b) of this rule when a specifically named and described item or items are detailed and approved by the Commission in the annual financial plan (as it may be amended) or are otherwise pre-approved in concept at a Commission Meeting.

(b) The Director is required by statute and rules to operate and administer the Lottery, so the Commission delegates to the Director the authority to initiate procurements or contracts that exceed the amounts specified in subsections (2)(a) and (b) when those procurements and contracts are a part of the day-to-day operation of the Lottery. These procurements and contracts are intended to support, maintain, or continue ongoing and pre-established activities and programs including, but not limited to, spare part or monitor replacement, replenishment of goods and supplies, equipment replacement, maintenance agreements, and periodic updating of existing systems, equipment or technologies. This does not include contracts which could be reasonably construed as a departure from pre-established activities or programs.

(c) The Director will confer with the Commission and make available upon request books, records, files, or other information and documents related to contracting and procurement actions. All contract awards will be reported to the Commission as a part of the monthly financial report to the Commission.

(2) The Commission hereby delegates authority to the Director to initiate procurements and enter into all contracts and contract extensions for the acquisition or lease of systems, equipment, materials, supplies, services other than personal, personal services, information technology, and for the acquisition of interests in real property and for projects for improvements to real or leased property, on behalf of the Commission and the Oregon State Lottery, except as follows:

(a) New, unbudgeted contracts and contract extensions for the acquisition or leasing of systems, equipment, materials, supplies, services other than personal, and for the acquisition of interests in real property and for projects for improvements to real or leased property that are not part of preestablished activities or programs and are anticipated to exceed \$100,000 over the life of the contract.

(b) New, unbudgeted contracts and contract extensions for the acquisition of personal services and information technology products and services, or any combination thereof, that are not part of preestablished activities or programs and are anticipated to exceed \$75,000 over the life of the contract.

(c) Contracts for Major Procurements.

(3) Notwithstanding the provisions of section (1) of this rule, the Commission having once approved a planned contract action authorizes the Director to execute the contract without further action by the Commission.

(4) The Commission, having once approved a particular contract, delegates authority to the Director to make all disbursements and payments as provided in the contract and any contract extension, without further, specific approval action by the Commission. In addition, the Director may, without further, specific approval action by the Commission, execute any amendment to a contract that results in a reduction of the price paid by the Lottery per item, unit or other measure of the product or services provided under the contract, and may exercise any option under a contract previously approved by the Commission where the option terms of the approved contract establish a specific price for the items or services to be acquired under the option.

(5) The Commission delegates authority to the Director to enter into emergency contracts or make other emergency procurements that exceed the delegated authority granted the Director in section (2) of this rule when immediate and decisive action is required to:

(a) Protect the security, credibility, or integrity of the Lottery or a Lottery game; or

(b) Avoid or mitigate conditions that may lead to a substantial loss of revenue, a serious interruption of services, or damage or destruction to Lottery property.

(c) In an emergency as defined by this subsection, the Director may also establish an extension of a contract for a Major Procurement where the original contract specifically provides for the extension, the extension does not result in any change in the provisions of the contract other than an increase in its duration, and the Vendor has maintained its status as an approved Major Procurement vendor.

(d) The Director shall make reasonable efforts to report to the Commission in writing, within five days of the contract award date, any emergency contracts entered into by the Director under subsection (5) of this rule. However, the inability or failure to report to the Commission within this time shall not affect the validity of any emergency contract. Unless reported in writing prior to the next scheduled Commission meeting, a contract entered into under section (5) of this rule shall be reported to the Commission at its next meeting following the contract award date. Such procurement actions may be taken without the issuance of invitations to bid or requests for proposal.

(e) Unless approved at a meeting of the Commission, an emergency contract for a Major Procurement shall be subject to Commission action by telephonic or electronic vote as provided in ORS 192.670 and the meeting notice requirements of ORS 192.640.

(6) Pursuant to ORS 461.180(7), the Director may delegate, in writing, to any of the employees of the Oregon State Lottery or the Assistant Director for Security the exercise or discharge of any of the powers, duties or functions delegated to the Director in these rules.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.400 & 461.440
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0130

Advertising and Promotional Contracts

(1) Because advertising and promotional contracts involve unique marketing strategies for Lottery games, the Director may procure such services and materials directly without using competitive procurement procedures. This policy applies to advertising and promotional contracts whether placed through the Lottery's advertising agency or directly by the Commission or the Director. For the purpose of this rule, advertising and promotional contracts, include but are not limited to: Agreements with radio and television stations; acquisition of prizes; media selection; placement of advertising contracts, promotional printing, and placement of or creation of art work; and development and placement of all forms of commercials and display presentations.

(2) Section (1) of this rule does not apply to the selection of the Lottery's primary advertising agency which will be governed by OAR 177-035-0220 pertaining to Sensitive Procurements.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.440
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

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177-035-0140

Oregon Preference; Foreign Vendors

(1) In all contracts, the State Lottery shall prefer goods or services that have been manufactured or produced in this State if price, fitness, availability, and quality are otherwise equal.

(2)(a) Where a Lottery contract is awarded to a foreign contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract, and such other information as the Department of Revenue may require before final payment can be received on the Lottery contract. The State Lottery shall satisfy itself the requirement of this subsection has been complied with before it issues a final payment on a Lottery contract.

(b) For the purposes of this subsection, a foreign contractor is one who is not domiciled in or registered to do business in the state of Oregon (adaptation of ORS 279.021).

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0150

Investment Contracts

The Director may enter into contracts to acquire structured settlements, place investments, or acquire annuities related to the pay-off of major prizewinners without following competitive bidding procedures.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0160

Security Study

(1) In accordance with ORS 461.180, the Lottery shall contract with an independent firm to conduct, every other year, a study and evaluation of aspects of security in the operation of the Lottery.

(2) Any firm that performs a service that is subject to the study and evaluation is prohibited from participating in the solicitation for the firm to conduct the study and evaluation.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.180

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0200

Classification of Lottery Procurements

(1) State Lottery procurements or contracts for the acquisition or leasing of systems, equipment, materials, supplies, services and personal services, information technology, and for the acquisition of interests in real property and projects for improvements to real property are classified according to relative sensitivity, which in turn determines the level of review and the extent of disclosure required to be made by Lottery Vendors. The factors used to classify a procurement include, but are not limited to: The type of services, goods, or products to be provided; the risk to Lottery games technology and data associated with the services, goods, or other product; the type of company involved in providing such services, goods or other product; and any other factors which may, in the opinion of the Director, affect the honesty, fairness, integrity, or security of the Lottery. The three levels of classification are as follows:

(a) Major Procurements: Procurements that are the most sensitive; the provisions governing this classification of procurements are contained in ORS 461.410, 461.700, and OAR 177-035-0210.

(b) Sensitive Procurements: Procurements that are of intermediate sensitivity; the provisions governing this classification of procurements are contained in OAR 177-035-0220.

(c) General Procurements: Procurements that are least sensitive; the provisions governing this classification of procurements are contained in OAR 177-035-0230.

(2) The decision to classify a procurement as Major, Sensitive, or General shall be made by the Director in consultation with the Assistant Director for Support Services and the Assistant Director for Security prior to the Lottery's solicitation of proposals, bids, or offers. The classification of a procurement and requirements and instructions for disclosure will be stated in the procurement solicitation documentation or in the procurement advertisement.

(3) The Director's decision to classify a particular procurement under sections (1) and (2) of this rule is not binding on the Lottery and in no way

limits the Commission or the Director from changing the classification or changing the amount of personal information to be submitted.

Stat. Auth.: ORS 461.120

Stats. Implemented: ORS 461.410 & 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0210

Major Procurements

(1) Under ORS 461.410, a major procurement is any procurement for:

(a) The printing of tickets used in any lottery game;

(b) Any goods or services involving the receiving or recording of number selection in any lottery game; or

(c) Any goods or services involving the determination of winners in any lottery game.

(2) All bid announcements, invitations, requests for information or proposal covering major procurements shall identify the planned acquisition as a major procurement.

(3) All contracts or procurement actions classified as major procurements are subject to all disclosure requirements specified in ORS Chapter 461 and OAR chapter 177, division 35, and any other special disclosure requirements deemed necessary by the Director. Vendor applicants for major procurements shall submit application and disclosure information on forms provided by the Lottery for major procurements.

(4) Each Lottery contractor for a major procurement shall maintain its disclosure filing in a current status during the tenure of the contract as described in OAR 177-035-0300, unless other standards are established in the vendor contract.

(5) Each Lottery contractor for a major procurement shall post a performance bond with the Commission as provided in ORS 461.430 and OAR 177-035-0400.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.410 & 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; LOTT 13-2001(Temp), f. & cert. ef. 9-28-01 thru 3-25-02; LOTT 1-2002, f. & cert. ef. 1-28-02; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0220

Sensitive Procurements

(1) Sensitive Procurements are of intermediate sensitivity and are for materials, supplies, equipment, services other than personal, or personal or professional services which may have a direct impact upon Lottery games. A Sensitive Procurement includes, but is not limited to, such items as drawing auditors, security auditors, technology consultants who have direct access to gaming computer systems or programs involved in the receiving or recording of gaming information, locks and keys for terminals, and the Lottery's primary advertising agency.

(2) All contracts or procurement actions classified as Sensitive Procurements shall be subject to all disclosure requirements specified in the solicitation document and any other special disclosure requirements deemed necessary by the Director. Vendor applicants for Sensitive Procurements shall submit all of the required application and disclosure information on forms provided by the Lottery for Sensitive Procurements.

(3) Each Lottery Vendor for a Sensitive Procurement shall maintain its disclosure filing in a current status during the tenure of the contract as described in OAR 177-035-0300, unless other standards are established in the Vendor contract.

(4) Each Lottery Vendor for a Sensitive Procurement may be required to post a performance bond with the State Lottery as described in OAR 177-035-0400.

Stat. Auth.: ORS 461.120

Stats. Implemented: ORS 461.400, 461.410 & 461.440

Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0230

General Procurements

(1) A General Procurement is defined as all procurements other than those classified by rule or by the Director as Major or Sensitive. A General Procurement is generally related to goods and or services that will not directly impact the production or security of a Lottery game. Examples include, but are not limited to, office supplies and equipment, courier services, billboards, auto parts, and building maintenance or security services.

(2) Disclosure forms are not normally required for this class of procurements; however, the Director may require any level of disclosure and any other special disclosure requirements deemed necessary. If disclosure is required of a General Procurement applicant, the Vendor applicant shall submit application and disclosure information on forms provided by the Lottery for General Procurements. If disclosure is required of a General

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Procurement applicant, the Lottery Vendor shall maintain its disclosure filing in a current status during the tenure of the contract and as described in OAR 177-035-0300, unless other standards are established in the Vendor contract.

(3) Each Lottery Vendor for a General Procurement may be required to post a performance bond with the State Lottery as described in OAR 177-035-0400.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.400 & 461.440
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0300

Vendor Application and Contract Disclosure Requirements

(1) The Director may require any degree or type of Vendor disclosure deemed necessary to assure the security and integrity of the Lottery and Lottery games.

(2) The Director shall approve all the forms and procedures to be used by all Persons who wish to apply for approval as a Lottery Vendor or Control Person.

(3) All applicants for Lottery Vendor contracts must provide all the information required by the Director and these rules. All applicants, Control Persons, and others as determined by the Director, must complete the required application, disclosure, or personal disclosure form within the guidelines and time lines set forth in the solicitation document or as required by the Director and the Assistant Director for Security. All applicants, Control Persons, and others as determined by the Director, must provide any documents required in the application or disclosure process, or other documents as determined by the Director and the Assistant Director for Security.

(4) The Director may reject an application if the applicant has not provided all the information requested in the application or if any information provided is not accurate, current or truthful.

(5) Each Lottery Vendor required to provide disclosure shall accurately maintain and keep current its disclosure during the approval and Vendor selection process.

(6) Unless other standards are established in a Vendor contract once executed, any changes in the status of the Vendor or of any of the listed Control Persons, or the addition of any other Control Persons, shall be reported to the Lottery Director within 30 days of the known change, and those whose status has changed or who have been added as Control Persons will be required to submit the required disclosure information. If there has been no change in Vendor status or Control Persons, the Vendor shall be required to certify annually on their vendor contract anniversary date that there has been no change.

(7) The burden of proof for satisfying the Lottery's disclosure requirements resides with the applicant.

(8) Each Lottery Vendor applicant must consent in writing to the examination of all accounts, bank accounts, and Vendor records under the applicant's possession or control. If required by the Lottery Director, an applicant must permit an examination of the applicant's premises.

(9) The Director may charge a Vendor an amount necessary to reimburse the Lottery for the estimated costs associated in processing the Vendor's application.

(10) Each Lottery Vendor applicant must accept any risk of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication by a third party of any material or information requested by the Lottery in response to a Vendor application. In submitting a Vendor application to the Lottery, the Vendor applicant expressly waives any claim against the Lottery, the Director, the Commission, the State of Oregon and their officers and employees for damages as a result thereof.

(11) All disclosure filings are subject to review by the Assistant Director for Security and approval of the Director. Failure of any Lottery Vendor contract applicant to properly execute, fully complete, or timely submit the required disclosure may be grounds for rejection of the bid or proposal or termination of an existing Vendor contract.

(12) By submitting a proposal, bid, or offer, each Vendor binds itself, its officers, employees, agents, and any subcontractors to comply with all disclosure and other requirements established by the Director. The Vendor's failure or refusal to comply with any applicable requirement may result in the Director's denial or revocation of the award of the contract. In the event of denial or revocation of the award due to a Vendor's refusal or failure to comply with any applicable requirement, the Vendor shall be liable under the bid bond or shall forfeit any security posted for the procurement, and the Vendor shall be responsible for compensating the Lottery for the

Lottery's expenses that result from, and any losses arising out of, the denial or revocation. These losses include any difference in the contract price proposal or bid submitted by the Vendor and the contract price proposal or bid made by the Vendor that is finally chosen.

(13) Vendors, including manufacturers, shall have a contract with the Lottery before performing any work requested by the Lottery.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.300 & 461.410
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0310

Criteria For Denying a Vendor or Control Person Application or Contract

(1) A background investigation shall be conducted by the Assistant Director for Security in response to all apparent Vendor application finalists related to Major and Sensitive procurements and for any other background investigation specified by the Director.

(2) The Director may deny a Vendor application, Vendor Control Person application, or contract when the applicant:

(a) Does not demonstrate, either individually or through his or her employees, the business ability and experience to establish, operate, and maintain the business for the type of contract for which application is made.

(b) Does not demonstrate adequate financing for the business proposed under the type of contract for which application is made. The Director shall consider whether financing is from a source that meets the qualifications in subsections (a), (b), and (c) of this subsection and is in an amount likely to ensure success in the performance of the contractor's duties and responsibilities.

(c) Has been convicted of any crime in any jurisdiction.

(d) Has been convicted of any gambling offense in any jurisdiction.

(e) Has been imposed with a civil judgment based in whole or in part upon conduct which allegedly constituted a crime.

(f) Has omitted any material fact that was to be disclosed to the Lottery or its authorized agents during an initial or subsequent background or security investigation.

(g) Is a person whose background, including criminal, civil, and financial records, reputation, and associations, poses a threat to the public interest of the state or to the security and integrity of the Lottery.

(h) Is not a person of good character, honesty, and integrity.

(i) Has provided a material misstatement or untrue statement of material fact.

(j) Has engaged in conduct the Director determines may, in any way, adversely affect the integrity, security, honesty or fairness of the Lottery.

(k) Refuses to provide access to their records or to the entire physical premises of the business for inspection.

(l) Has an association with persons or businesses of known criminal background, or persons of disreputable character or conduct, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Lottery.

(m) Is qualified, but there is an ownership interest in the applicant's business operation by a Person who is unqualified or disqualified to hold a Lottery contract, regardless of the qualifications of the Person who seeks approval as a Lottery Vendor or Vendor Control Person.

(3) In evaluating whether to deny a contract based on subsections (2) of this rule, the Director may consider the following factors:

(a) The nature and severity of the conduct, incident, or circumstance;

(b) The passage of time;

(c) Any intervening circumstances;

(d) The number of offenses, crimes, or incidents;

(e) The materiality and relevancy to the work to be performed; or

(f) Any extenuating circumstances that affect or reduce the impact of the conduct, incident, offense or crime on the security, integrity, honesty, and fairness of the Lottery.

(4) No contract or other agreement for the purpose of providing services to the Lottery shall be entered into, renewed, or extended with any Person, unless the Person certifies in writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.380(4). A copy of the certification form may be obtained from the Lottery or the Department of Revenue. The original certification shall be retained in the Lottery's contract file.

(5) The denial by the Director of a Vendor application based upon a background investigation shall be final.

(6) The denial criteria described in this rule may also constitute sufficient grounds for termination, immediate or otherwise of an existing Vendor contract.

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(7) The Director is authorized to terminate an existing Vendor contract if there has been a violation of any term or condition of the contract or as otherwise authorized in these rules.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.430
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0400

Performance Bonds

(1) All Vendors who receive a contract classified as a Major Procurement shall post a performance bond. The performance bond shall be included and incorporated as part of the Vendor's contract with the Lottery.

(2) Vendors who are required by the Director to post a performance bond under OAR 177-035-0220 or 177-035-0230 shall have the performance bond included and incorporated as part of the Vendor's contract with the Lottery.

(3) The Director shall determine the amount of the performance bond to be posted by a Vendor. In determining the amount of the bond, the Director shall consider all factors relating to the Vendor's ability to perform the contract.

(4) The performance bond shall be issued by a surety licensed to do business in this state and shall be for the duration specified in the procurement announcement or, if not specified, for the term of the contract.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.430
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-035-0600

Video Lottery Vendor Restrictions

(1) Any Person applying to become a Video Lottery Game Vendor or Video Lottery Vendor Control Person shall disclose to the Director any interest in gambling activities in any jurisdiction including, but not limited to, any ownership, possession, operation, or manufacture related to such activities, or of any income or reimbursement gained from such activities.

(2) Any person who manufactures, offers or makes available a Video Lottery device in Oregon must be approved by the Director. The Director shall not include on the approved list, the name of any manufacturer or distributor who does not grant the Oregon State Lottery access to its business and financial records.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.430
Hist.: LOTT 2-1999, f. 2-26-99, cert. ef. 3-1-99; Suspended by LOTT 11-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

Adm. Order No.: LOTT 12-2005(Temp)

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Subject: The Oregon Lottery has redrafted its vendor contracting rules. The Lottery proposes to adopt these rules to set forth the Lottery's process for the procurement of goods and services.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-036-0000

Definitions

The following definitions apply to all Oregon Administrative Rules contained in OAR chapter 177, division 36:

(1) "Addendum" or "Addenda" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "Advantageous" means in the Lottery's best interests, as assessed according to the judgment of the Lottery.

(3) "Award" means either the act or occurrence of the Lottery's identification of the Person with whom the Lottery will enter into a Contract.

(4) "Bid" means a response to an Invitation to Bid.

(5) "Bidder" means a Person that submits a Bid in response to an Invitation to Bid.

(6) "Closing" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(7) "Contract" means a purchase, lease, rental or other acquisition or sale or other disposal by the Lottery of Goods or Services.

(8) "Contract Price" means, as the context requires:

(a) The maximum payments that the Lottery will make under a Contract if the Contractor fully performs under the Contract;

(b) The maximum not-to-exceed amount of payments specified in the Contract; or

(c) The unit prices for Goods and Services set forth in the Contract.

(9) "Contractor" means the Person with whom the Lottery enters into a Contract.

(10) "Days" means calendar days.

(11) "Director" has that definition as defined in ORS 461.010(3).

(12) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen; and

(b) Require prompt execution of a Contract to remedy the condition; and

(c) Meet one of the following two conditions:

(A) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen; or

(B) The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the Lottery or a Lottery game.

(13) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Lottery is authorized by law to procure.

(14) "Information Technology Contract" means a Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software or services for computers or telecommunications.

(15) "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting Bids using a competitive bidding process in which specifications, price and delivery (or project completion) will be the predominant Award criteria.

(16) "Large Procurement" means the Lottery's procurement of Goods or Services exceeding \$150,000 in accordance with the requirements of OAR 177-036-0040(4).

(17) "Lottery" has that definition as defined in ORS 461.010(1).

(18) "Lottery Commission" or "Commission" has that definition as defined in ORS 461.010(4).

(19) "Major Procurement" means a procurement that involves highly sensitive and highly secure Lottery information and includes but is not limited to, the printing of tickets used in Lottery games, Goods or Services involving the receiving or recording of number selection in any Lottery game, or any Goods or Services involving the determination of winners in any Lottery game. Disclosure requirements for this classification of procurements are contained in ORS 461.410, 461.700, and OAR 177-037-0030.

(20) "Offer" means a response to a Solicitation Document.

(21) "Offeror" means a Person who submits an Offer.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" means the services or type of services performed under a Personal Services Contract.

(24) "Personal Services Contract" means a Contract or member of a class of Contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, or sculptor).

(25) "Proposal" means a response to a Request for Proposal.

(26) "Proposer" means a Person that submits a Proposal in response to a Request for Proposal.

(27) "Responsible Offeror" (also "Responsible Bidder" or "Responsible Proposer" as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 177-036-0110, and that has not been debarred by the Lottery under OAR 177-036-0210. When used alone, "Responsible" means meeting the aforementioned standards.

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(28) "Responsive Offer" (also "Responsive Bid" or "Responsive Proposal" as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation Document requirements. When used alone, "Responsive" means having the characteristics of substantially complying in all material respects with applicable Solicitation Document requirements.

(29) "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting Proposals using a competitive Proposal process in which price is not the sole determining factor for Contract Award.

(30) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.

(31) "Signed" or "Signature" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person, with the intent to be bound.

(32) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(33) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(34) "Vendor" has that definition as defined in ORS 461.010(8). For purposes of these Division 36 rules, Vendor does not include a Lottery game retailer as defined in ORS 461.010(7).

(35) "Work" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual requirement in a Contract and successful completion of all duties and obligations imposed by the Contract.

(36) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0010 General Policy

It is the policy of the Lottery to conduct its procurement efforts to ensure a process that promotes fairness, integrity, security, and honesty to maximize revenue for the public purposes set forth in ORS 461.200. The purpose of these division 36 rules is to provide a framework for the Lottery procurement processes. These division 36 rules apply to the Lottery's procurement of Goods and Services.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0020 Application of the Lottery's Procurement Rules; Exceptions

(1) **General:** It is the policy of the Lottery, to the extent that is reasonable given the objectives of maximizing the net revenues of the Lottery, to conduct its contracting affairs in an open, competitive manner in accordance with ORS 461.440 and these division 36 rules.

(2) **Exceptions:** The Lottery may enter into the following classifications of Contracts without a competitive process:

(a) Contracts between the Lottery and a state agency or local government of this or another state, with the United States or a United States governmental agency, with an American Indian tribe or an agency of an American Indian tribe, or with a nation or a public agency in any nation other than the United States as permitted in ORS Chapter 190;

(b) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(c) Contracts for books, memberships, or subscriptions;

(d) Sponsorship agreements;

(e) Advertising and promotional Contracts, including, but not limited to, Contracts to place media, Contracts for talent, acquisition of prizes, and promotional Goods or Services. This exception does not apply to the selection of the Lottery's primary advertising agency;

(f) Contracts for video Lottery terminals and similar devices and video Lottery games (including the equipment and services necessary to operate and maintain the devices or games);

(g) Equipment repair and overhaul Contracts subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specifically trained personnel are required and such personnel are available from only one source;

(h) Investment contracts related to the payoff of major prize winners;

(i) Security studies;

(j) Price regulated items where the rate or price is established by federal, state or local regulatory authority;

(k) Purchase of used personal property; and

(l) Contracts with Lottery game retailers pursuant to ORS 461.300 through 461.335.

(3) **Reservation of Rights:** Although the Lottery is exempt from ORS Chapter 279A and 279B, which govern public contracts and procurement, the Lottery reserves the right to use, as guidelines to govern its procurement actions, relevant provisions of ORS Chapter 279A, and 279B, the Attorney General's Model Public Contract Rules (OAR chapter 137, divisions 46 and 47) and the Public Contracting Rules established by the Oregon Department of Administrative Services (OAR chapter 125, divisions 246 and 247). However, the procedures set forth in these statutes and administrative rules shall be guidance only and shall not obligate the Lottery to follow the procedures set forth in these statutes and administrative rules.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0030 Procurement Authority

(1) **General:** The Director is authorized to initiate procurements and enter into all Contracts and Contract amendments for Goods and Services that have been approved by the Lottery Commission in the annual financial plan (as it may be amended) or are otherwise pre-approved in concept at a Lottery Commission meeting, on behalf of the Lottery Commission except as follows:

(a) Unbudgeted procurements that will result in a Contract with a Contract Price in excess of \$75,000 over the term of the Contract and Unbudgeted Contracts with a Contract Price in excess of \$75,000 over the term of the Contract must be approved by the Lottery Commission. For purposes of section (1) of this rule, "Unbudgeted" means expenditures that have not been previously approved by the Commission in the Lottery's current financial plan or at a Commission meeting.

(b) The first Unbudgeted Contract amendment that increases the Contract Price to more than \$75,000 and all subsequent Unbudgeted Contract amendments that increase the Contract Price by more than \$75,000 since the last Unbudgeted Contract Amendment approved by the Commission, must be approved by the Commission.

(c) Contracts for Major Procurements must be approved by the Commission.

(2) **Commission Approved Contracts:** Notwithstanding the provisions of section (1) of this rule, the Commission having once approved a Contract or Contract amendment authorizes the Director to execute the Contract or Contract amendment, make all disbursements and payments as provided in the Contract or Contract amendment, without further action by the Commission.

(3) **Emergency Procurements:** Notwithstanding the provisions of section (1) of this rule, the Director is authorized to enter into a Contract awarded as an Emergency procurement as set forth in OAR 177-036-0040(6).

(4) **Rule or Statutory Authorization:** If a contract action is authorized by statute or rule, the Director is authorized to execute the Contract or any Contract amendment, and make all disbursements and payments as required by the Contract terms or the terms of the Contract amendment.

(5) **Price Reduction:** The Director is authorized, without further, specific approval action by the Commission, to execute any Contract amendment that results in a reduction of the price paid by the Lottery per item, unit or other measure of the Goods or Services provided under the Contract, and may exercise any option under a Contract previously approved by the Commission, where the option terms of the approved Contract establish a specific price for the Goods or Services to be acquired under the option.

(6) **Delegation by Director:** Pursuant to ORS 461.180(7), the Director may delegate, in writing, to any of the employees of the Lottery

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the exercise or discharge of any of the powers, duties or functions of the Director in these division 36 rules.

(7) **Legal Sufficiency Review:** When the Attorney General legal sufficiency review and approval is required under ORS 291.047, the Lottery must seek legal sufficiency review and approval of Contracts pursuant to ORS 291.047 and review of procurement documents pursuant to OAR 137-045-0035.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0040

Source Selection

(1) **General:** The Lottery shall Award Contracts for Goods or Services by one of the source selection methods in this rule. Except as provided in section (2), and sections (5) through (7) of this rule, the Lottery will generally conduct a competitive process for Goods or Services by issuing a Solicitation Document.

(2) **Small Procurements:** Any procurement of Goods or Services not exceeding \$15,000 may be Awarded without a competitive process. The Lottery may Award a Contract in any manner deemed practical or convenient by the Lottery, including by direct selection or Award. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this rule.

(3) **Intermediate Procurements:** Any procurement of Goods or Services exceeding \$15,000 but not exceeding \$150,000 may be Awarded after seeking three competitive price quotes or Offers. The Lottery shall keep a Written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Lottery shall make a Written record of the effort made to obtain the Offers. If a Contract is Awarded, the Lottery shall Award the Contract to the Offeror whose Offer will best serve the interests of the Lottery, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under OAR 177-036-0110. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this rule.

(4) **Large Procurements:** Any procurement of Goods or Services exceeding \$150,000 may be Awarded after seeking three solicited competitive Offers. The Lottery shall keep a Written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Lottery shall make a Written record of the effort made to obtain the Offers. If a Contract is Awarded, the Lottery shall Award the Contract to the Offeror whose Offer will best serve the interests of the Lottery, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under OAR 177-036-0110.

(5) **Sole Source Procurements:** The Lottery may Award a Contract for Goods or Services without a competitive process when the Director, or a person designated in Writing by the Commission, determines in Writing, based on findings of current market research, that the Goods or Services are available from only one seller or source.

(6) Emergency Procurements:

(a) **General:** The Director may make Emergency procurements and enter into Contracts Awarded as Emergency procurements in an Emergency. Notwithstanding OAR 177-036-0030, the Director may make Emergency procurements and enter into Contracts Awarded as Emergency procurements regardless of the dollar amount of the Contract without the Commission's approval.

(b) Major Procurements:

(A) Notwithstanding subsection 6(a) of this rule, the Director may make an Emergency procurement or enter into an Emergency Contract for a Major Procurement only upon the approval of the Commission. If the Emergency procurement requires immediate approval of the Contract, the Commission may conduct its meeting as provided in ORS 192.670 and 192.640(3).

(B) The Director may establish an extension of an Emergency Contract for a Major Procurement without the approval of the Commission, where the original Contract specifically provides for the extension, the extension does not result in any change in the terms and conditions of the Contract other than an extension in its term, and the Contractor has maintained its status as an approved Major Procurement Vendor pursuant to OAR 177-037-0030 and 177-037-0060.

(C) The Director shall make reasonable efforts to report to the Commission in Writing, within five Days of the Contract Award, or by the next scheduled Commission meeting following the Contract Award date,

whichever is later, any Emergency Contracts entered into by the Director. However, the Director's inability or failure to report to the Commission within this time shall not affect the validity of any Emergency Contract.

(7) Alternative Procurement Methods:

(a) The Lottery reserves the right to use an alternative procurement method if that method will be more likely to:

(A) Maximize the Lottery's net revenue;

(B) Achieve the specific business objective or business objectives of the procurement; or

(C) Aid the Director in fulfilling the statutory mandate to operate and administer the Lottery.

(b) Alternative procurement methods may include, but are not limited to, specialized Vendor prequalifications, multistep Bids or Proposals, single Proposer negotiations, competitive negotiations between two or more Proposers, brand name solicitations, and cooperative procurements. The Lottery shall conduct the alternative procurement method in accordance with the process set forth in the applicable Solicitation Document.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0050

Public Notice of Solicitation Documents

The Lottery may provide notice of a Solicitation Document by placing notice on an electronic procurement system, by sending the Solicitation Document to prospective Offerors, or by using any method it determines appropriate to foster and promote competition.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0055

Offer Submissions

Offerors may not submit facsimile and electronic Offers unless specifically authorized in the Solicitation Document.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0060

Addenda to Solicitation Documents

(1) **Issuance; Receipt:** The Lottery may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Lottery otherwise specifies in the Addenda.

(2) **Notice and Distribution:** The Lottery shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Lottery will provide notice of Addenda.

(3) **Timelines; Extensions:** The Lottery shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Lottery may extend the Closing if the Lottery determines prospective Offerors need additional time to review and respond to Addenda.

(4) **Request for Change or Protest to an Addendum of a Large Procurement:** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum of a Large Procurement, as provided in OAR 177-036-0160, by the close of the Lottery's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 177-036-0160, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 177-036-0160, then the Lottery may consider an Offeror's request for change or protest to the Addendum only, and the Lottery shall not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0070

Pre-Closing Modifications or Withdrawal of Offers

(1) **Modifications:** An Offeror may modify its Offer in Writing prior to Closing. An Offeror shall prepare and submit any modifications to its Offer to the Lottery. The last Offer received by the Lottery prior to Closing will supercede any previous Offers received unless the Offer is identified by the Offeror as an alternate Offer.

(2) **Withdrawals:** An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, signed by an authorized rep-

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representative of the Offeror, delivered to the Lottery and received by the Lottery prior to Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Lottery.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0080

Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) **Receipt:** The Lottery shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Lottery shall not open the Offer or modification upon receipt, but shall maintain it as confidential until Closing. If the Lottery inadvertently opens an Offer or a modification prior to Closing, the Lottery shall document the resealing for the procurement file and return the Offer or modification to its confidential state until Closing.

(2) **Opening:** The Lottery does not publicly open Offers.
Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0090

Late Offers, Withdrawals, and Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The Lottery shall not consider late Offers, withdrawals or modifications except as permitted in OAR 177-036-0100.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0100

Mistakes

(1) **General:** To protect the integrity of the competitive procurement process and to assure fair treatment of Offerors, the Lottery shall carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) **Lottery's Treatment of Mistakes:** The Lottery shall not allow an Offeror to correct or withdraw an Offer for an error of judgment. If the Lottery discovers certain mistakes in an Offer after Closing, but before Award of the Contract, the Lottery may take the following action:

(a) **Minor Informality:** The Lottery may waive, or permit an Offeror to correct a minor informality. A minor informality is a matter of form rather than substance when it is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include, but are not limited to, an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) **Clerical Error:** The Lottery may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Lottery's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, and instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) **Burden of Proof:** The Lottery may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error of judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Lottery does not grant the Offeror permission to withdraw the Offer;

(G) That the Lottery's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Lottery; and

(H) That the Offeror promptly gave notice of the claimed error to the Lottery.

(d) **Withdrawing Offers After Closing:** The criteria in subsection (2)(c) of this rule shall determine whether the Lottery will permit an Offeror to withdraw its Offer after Closing. This criteria also shall apply to the question of whether the Lottery will permit an Offeror to withdraw without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Lottery based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the Lottery, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes:** The Lottery shall reject an Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award:** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this division 36 only to the extent as permitted by applicable law.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0110

Responsibility of Offerors

(1) **General:** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. The Lottery shall prepare a Written determination of non-Responsibility of an Offeror if the Offeror does not meet the standards of Responsibility.

(2) **Considerations:** In determining whether an Offeror has met the standards of Responsibility, the Lottery shall consider whether the Offeror:

(a) **Business Qualifications:** Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;

(b) **Record of Performance:** Has a satisfactory record of contract performance. The Lottery shall carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Lottery shall determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Lottery may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Lottery shall make its basis for determining an Offeror non-Responsible under this subsection part of the procurement file;

(c) **Record of Integrity:** Has a satisfactory record of integrity. An Offeror may lack integrity if the Lottery determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or making of false certifications. The Lottery may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The Lottery shall make its basis for determining an Offeror non-Responsible under this subsection part of the procurement file;

(d) **Legally Qualified:** Is qualified legally to contract with the Lottery; and

(e) **Necessary Information:** Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Lottery concerning Responsibility, the Lottery shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

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177-036-0115

Vendor Disclosure Requirements

Prospective Offerors shall comply with all disclosure requirements set forth in the Lottery's Vendor Disclosure Rules in OAR chapter 177, division 37.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0120

Offer Evaluation and Award

(1) **Lottery Evaluation:** The Lottery shall evaluate Offers only as set forth in the Solicitation Document and in accordance with applicable law. The Lottery shall not evaluate Offers using any other requirement or criterion.

(2) **Clarification of Offers:** After Closing, the Lottery may conduct discussions with apparent Responsive Bidders or Proposers for the purpose of clarification to assure full understanding of the Offer. The Lottery shall document clarification of any Offer in the procurement file.

(3) **Preference for Oregon Goods and Services:** The Lottery shall prefer Goods and Services that have been manufactured or produced in Oregon if price, fitness, availability, and quality are otherwise equal.

(a) **Award When Offers Identical:** When the Lottery receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Lottery shall award the Contract based on the following order of precedence:

(A) The Lottery shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services that have been manufactured or produced in Oregon.

(B) If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the Lottery shall award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(C) If the Lottery receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, the Lottery shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(b) **Determining if Offers are Identical:** The Lottery shall consider Offers identical in price, fitness, availability and quality as follows:

(A) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.

(B) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposal.

(c) **Determining if Goods or Services are Manufactured or Produced in Oregon:** For the purposes of complying with section (3) of this rule, Lottery may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Lottery, any information the Lottery determines appropriate and necessary to allow the Lottery to determine if the Goods or Services are manufactured or produced in Oregon. The Lottery may use any reasonable criteria to determine if Good or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Lottery applies those criteria equally to each Bidder or Proposer.

(d) **Procedure for Drawing Lots:** In any instance when this section calls for the drawing of lots, the Lottery shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(4) **Negotiations:** Except as permitted by section (2) of this rule, the Lottery shall not negotiate with any Bidder. The Lottery may conduct discussions or negotiate with Proposers in accordance with the process set forth in the Solicitation Document.

(5) Award:

(a) **General:** The Lottery shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous Responsible Proposal unless otherwise stated in the Solicitation Document. The Lottery may Award by item,

groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the best interest of the Lottery as determined by the Lottery.

(b) **Multiple Items:** A Solicitation Document may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Lottery's expected purchases, or grand total of all items.

(c) **Multiple Awards:** Notwithstanding subsection 5(a) of this rule, the Lottery may Award multiple Contracts in accordance with the criteria set forth in the Solicitation Document. If a Solicitation Document permits the Award of multiple Contracts, the Lottery shall specify in the Solicitation Document the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services. A notice to prospective Offerors that multiple Contracts may be Awarded for any Solicitation Document shall not preclude the Lottery from Awarding a single Contract for such Solicitation Document.

(d) **Partial Awards:** If after evaluation of Offers, the Lottery determines that an acceptable Offer has been received for only part of the requirements of the Solicitation Document:

(A) The Lottery may Award a Contract for the part of the Solicitation Document for which acceptable Offers have been received; or

(B) The Lottery may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(e) **All or None Offers:** The Lottery may Award all or none Offers if the evaluation criteria specifies an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0130

Notice of Intent to Award

At least seven Days before the Award of a Contract as a Large Procurement, the Lottery shall provide all Offerors Written notice of the Lottery's intent to Award a Contract, unless the Lottery determines that circumstances require prompt execution of the Contract, in which case the Lottery may provide a shorter notice period.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0140

Availability of Award Decisions

(1) **Contract Documents:** To the extent required by the Solicitation Document, the Lottery shall deliver to the successful Offeror a Contract, Signed purchase order, or other agreements as applicable.

(2) **Availability of Award Decisions:** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals by submitting a form provided by the Lottery. In addition, the Lottery may make available tabulations of Bids and Proposals through an electronic procurement system.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0150

Cancellation, Rejection, and Delay of a Solicitation

(1) **General:** Any procurement described in a Solicitation Document may be cancelled, or any or all Offers may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the Lottery as determined by the Lottery. The reasons for the cancellation or rejection must be made a part of the solicitation file. The Lottery is not liable to any Offeror for any loss or expense caused by or resulting from the cancellation or rejection of a Solicitation Document, Offer, or Award.

(2) **Offer Findings:** The Lottery shall reject an Offer upon the Lottery's finding that the Offer:

(a) Is contingent upon the Lottery's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(b) Takes exceptions to terms and conditions (including Specifications) set forth in the Solicitation Document;

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(d) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(e) Is late;

(f) Is not in substantial compliance with the Solicitation Document requirements; or

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(g) Is not in substantial compliance with all prescribed public procurement procedures.

(3) **Offeror Findings:** The Lottery shall reject an Offer upon the Lottery's finding that the Offeror:

(a) Has been debarred pursuant to OAR 177-036-0210;

(b) Has not properly executed Bid or Proposal security as required by the Solicitation Document; or

(c) Is non-Responsible as defined in OAR 137-036-0110.

(4) **Disposition of Offers:**

(a) **Prior to Closing:** If the Lottery cancels a procurement prior to Closing, the Lottery shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Lottery shall open the Offer to determine the source and then return it to the Offeror.

(b) **After Closing:** If the Lottery cancels a procurement after Closing, the Lottery shall keep the Offers in the procurement file.

(c) **Rejection of All Offers:** If the Lottery rejects all Offers, the Lottery shall keep all Offers in the procurement file.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0160

Request for Change or Clarification of Large Procurements

(1) **Purpose:** A prospective Offeror may request changes or clarifications to the procurement process or the Solicitation Document for Large Procurements.

(2) **Delivery:** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a request for change or clarification in Writing to the Lottery no less than ten Days prior to Closing.

(3) **Content:** A prospective Offeror's request for change or clarification shall include a statement of the desired changes or clarification to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror has based its request.

(4) **Lottery's Response:** The Lottery shall not consider a Prospective Offeror's request submitted after the deadline established for submitting such request under this rule, or such different time as may be provided in the Solicitation Document. The Lottery shall consider the request if it is timely filed and meets the conditions set forth in this rule. The Lottery shall issue a Written disposition of the request. If the Lottery upholds the request, in whole or in part, the Lottery may in its sole discretion either issue an Addendum reflecting its disposition or cancel the Solicitation Document.

(5) **Extension of Closing:** If the Lottery receives a request from a prospective Offeror in accordance with this rule, the Lottery may extend Closing if the Lottery determines an extension is necessary to consider and respond to the request.

(6) **Clarification:** Prior to the deadline for submitting a request, a prospective Offeror may request that the Lottery clarify any provision of the Solicitation Document. The Lottery's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Lottery unless the Lottery amends the Solicitation Document by Addendum.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0170

Award Protests of Large Procurements

(1) **Purpose:** An Offeror may protest Lottery's intent to Award of a Contract as a Large Procurement.

(2) **Delivery:** An Offeror must deliver the protest to the Lottery no later than five Days after the date of issuance of intent to Award the Contract, unless otherwise stated in the Solicitation Document.

(3) **Content of Protest:** All protests must be in Writing and signed by the Offeror. The protest must state all facts and arguments on which the Offeror is basing the protest. The protest must claim, and state facts which substantiate a claim, that:

(a) All lower Bids or higher ranked Proposers are ineligible to receive the Contract Award because they are non-Responsive; or

(b) The Lottery committed a material violation of a provision in the Solicitation Document or of an applicable statute or administrative rule, and but for the alleged material violation, Offeror would have been the lowest Bidder or highest ranked Proposer.

(4) **The Lottery's Response:** The Lottery's Procurement and Contract Manager shall review the protest and shall fax and mail the

Offeror a Written decision within three Days of receipt of the Written protest to the fax number and address provided in the Offer. Any Written decision from the Lottery may include the Lottery's final opinion of the protest, a notice to the Offeror that the Lottery needs additional time in which to evaluate the protest, or other information to the Offeror.

(5) **Appeal:**

(a) **Appeal to the Director:**

(A) If the Lottery Procurement and Contract Manager's decision is adverse to the Offeror, the Offeror may appeal the Lottery Procurement and Contract Manager's decision by submitting a Written appeal to the Director within three Days after the date of issuance of the Lottery Procurement and Contract Manager's Written decision.

(B) The Director shall review any appeal of the Lottery Procurement and Contract Manager's decision and shall fax and mail a Written decision to the Offeror within three Days of receipt of the Written appeal to the fax number and address provided in the Offer. The Director will not consider grounds or arguments in favor of the protest that were not first presented to the Lottery Procurement and Contract Manager.

(b) **Appeal to Lottery Commission:**

(A) If the decision of the Director is adverse to the Offeror, the Offeror may submit a subsequent Written appeal of the Director's decision to the Lottery Commission by delivering the subsequent Written appeal to the Director within two Days after the date of issuance of the Director's Written decision.

(B) The Lottery Commission, in considering the appeal, shall review the documentation presented to the Lottery Procurement and Contract Manager and the Director, and thereafter, shall base its decision on such material. The Lottery Commission shall respond to the appeal on or before the next regularly scheduled Commission meeting, but in no event shall the Lottery Commission be required to review and respond to the appeal in less than ten Days of receipt of the Written appeal. The Lottery Commission will not consider grounds or arguments in favor of the appeal that were not first presented to the Lottery Procurement and Contract Manager. The Lottery Commission will not review and rescore the evaluation scores.

(6) **Late Submission:** The Lottery shall not consider an Offeror's protest or appeal submitted after the timelines established for submitting such protest or appeal under this rule or such different time period as may be provided in the Solicitation Document. If the Lottery upholds the protest, in whole or in part, it may in its sole discretion either Award the Contract to the successful protestor or cancel the solicitation.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0180

Contract Amendments

(1) **Additional Goods or Services:** The Lottery may amend a Contract without additional competition to add additional Goods or Services within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, subject to the following conditions:

(a) The additional Goods or Services are required by reason of existing or new laws, rules, regulations, or ordinances that affect the performance of the original Contract; or

(b) The prices for the Goods or Services are modified only as follows:

(A) When prices for the Goods or Services are based on unit prices, unit prices that establish the cost basis for the additional Goods or Services were provided in the Offer or original Contract and those prices do not increase except as permitted by an escalation clause in the Contract; or

(B) When prices for the Goods or Services are not based on unit prices, options that establish the cost basis for the additional Goods or Services were provided in the Solicitation Document, Offer, or original Contract.

(2) **Renegotiated Contract:** The Lottery may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the Lottery subject to the following conditions:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, within the Scope of the Contract;

(b) The Lottery must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Lottery as the original Contract; and

(c) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document or Contract after combining the initial and extended terms.

(d) If a Contractor offers a lower price in exchange for a term or condition that was expressly rejected in the original solicitation, the amended

ADMINISTRATIVE RULES

Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(e) If the Contract is the result of a cooperative procurement under ORS 279A.200 through 279A.225, the amended Contract may not materially change the terms, conditions, and prices of the original Contract.

(3) **Small or Intermediate Contract:** The Lottery may amend a Contract Awarded as a small or intermediate procurement pursuant to sections (1) or (2) of this rule, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than twenty-five percent of the original Contract Price, unless the amendment increasing the original Contract Price to more than twenty-five percent of the original Contract Price is approved in Writing by the Director prior to execution of the amendment.

(4) **Emergency Contract:** The Lottery may amend a Contract Awarded as an Emergency procurement if the Emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing Emergency.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0190

Cooperative Procurements

The Lottery may participate in, sponsor, conduct, or administer cooperative procurements pursuant to ORS 279A.200 through 279A.225.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0200

Performance Bond

(1) **General:** A successful Offeror for a Major Procurement, as defined in OAR 177-037-0000(2), shall promptly execute and deliver to the Lottery a performance bond in the amount specified in the Solicitation Document or Contract as provided in ORS 461.430. A successful Offeror shall also promptly execute and deliver to the Lottery a performance bond for other procurements, as required by the Solicitation Document or Contract, when the Lottery determines a performance bond is necessary to protect the interests of the Lottery.

(2) **Authorized Surety:** The performance bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance bond must be payable to the Lottery as specified in the Solicitation Document or Contract, and must be in a form approved by the Lottery.

(3) **Emergency Procurement:** In cases of an Emergency procurement, the requirement of furnishing a performance bond for the performance of a Major Procurement Contract may be excused by the Lottery if a declaration of such Emergency is made in accordance with OAR 177-036-0040(6).

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-036-0210

Debarment of Prospective Offerors

(1) **General:** The Lottery may debar a prospective Offeror from consideration for Award of Lottery Contracts for the reasons listed in section (2) of this rule after providing the prospective Offeror with notice and a reasonable opportunity to be heard.

(2) **Factors for Consideration:** A prospective Offeror may be debarred from consideration for Award of Lottery Contracts if:

(a) The prospective Offeror has committed a violation of a material Contract provision. A violation may include but is not limited to a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment.

(b) The prospective Offeror has been convicted of a criminal offense resulting from obtaining or attempting to obtain a public or private contract or subcontract or resulting from the performance of such contract or subcontract.

(c) The prospective Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective Offeror's responsibility as a contractor or that the

Lottery determines may affect the honesty, fairness, integrity or security of the Lottery or any Lottery games.

(d) The prospective Offeror has been convicted under state or federal antitrust statutes.

(e) The prospective Offeror does not carry worker's compensation or unemployment insurance as required by statute.

(3) **Period of Debarment:** The Lottery shall determine the period of debarment of a prospective Offeror, however the period shall not exceed three years.

(4) **Responsibility:** Notwithstanding the limitation on the term for debarment in section (3), the Lottery may determine that a previously debarred Offeror is not Responsible prior to Contract Award.

(5) **Imputed Knowledge:** The Lottery may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(6) **Limited Participation:** The Lottery may allow a debarred Person to participate in a competitive process and Contracts on a limited basis during the debarment period upon Written determination by the Director that participation is Advantageous to the Lottery. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

(7) Decision:

(a) The Lottery shall issue a Written decision to debar a prospective Offeror under this rule. The decision must:

(A) State the reasons for the debarment; and

(B) Inform the debarred prospective Offeror of the appeal rights of the prospective Offeror under section (8) of this rule.

(b) The Lottery shall send a copy of the decision immediately to the debarred prospective Offeror by certified mail, return receipt requested, or by personal service.

(8) Appeal:

(a) The procedure for appeal from the Lottery's debarment of a prospective Offeror under this rule, shall be in accordance with this section and is not subject to ORS Chapter 183 except when specifically provided by this section.

(b) Upon receipt of a notice from the Lottery of a decision to debar under this rule, a prospective Offeror that wishes to appeal the decision shall, within three business days after receipt of the decision, notify the Lottery Director that the prospective Offeror appeals the decision and requests a hearing as provided in this section.

(c) Upon receipt of the prospective Offeror's notice of appeal and request for hearing, the Lottery Director shall promptly notify the prospective Offeror appealing of the time and place of the hearing. The Director shall conduct the hearing and decide the appeal within thirty Days after receiving the notice from the prospective Offeror. The Director shall set forth in Writing the reasons for the hearing decision.

(d) At the hearing, the Director shall consider de novo the notice of debarment, the reasons listed in section (2) of this rule on which the Lottery based the debarment, and any evidence provided by the Lottery and the prospective Offeror. In all other respects, a hearing before the Director shall be conducted in the same manner as a contested case under ORS 183.415(3) to (6) and (9), 183.425, 183.440, 183.450, and 183.452. The hearing shall not be considered a contested case hearing under ORS Chapter 183 in any other respects.

(e) The prospective Offeror may seek judicial review of the Director's decision as set forth in ORS 183.484 for orders other than contested cases.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

Adm. Order No.: LOTT 13-2005(Temp)

Filed with Sec. of State: 11-3-2005

Certified to be Effective: 11-3-05 thru 4-30-06

Notice Publication Date:

Rules Adopted: 177-037-0000, 177-037-0010, 177-037-0020, 177-037-0030, 177-037-0040, 177-037-0050, 177-037-0060, 177-037-0070

Subject: The Oregon Lottery has redrafted its vendor contracting rules. The Lottery proposes to adopt these rules to set forth the application and disclosure requirements for approval to be a Lottery ven-

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dor or contractor. These proposed rules also set forth the criteria for denying approval to be a Lottery vendor or contractor.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-037-0000

Definitions

The definitions in OAR 177-036-0000 apply to the terms used in this division. In addition, the following definitions apply:

(1) “Control Person” means a person described in ORS 461.410.

(2) “General Procurement” means a procurement for those Goods or Services that do not involve sensitive or secure Lottery information, and includes, but is not limited to, office supplies and equipment, media, vehicles, and promotional products. Disclosure requirements governing this classification are contained in OAR 177-037-0050.

(3) “Major Procurement” has that definition as defined in OAR 177-036-0000(19).

(4) “Sensitive Procurement” means a procurement that involves sensitive and secure information and includes, but is not limited to, Goods or Services involving audits for drawings and security, direct access to gaming computer systems, financial systems, receiving or recording of gaming information, locks and keys for terminals, and also includes the Lottery’s primary advertising agency. Disclosure requirements for this classification of procurements are contained in ORS 461.700 and OAR 177-037-0040.

(5) “Vendor” means, for the purposes of this chapter, any Person interested in providing Goods or Services to the Lottery, but does not include a Lottery game retailer as defined in ORS 461.010(7).

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0010

General Policy

(1) **General:** It is the policy of the Lottery to conduct security background investigations on Lottery Vendors and Lottery Contractors to ensure the competence, integrity, background, good character, and the nature of the true business ownership and control of a Vendor or Contractor.

(2) **Disclosure:** To assure the security and integrity of the Lottery and Lottery games, the Director may require a Vendor, including any Control Person of the Vendor, or any employee or subcontractor of the Vendor that Lottery determines may have access to sensitive or secure Lottery information, to disclose and provide any information or disclosures deemed necessary to approve the Vendor as a Lottery Contractor. When required by these rules or by the Director, the Vendor must submit an application for approval to be a Lottery Contractor on disclosure forms provided by Lottery and must include all information and disclosures requested.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0020

Classification of Lottery Procurements

(1) **General:** A procurement or Contract is classified according to the degree to which a Contractor may have access to secure and sensitive Lottery information, including materials or systems, which in the opinion of the Director affect the honesty, fairness, integrity, or security of the Lottery or any Lottery games. The factors used to classify a procurement or Contract include, but are not limited to: The type of Goods or Services to be provided; access to and the potential risk to Lottery games technology or data, access to and the potential risk to Lottery financial systems; and the type of company involved. There are three classifications of Procurements: Major, Sensitive, and General.

(2) **Classification:** The decision to classify a procurement as a Major, Sensitive, or General Procurement is made by the Director in consultation with the Assistant Director for Security prior to the Lottery’s issuance of a Solicitation Document. The classification of a procurement, disclosure requirements, and instructions for disclosure will be stated in the procurement Solicitation Document or in the procurement advertisement.

(3) **Classification Changes:** The Director’s decision to classify a particular procurement under sections (1) and (2) of this rule is not binding on the Lottery and in no way limits the authority of the Commission or the Director to change the procurement or Contract classification, or the disclosure requirements at any time prior to the award of a Contract or during the term of a Contract.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0030

Major Procurements

(1) **General:** In all solicitations for a Major Procurement, Lottery shall clearly identify the solicitation as a Major Procurement.

(2) **Disclosure:** All procurements classified as a Major Procurement require an extensive security background investigation and are subject to all disclosure requirements specified in ORS Chapter 461 and OAR chapter 177, division 37, and any other special disclosure requirements deemed necessary by the Director or the Commission. An Offer or Proposal for a Major Procurement must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery.

(3) **Continuing Disclosure Requirement:** Unless otherwise specified in the Contract for a Major Procurement, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0040

Sensitive Procurements

(1) **General:** In all solicitations for a Sensitive Procurement, Lottery shall clearly identify the solicitation as a Sensitive Procurement

(2) **Disclosure:** All procurements classified as a Sensitive Procurement require a security background investigation and are subject to all disclosure requirements specified in OAR chapter 177, division 37 and the Solicitation Document, and any other special disclosure requirements deemed necessary by the Director or the Commission. An Offer or Proposal for a Sensitive Procurement must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery.

(3) **Continuing Disclosure Requirement:** Unless otherwise specified in the Contract for a Sensitive Procurement, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0050

General Procurements

(1) **General:** In all solicitations for a General Procurement, Lottery shall clearly identify the solicitation as a General Procurement.

(2) **Disclosure:** A procurement classified as a General Procurement does not require a security background investigation, unless deemed necessary by the Director or the Commission.

(3) **Continuing Disclosure Requirement:** If a security background investigation is deemed necessary, the Solicitation Document shall include the instructions for disclosure. An Offer or Proposal must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery. Unless otherwise specified in the Contract, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0060

Vendor Application and Contract Disclosure Requirements

(1) **General:** The Director may require any degree or type of disclosure deemed necessary to assure the security and integrity of the Lottery and Lottery games.

(2) **Forms and Procedures:** The Director shall approve all the forms and procedures to be used by all Vendors who wish to apply for approval to be a Lottery Contractor.

(3) **Vendor Submission:** A Vendor must complete the required application for approval to be a Lottery Contractor and provide any information and disclosures required, as determined by the Director and the Assistant Director of Security within the guidelines and timelines set forth in the Solicitation Document or as otherwise required by the Director and the Assistant Director for Security.

(4) **Complete Disclosure Required:** The Director may reject an application for approval to be a Lottery Contractor if the Vendor has not

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provided all the information and disclosures required to be submitted or if any of the information or disclosures submitted is not accurate, current, or truthful.

(5) **Continuing Disclosure Requirement:** If during the evaluation period for an Offer or Proposal there are any changes to the information or disclosures submitted, a Vendor must update the information as soon as possible. After the Award, a Vendor selected must immediately update any changes to the information or disclosures submitted.

(6) **Status Changes:** Unless other standards are established in a Contract, during the term of the Contract any changes in the status of the Contractor, the status of a Control Person, or any employee or subcontractor for which information or disclosures were submitted, or the addition of any other Control Person, or the addition of any employee or subcontractor who may have access to sensitive or secure Lottery information, must be reported to the Director within thirty days of the known change. Those whose status has changed or who have been added as a Control Person or added as an employee or subcontractor who the Lottery determines may have access to sensitive or secure Lottery information will be required to submit the required information and disclosures. If there has been no change in Vendor status or Control Persons, the Vendor is required to certify annually on their vendor Contract anniversary date that there has been no change.

(7) **Burden of Proof:** The burden of proof for satisfying the Lottery's disclosure requirements resides with the Vendor or Contractor.

(8) **Vendor Consent:** Each Vendor who submits an application for approval to be a Lottery Contractor must consent in writing to the examination of all accounts, bank accounts, and Vendor records under the Vendor's possession or control. If required by the Director, a Vendor must permit an inspection of any portion of the Vendor's business premises deemed necessary by the Lottery.

(9) **Investigation Costs:** As authorized under ORS 461.700(2), the Director may charge a Vendor an amount necessary to reimburse the Lottery for the costs associated with conducting the security background investigation if the Director determines the costs of the investigation exceed the usual costs of such investigation.

(10) **Acceptance of Risk:** Each Vendor or Contractor must accept any risk of adverse public notice, embarrassment, criticism, damages, or financial loss, including any publication or use by a third party, which may result from the disclosure or use by Lottery of any information or document submitted by the Vendor or Contractor. By submitting a Vendor application for approval to be a Lottery Contractor to the Lottery, the Vendor or Contractor expressly waives any claim against the State of Oregon, including the Lottery, the Director, the Commission, the Department of State Police, and their officers and employees for any and all damages resulting from the use or disclosure of any information or documents submitted to Lottery or from the use or disclosure of any information obtained by Lottery as a result of the security background investigation.

(11) **Indemnification:** By submitting an application for approval to be a Lottery Contractor to the Lottery, the Vendor or Contractor agrees to indemnify, defend, and hold harmless the State of Oregon, the Lottery Commission, the Lottery, the Department of State Police, their agents, officers, employees, and representatives, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses arising out of, or relating to, the use or disclosure of any information or disclosures submitted in the application for approval to be a Lottery Contractor or from the use or disclosure of any information obtained by Lottery as a result of the security background investigation. The Vendor's or the Contractor's obligations include, but are not limited to, any and all losses, damages, liabilities, settlements, judgments, fines, costs, fees, and expenses of any nature whatsoever, including, but not limited to, attorneys and other professional fees at trial and on appeal.

(12) **Chain of Custody:** All required information and disclosures must be submitted in a secure manner and may only be opened for review by the Assistant Director for Security or his designee, or by the Director.

(13) **Submission Constitutes Consent:** By submitting an Offer or Proposal, a Vendor binds itself, its officers, employees, agents, and any subcontractors to comply with all disclosure requirements established by the Director. Failure or refusal to comply with any applicable requirement may result in denial or revocation of a Contract Award. In the event of denial or revocation of the Award due to refusal or failure to comply with any applicable disclosure requirement set forth in these rules, the Vendor is liable under the bid bond or shall forfeit any security posted for the procurement.

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

Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440

Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

177-037-0070

Criteria for Denying a Vendor or Control Person Application or Contract

(1) **General:** Before a Contract for a Major or Sensitive Procurement is Awarded, a security background investigation must be conducted by the Assistant Director for Security for any Vendor who is selected to be Awarded the Contract. The Assistant Director for Security shall conduct any other security background investigation specified by the Director.

(2) **Director's Determination:** The Director may deny or revoke approval to be a Lottery Contractor to any Vendor or Contractor when a security background investigation determines:

(a) **Business Qualifications:** The Vendor or Contractor does not demonstrate, either individually or through its employees or Control Persons, that the business has the ability and experience to establish, operate, and maintain the business operations necessary to provide the Goods or Services required in the Solicitation Document or under the Contract, or to provide the security necessary to protect sensitive and secure Lottery information, materials, or systems.

(b) **Financing:** The Vendor or Contractor does not demonstrate adequate financing to be able to provide the Goods or Services as required for performance of the Contract.

(c) **Integrity:** The Vendor, a Control Person of the Vendor, or any employee or subcontractor of the Vendor the Lottery determines may have access to sensitive or secure Lottery information, materials or systems:

(A) **Criminal Conviction:** Has been convicted of any crime in any jurisdiction.

(B) **Gambling Offense Conviction:** Has been convicted of any gambling offense in any jurisdiction.

(C) **Conduct Constituting a Crime:** Has been imposed with a civil judgment based in whole or in part upon conduct which constitutes a crime.

(D) **Material Omission:** Has omitted any material fact that was to be disclosed to the Lottery or its authorized agents during an initial or subsequent security background investigation.

(E) **Threat to the Public Interest:** Is an individual or entity whose background, including criminal, civil, and financial records, or whose reputation, or whose personal or business associations, pose a threat to the public interest of the state or to the security and integrity of the Lottery.

(F) **Character:** Is not of good character, honesty, or integrity.

(G) **Material Misstatement:** Has provided a material misstatement or untrue statement of a fact deemed to be material by the Director.

(H) **Other Conduct:** Has engaged in conduct the Director determines may, in any way, adversely affect the integrity, security, honesty or fairness of the Lottery.

(I) **Access:** Refuses to provide access to records or to inspection of any part of the business premises deemed necessary by the Lottery.

(J) **Association:** Has an association with a person or business having a known criminal background, or a person the Lottery Director determines is of disreputable character or conduct, and which may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Lottery.

(d) **Ownership Interest:** The Vendor is qualified to be approved as a Lottery Contractor, but there is an ownership interest in the Vendor's business operation by a Person who is unqualified or disqualified to be approved as a Lottery Contractor.

(e) **Tax Violation:** The Vendor is in violation of any tax laws described in ORS 305.380(4).

(3) **Evaluation Factors:** In evaluating whether to deny approval to be a Lottery Contractor to any Vendor or based on subsection (2) of this rule, the Director may consider the following factors:

(a) **Nature and Severity:** The nature and severity of the conduct, incident, or circumstance;

(b) **Time:** The passage of time;

(c) **Intervening Factors:** Any intervening circumstances;

(d) **Multiple Offenses:** The number of offenses, crimes, or incidents;

(e) **Materiality and Relevancy:** The materiality and relevancy to the work to be performed; or

(f) **Extenuating Circumstances:** Any extenuating circumstances that affect or reduce the impact of the conduct, incident, offense or crime on the security, integrity, honesty, and fairness of the Lottery.

(4) **Director's Determination:** The Director's decision to deny approval to be a Lottery Contractor is final.

(5) **Revocation and Termination:** The denial criteria described in this rule may also constitute sufficient grounds for revoking a Contractor's approval to be a Lottery Contractor and for the termination, immediate or otherwise, of an existing Contract.

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

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Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06

Oregon Student Assistance Commission Chapter 575

Adm. Order No.: OSAC 5-2005
Filed with Sec. of State: 10-18-2005
Certified to be Effective: 10-18-05
Notice Publication Date: 8-1-05
Rules Repealed: 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
Subject: 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: Margie Lowe—(503) 687-7377

Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Adm. Order No.: ODA 4-2005
Filed with Sec. of State: 10-18-2005
Certified to be Effective: 10-18-05
Notice Publication Date: 8-1-05
Rules Renumbered: 583-050-0031 to 583-050-0014
Subject: Revises regulations related to the validity and use of college degrees as credentials.
Rules Coordinator: Margie Lowe—(503) 687-7377

583-050-0014

Unaccredited Degrees

- (1) Users of unaccredited degrees may use the degrees in the following ways.
- Unaccredited degrees that have achieved ODA approval under ORS 348.609(d) can be used without a disclaimer.
 - Unaccredited degrees that have not achieved ODA approval under ORS 348.609(d) can only be used with a disclaimer.
 - Degrees issued by degree mills are invalid for use, with or without a disclaimer.
- (2) Process for approval under ORS 348.609(d). A claimant of an unaccredited U.S. degree may submit to the Office information indicating that the school conferring the degree has the legal authority to issue degrees in another state and could reasonably be considered for approval in Oregon under OAR 583-030.
- A reasonable possibility of approval can be demonstrated by submitting to ODA the appropriate review fee and sufficient evidence that the unaccredited institution could meet ODA academic standards under OAR 583-030 for authorization to operate in Oregon if it chose to make such an application.
 - ODA may, upon its own motion, evaluate an unaccredited institution and determine whether it has a reasonable chance to meet Oregon authorization standards without a degree user making such a request.
 - If a request for evaluation under this section is not made to ODA within 30 days of notification that an unaccredited degree is being used contrary to Oregon law, the degree user's right to such a review is waived and ODA may pursue appropriate enforcement action. Degree users may, within the first 30 days, request up to 30 additional days for the purpose of gathering material necessary to apply for an evaluation.
 - A claimant of a non-U.S. degree issued by a degree supplier not accredited by a U.S. accreditor may submit to the Office information proving that the supplier issuing the degree has the following characteristics.
 - The supplier is operating legally as a degree-granting institution in its host country.
 - The host country has a postsecondary approval system equivalent to U.S. accreditation in that it applies qualitative measures by a neutral external party recognized in that role by the government.
 - The supplier has been approved through the demonstrable application of appropriate standards by the host country's accreditor equivalent.
 - All degrees issued by the supplier are legally valid for use and professional licensure within the host country.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603, 348.609, 348.992 & SB 1039 (2005 OL, Ch. 546)
Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 4-2004, f. & cert. ef. 5-14-04; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; Renumbered from 583-050-0031, ODA 4-2005, f. & cert. ef. 10-18-05

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 24-2005
Filed with Sec. of State: 11-8-2005
Certified to be Effective: 11-8-05
Notice Publication Date: 9-1-05
Rules Amended: 416-300-0000, 416-300-0010, 416-300-0020, 416-300-0030, 416-300-0040, 416-300-0050, 416-300-0060, 416-300-0080
Rules Repealed: 416-300-0070, 416-300-0090, 416-300-0100, 416-300-0110, 416-300-0120
Subject: OAR chapter 416, division 300 is amended as follows: The purpose of these rules is changed to accurately reflect the Oregon Youth Authority's position as it relates to offenders on the conditional release status in the community; definitions are revised and updated; rule titles are changed to more accurately describe their intent; parole status and revocation are revised and changed to more concisely define the due process requirements for revocation.
Rules Coordinator: Kimberly Walker—(503) 378-6834

416-300-0000

Purpose

These rules set forth the essential procedures Oregon Youth Authority (OYA) staff must utilize when placing an offender on parole or conditional release status in the community or revoking that status.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.105, 420A.115, 420A.120, 420.905, 420.910
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0010

Definitions

- Administrative status: An offender's status in the OYA system, such as placement in a youth correctional facility, on parole status in the community, on authorized absence from a facility, on unauthorized absence from any status (except discharge); and discharge of the OYA commitment.
- Formal hearing officer: The person designated by the Superintendent of a close custody facility to conduct a formal revocation hearing for a paroled offender.
- Formal revocation hearing committee: A committee composed of three close custody staff selected by the Superintendent, none of whom have brought the parole violation charges against the offender.
- Parole: The conditional release of an offender from a close custody facility to a person or persons who thereupon acquire temporary legal and physical custody; who provide care and supervision to the offender subject to continued control of the OYA and subject to revocation of parole status if conditions of parole are violated or if OYA determines that parole is not in the best interests of the offender or the community.
- Preliminary hearing: A process that determines whether or not an offender has violated one or more conditions of parole and whether there is probable cause to believe that revocation of parole is in the best interests of the offender and the community.
- Preliminary hearing officer: A person other than the person(s) bringing charges that may result in revocation, or the juvenile court, designated to conduct a preliminary hearing for a paroled offender.
- Revocation: An act of canceling or annulling an offender's release from a close custody facility.
- Formal revocation hearing: A hearing used to consider testimony and evidence in order to determine whether one or more violations of conditions of parole have occurred, whether the violations require revocation, whether there are substantial reasons that make revocation inappropriate, or to determine whether revocation is in the best interests of the offender and the community.
- Youth correctional facility (YCF): An OYA secure facility designed to provide custody for offenders committed to the legal or physical custody of the OYA.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420, 420A

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

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416-300-0020

Parole Status

(1) When it is determined that an offender is ready for temporary release and after notifying the committing court of the intended release, the Superintendent, or designee, may conditionally release the offender to parole status. Release is formalized by a written agreement that includes the following understandings and conditions:

- (a) Parole is a conditional release and does not restore full freedom;
- (b) The person(s) with whom the offender is placed will have legal and physical custody of the offender subject to supervision by the OYA.
- (c) Conditions of release are subject to modification at any time during the community placement, including an increase or decrease in supervision or other changes the OYA deems necessary.

(d) Parole may be revoked if any written conditions are violated or not met;

(2) Offenders on parole status must abide by the conditions of the Juvenile Parole/Probation Agreement and:

- (a) Remain within the control and care of the person(s) having legal and physical custody;
- (b) Inform the parole/probation officer (PPO) of his/her whereabouts, including obtaining prior approval before changing addresses, being absent overnight from an approved residence, or leaving the state for any reason;
- (c) Obey all federal and state laws, and all county and city ordinances; and

(d) Abide by the requests, decisions, direction, and counsel of the PPO and the provisions of any written agreements, including special conditions.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0030

Recommendation for Revocation

(1) The first step toward revocation is the PPO's report and recommendation to revoke.

(a) The report and recommendation are presented to the Parole/Probation Supervisor in writing.

(b) In this report, the PPO will state allegations and verifiable facts, and provide, as much as possible, an accurate account of the offender's behavior.

(c) The Parole/Probation Supervisor will review with PPO the written report of alleged violations and recommendations, including any alternative actions that may be taken.

(2) If the Parole/Probation Supervisor agrees with the report and recommendation, the offender will be arrested and detained under the procedures set forth in OAR 416-300-0040 and a preliminary hearing will be conducted.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0040

Arrest and Detention

(1) When an offender on parole status is absent from the community placement without authorization, has failed to abide by the conditions of parole, or has failed to respond successfully to parole, the Superintendent, or designee, may issue an order for the arrest and detention of the offender. The order must be based on reasonable belief that grounds exist for issuing the order.

(2) Upon issuance of an order or warrant of arrest, the paroled offender may be lodged in juvenile detention if the offender is less than 18 years of age. If the offender is 18 years of age or older, the offender may be lodged in an adult detention facility.

(3) The offender may be detained no longer than 72 hours excluding Saturdays, Sundays and judicial holidays, except on the order of a hearing officer pursuant to a finding from a preliminary hearing that probable cause exists that the offender has violated parole and detention is appropriate. The hearing officer will consult with the agency responsible for paying the detention bill before ordering detention beyond 72 hours.

(4) The offender may be held in detention up to eight calendar days based on agreement between the appropriate juvenile department authority and the Assistant Director, Field Operations, or designee. The decision will be based on local policy guidelines of the detention facility, good casework practice, and available funds to support the stay.

(5) The PPO involved with the case must communicate the following information to detention staff:

- (a) The charges or reasons why the offender is detained;

(b) The post-detention plan;

(c) The visitors who are permitted to see the offender; and
(d) Significant needs of the offender, including medical.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.910, 420.915, 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0050

Preliminary Hearing

(1) Notice of preliminary hearing

(a) Before the preliminary hearing is scheduled to occur, the hearing officer will ensure that notice of the preliminary hearing is provided to the offender and the offender's parent/guardian.

(b) The notice will include the following information.

(A) A concise statement of each alleged parole violation or other reason for revocation, and relevant supporting evidence.

(B) The offender's right to a preliminary hearing.

(C) The time and place of the preliminary hearing.

(D) Notice that the purpose of the preliminary hearing is to determine whether probable cause exists to believe parole has been violated.

(E) The names of persons who have given information of the alleged violation, and the offender's right to have these persons present at the preliminary hearing for the purposes of confrontation and cross-examination unless the hearing officer determines that an informant or witness would be subjected to risk of harm if his/her identity is disclosed. If names of persons or witnesses are omitted from the notice, each person will be listed as "Name Withheld."

(F) The offender's right to admit or deny the allegations and present letters, documents, affidavits or persons with relevant information at the preliminary hearing in support of his/her defense or contentions.

(G) The offender's right to be represented by an attorney at his/her own expense.

(2) Preparation for the preliminary hearing

(a) Prior to the preliminary hearing, the hearing officer will ensure that the offender:

(A) Is informed of the alleged violation(s) or reason(s) for the preliminary hearing;

(B) Is provided copies of all documentary evidence that will be used against the offender;

(C) Has reasonable time to prepare for the preliminary hearing; and

(D) Has been informed of his/her rights to appear with counsel at his/her own expense.

(3) Conducting the preliminary hearing

(a) The preliminary hearing will be held at a place determined to be in the best interests of the offender, taking into account such matters as location of evidence, travel conditions, security, and welfare of the offender.

(A) In making this determination, preference will be given to holding the preliminary hearing as near as practicable to the place of the alleged violation, unless it is in the offender's interest to hold the preliminary hearing as near as practicable to the place of the offender's placement at the time of the alleged violation.

(B) In the case of multiple violations, the preliminary hearing may be held in one location.

(b) The preliminary hearing will be held promptly at a time convenient to the offender and the hearing officer.

(c) The preliminary hearing will be conducted by a hearing officer, who is someone other than the person(s) bringing charges that may result in revocation, or the juvenile court.

(d) The offender will be permitted to appear and speak in his/her own behalf, to admit or deny the allegations and to present any relevant evidence.

(e) The offender will be allowed full opportunity to present his/her case.

(f) The attorney for the offender, if any, may cross-examine witnesses, unless the hearing officer determines that it is necessary to deny cross-examination to preserve the anonymity of the witness.

(g) The hearing officer will make a written summary of what occurs at the preliminary hearing, including the response of the offender and the substance of the documents or evidence given in support of parole revocation.

(h) Based upon the information presented, the hearing officer will determine if probable cause exists to believe a violation has occurred and that the offender can be further held until a final determination is made.

(A) The hearing officer will report this determination to the Superintendent, or designee.

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(B) The report may first be made orally but must be reduced to writing. The Superintendent, or designee, will consider the report and decide whether or not the offender is an appropriate candidate for a formal revocation hearing.

(C) If the Superintendent, or designee, determines that a formal revocation hearing is not appropriate, the Superintendent, or designee, may order that the offender be continued in a community placement.

(D) If the Superintendent, or designee, determines that the offender is an appropriate candidate for a formal revocation hearing, the formal revocation hearing will be held unless the offender voluntarily waives that right.

(i) The Superintendent or designee will write a final order that reflects the decisions resulting from the preliminary hearing. A copy of the final order will be provided to the offender, and the committing court will be notified of the results of the preliminary hearing.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0060

Formal Revocation Hearing

(1) Hearing rights:

(a) Every offender is entitled to a formal revocation hearing.

(b) The offender may choose to waive his/her right to the formal revocation hearing. However, before the OYA accepts such waiver, the following conditions must be met.

(A) The offender will be given a form that sets forth or informs the offender of the rights that he/she is entitled, including the right to speak with an attorney, at the offender's expense, prior to making a decision about a waiver.

(B) Staff will not attempt to influence the offender to waive his/her rights to a formal revocation hearing.

(C) If a tape recording or a written summary of conversations with an offender about waiver of a formal revocation hearing exist, the recording or summary will be kept for 120 days after a final order is issued.

(D) At any time after a waiver has been made, the Superintendent, or designee, may review the waiver and may cause a revocation hearing to be held, if he/she believes such hearing is in the best interests of the offender.

(2) Notice of formal revocation hearing:

(a) Within a reasonable time before the formal revocation hearing is scheduled to occur, the formal hearing officer will provide notice of the formal revocation hearing to the offender and the offender's parent/guardian.

(b) The notice will include the following information.

(A) A concise statement of each alleged parole violation or other reason for revocation, and relevant supporting evidence.

(B) The offender's right to a hearing.

(C) The time and place of the hearing.

(D) Notice that the purpose of the formal revocation hearing is to determine whether the offender's conditions of parole have been violated and whether there are substantial reasons that mitigate or justify any violation such that revocation is inappropriate.

(E) The names of persons who have given information of the alleged violation, and the offender's right to have these persons present at the formal revocation hearing for the purposes of confrontation and cross-examination unless the formal hearing officer determines that an informant or witness would be subjected to risk of harm if his/her identity is disclosed. If names of persons or witnesses are omitted from the notice, each person will be listed as "Name Withheld."

(F) The offender's right to admit or deny the allegations and present letters, documents, affidavits or persons with relevant information at the formal revocation hearing in support of his/her defense or contentions.

(G) The offender's right to be represented by an attorney at his/her own expense.

(3) Subpoena request:

(a) The offender may request to subpoena witnesses at OYA expense in accordance with the following procedure.

(A) Where the OYA proposes to rely on affidavits or other documentary evidence of a testimonial nature, the OYA will subpoena any witness responsible for such evidence, at its expense, if requested by the offender or his/her attorney at least 72 hours prior to the hearing.

(B) If an offender requests that OYA subpoena a supporting witness for him/her at OYA expense, the Superintendent, or designee, will cause the subpoena to be served and the statutorily prescribed fees and mileage tendered to the witness if the offender satisfies to the Superintendent, or designee, that the proposed testimony is relevant, material and necessary.

(C) At the discretion of the revocation hearing committee, and under such conditions as will ensure an appropriate record, telephone conversa-

tion with a prospective witness may be substituted for the actual presence of the witness.

(i) The offender will be permitted to listen to and converse with the witness.

(ii) Testimony presented by telephone is not appropriate if the offender objects to its use.

(4) Formal revocation hearing:

(a) The formal revocation hearing will be held as promptly as convenient to the offender and the revocation hearing committee. In any event, the formal revocation hearing will be within 60 days from the date the offender is returned to the close custody facility.

(A) Exception: If the offender has been charged with one or more law violations that are to be adjudicated in court, revocation hearing procedures will be suspended pending the outcome of the court hearing. The offender may request a formal revocation hearing after the court hearing, if he/she so chooses.

(b) The Superintendent, or designee, will appoint the chairperson of the formal revocation hearing committee.

(c) Prior to the commencement of the formal revocation hearing, the chairperson of the formal revocation hearing committee will furnish the offender a written explanation of the proceedings.

(d) The formal revocation hearing will be conducted before a formal revocation hearing committee composed of three close custody staff selected by the Superintendent or designee, none of whom have brought the parole violation charge against the offender.

(e) At the formal revocation hearing, the offender will have an opportunity to be heard in person and through his/her attorney, if any.

(f) The formal revocation hearing will be conducted in the following manner.

(A) Statement and evidence of the OYA in support of the action.

(B) Statement and evidence of the offender.

(C) Questioning, examination, or cross-examination of witnesses, unless in the opinion of the chairperson that an informant or witness would be subjected to risk of harm if his/her identity is disclosed:

(i) The attorney for the offender, if any, may cross-examine witnesses, unless the chairperson determines that it is necessary to deny cross-examination to preserve the anonymity of the witness.

(ii) If the offender has no attorney, the Superintendent, or designee, will, if he/she has not already done so, appoint competent staff not directly involved with the offender, to cross-examine the witness for the offender. The hearing may be recessed if necessary for this purpose.

(D) The formal revocation hearing may be continued with recesses as determined by the chairperson.

(E) The chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(F) The burden of presenting evidence to support a fact or position rests on the proponent of that fact or position. Quantity of proof required for revocation is a preponderance of evidence.

(G) Exhibits will be marked and the markings will identify the person offering the exhibit. The exhibits will be preserved by the OYA as part of the record of the proceedings.

(H) Evidentiary rules are as follows:

(i) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs is admissible.

(ii) Irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(iii) All offered evidence, not objected to, will be received by the chairperson subject to his/her power to exclude irrelevant, immaterial, or unduly repetitious matter.

(iv) Evidence objected to may be received by the chairperson with rulings on its admissibility or exclusion to be made at the hearing or at the time a final order is issued.

(I) All testimony will be given under oath.

(J) The Superintendent or designee may discontinue the revocation proceedings at any time and may return the offender to conditional release status subject to similar or modified conditions.

(g) The chairperson will make a written summary of what occurs at the hearing, including the response of the offender and the substance of the documents or evidence given in support of revocation.

(A) A mechanical recording of all oral testimony and presentations will be made. This tape may be reviewed by the formal revocation hearing committee before any findings are determined, or in the event of a judicial review.

(B) Tapes will be kept at least 120 days after the final order is issued.

(5) Proposed order:

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(a) The revocation hearing committee will issue a written proposed order that contains:

- (A) Rulings on admissibility of offered evidence and other matters;
- (B) Findings of fact (each ultimate fact as determined by the formal revocation hearing committee based on the evidence before it); and
- (C) Conclusions and recommendations for action by the Superintendent or designee.

(b) The Superintendent or designee will review the committee's proposed order.

(A) If the formal revocation hearing committee's recommendation is to revoke parole, the Superintendent or designee will provide a copy of the proposed order with the committee's findings of fact and conclusions to the offender.

(B) The Superintendent or designee will notify the offender that he/she may file written exceptions or objections to the proposed order. The written objections must be received by the Superintendent or designee within 10 calendar days from the date of the proposed order.

(C) At the option of the Superintendent or designee, the offender may present exceptions or objections orally.

(6) Final order

(a) After reviewing any exceptions and objections presented by the offender, the Superintendent or designee will issue a final order.

(A) The order will indicate the action taken by the Superintendent or designee and will either incorporate the recommendations of the revocation hearing committee or set forth his/her own findings of fact, conclusions and rulings on admissibility of evidence and other matters.

(B) The Superintendent's or designee's order will also set forth the offender's right to petition for reconsideration or rehearing of the order, and the statutes under which the order may be appealed.

(b) The committing court will be immediately notified of the final order.

(c) The offender will be given a copy of the final order.

(7) Reconsideration of final order:

(a) The offender may file a petition for reconsideration or rehearing of a final order with the Superintendent or designee within 30 days after the order is received by the offender. A petition for reconsideration is deemed filed when it is physically received by the Superintendent or it is delivered to the Superintendent by mail in an envelope bearing a USPS cancellation stamp dated on or before the 30th day after the offender received the order.

(A) The petition will set forth the specific ground(s) for the reconsideration or rehearing.

(B) The petition may be supported by a written argument.

(b) The Superintendent or designee may grant a reconsideration petition if he or she finds sufficient reasons to justify reconsideration.

(c) If the Superintendent or designee concurs that the order should be changed in whole or in part, an amended order will be entered.

(d) The Superintendent or designee may grant a petition to rehear the revocation proceeding. The rehearing may be limited to specific matters.

(e) If a rehearing is held and a change in the original order becomes necessary, an amended final order will be entered.

(f) If the Superintendent or designee does not act on the petition by the 60th day following the date the petition was filed, as defined in subsection (7)(a) above, the petition is deemed denied.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

416-300-0080

Placement after Revocation

(1) Revocation of parole may result in placement in any OYA close custody facility. The offender may contest this placement through the grievance process in OAR chapter 416, division 20.

(2) The offender may be re-paroled again, in the opinion of the Superintendent, or designee, the offender is again ready for release and a suitable placement is available.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.115, 420A.120

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 24-2005, f. & cert. ef. 11-8-05

Adm. Order No.: OYA 25-2005

Filed with Sec. of State: 11-8-2005

Certified to be Effective: 11-8-05

Notice Publication Date: 9-1-05

Rules Amended: 416-465-0000, 416-465-0010, 416-465-0030

Subject: OAR 416-465-0000 will have a new purpose statement; OAR 416-465-0010 "Definitions" has been reformatted and

"offender" clarified; OAR 416-465-0030 changes "shall to "will" and (1)(b) is deleted.

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-465-0000

Purpose

The purpose of these rules is to define conditions under which the Oregon Youth Authority (OYA) will cause DNA samples to be collected from offenders in the physical custody of the OYA.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 137.076, 161.325 & 419C.473

Hist.: OYA 3-2002, f. & cert. ef. 1-18-02; OYA 25-2005, f. & cert. ef. 11-8-05

416-465-0010

Definitions

(1) Offender: A person in the legal and physical custody of the OYA, either in an OYA facility or placed in the community under supervision, or a person in the legal custody of the Department of Corrections and the physical custody of the OYA in OYA facilities.

(2) Subject crime: Defined by ORS 137.076.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 137.076, 161.325 & 419C.473

Hist.: OYA 3-2002, f. & cert. ef. 1-18-02; OYA 25-2005, f. & cert. ef. 11-8-05

416-465-0030

Process

(1)(a) As soon as practical after conviction or receipt of a court order, the OYA will request that the offender provides a blood or buccal sample.

(b) The offender may be asked to reimburse the agency for the cost of obtaining and transmitting a blood or buccal sample, when so ordered by the court.

(c) At the time the sample is taken, the OYA will ask the offender to provide both thumbprints for identification purposes.

(2)(a) The OYA will obtain and transmit the sample to the Department of State Police, as defined by agency procedure.

(b) The Department of State Police will notify the OYA if a sample is not adequate for analysis. If this occurs, the OYA will request that the offender provide an additional sample.

(3) A blood sample may only be drawn in a medically acceptable manner by a licensed professional nurse, a licensed practical nurse, a qualified medical technician, a licensed physician or a person acting under the direction or control of a licensed physician.

(4) A buccal sample may be obtained by anyone authorized and trained to do so by the OYA. The OYA will require that staff obtaining the samples will follow the collection procedures established by the Department of State Police.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 137.076, 161.325 & 419C.473

Hist.: OYA 3-2002, f. & cert. ef. 1-18-02; OYA 25-2005, f. & cert. ef. 11-8-05

Adm. Order No.: OYA 26-2005(Temp)

Filed with Sec. of State: 11-8-2005

Certified to be Effective: 11-8-05 thru 5-7-06

Notice Publication Date:

Rules Amended: 416-530-0010, 416-530-0040

Subject: OAR 416-530-0010 is amended to include a new definition of "Computerized criminal history checks " and renumbering of subsequent definitions.

OAR 416-530-0040 is amended to include a new subsection (6) regarding incidents of abuse and neglect as it relates to foster care applicants.

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-530-0010

Definitions

(1) Applicant: A person who applies for a certificate of approval to operate and maintain a foster home, including persons who seek initial certification or re-certification.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youths' interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certificate: A certificate of approval, issued by the OYA, to operate a foster home where offenders in OYA custody are placed.

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(4) Certification process: The process of initial or renewal application for certification to operate a foster home.

(5) 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 (LRDS) including on-line information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), the Department of Human Services (DHS) Child Abuse Registry, and the National Law Enforcement Telecommunications System (NLETS).

(6) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(7) Denial: The refusal of the OYA to issue a certificate of approval (including re-certification) to operate a foster home.

(8) Discipline: A process by which foster parents and OYA assist offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(9) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(10) Foster parent employee: Any person receiving compensation from foster parents for assistance in the care and supervision of offenders placed in the foster home.

(11) Foster care maintenance payment: The OYA's monthly payment to the foster parent to cover expenses such as the offender's room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, or other costs approved by the OYA.

(12) Foster home: A home in the community which is certified by the OYA and maintained and lived in by a foster parent who provides supervision, food, and lodging for offenders in OYA custody.

(13) Foster parent: A person certified by the OYA who demonstrates special competence to supervise offenders with serious social and/or behavioral maladaptive characteristics in a foster home setting. A foster parent must be unrelated to an offender by blood or marriage. Foster parents provide supervision, food, and lodging to offenders as the offenders progress through their case plan.

(14) Family foster home agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(15) Home study: The assessment process, conducted prior to issuance of a certificate, to determine an applicant's ability to provide foster care services to offenders.

(16) Information required: All information requested by the OYA, including information used to process criminal history checks.

(17) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for offenders. The process is a collaborative effort between OYA staff, the offender's biological and foster families and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

(18) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to the offender to limit movement.

(19) Members of household: Any person who lives in the foster home or who assists in the care provided to offenders including but not limited to the provision of tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(20) Offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 415C.005 for an act committed when the person was under 18 years of age.

(21) Physical force: To physically force or constrain the movement of a person in order to prevent self-harm, harm to others, damage to property, or to remove a person from a scene of danger.

(22) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(23) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to: Physical force or threat of physical force inflicted in any manner upon an offender; verbal abuse, including derogatory remarks about the offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting punishment of an offender by another offender; and use of cold shower as punishment.

(24) Regular certificate: A certificate of approval issued by the OYA, for a period of one year, when all foster care standards have been met.

(25) Respite care: A temporary arrangement between the foster parent and the respite provider to allow the foster parent(s) time away of 12 hours or more from the offender.

(26) Respite provider: An individual approved by the OYA who is at least 21 years of age who temporarily assists with supervision of offenders when the foster parent is not available.

(27) Revocation: The action taken to rescind a foster home certificate of approval after the OYA determines that the foster parent or the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with OYA.

(28) Special certificate: A conditional certificate of approval that limits the foster home to care and supervision of a specific offender, or other specified offenders, under specific conditions.

(29) Suspension: A temporary withdrawal of the foster home certificate after the OYA determines that the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with the OYA.

(30) Volunteer: Any person who is not a member of the household and who assists, for no compensation, with the supervision of offenders and with other activities, including but not limited to, food preparation, household chores, recreation, tutoring, mentoring, or respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06

416-530-0040

Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age.

(2) Meet the qualifications and standards described in these rules and chapter 416, division 800.

(3) Demonstrate the following personal qualifications.

(a) Responsible, stable, emotionally mature adults who exercise sound judgment and display the capacity to meet the mental, physical and emotional needs of offenders placed in foster care.

(b) Understand the behaviors of offenders, as well as ensure the safety of the community.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping an offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, and cultural identity and heritage.

(e) Be able to realistically evaluate which offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(4) Be physically and mentally able to perform the duties of foster care.

(a) The OYA may require a medical statement from a physician verifying that neither the applicant nor any member of the household suffers from a communicable disease, specific illness, or disability which would interfere with the ability to care for and supervise offenders.

(b) The OYA may ask the applicant to consent to the release of psychological, medical or physical, sex-offender, drug and alcohol, or other reports and evaluations.

(c) In the case of alcoholism or substance abuse, the applicant must be able to demonstrate he/she has been substance-free and sober for at least two years prior to making application for certification.

(5) Be free from a professional or personal conflict of interest. If the applicant is an OYA employee or works in a professional capacity which may contribute to a conflict of interest, the application and supporting study must be reviewed by the Assistant Director, Field Operations, or designee, who will decide whether a certificate should be issued.

(6) Not have any documented incidents of abuse or neglect that resulted in a founded disposition by DHS. The OYA will conduct DHS Child Abuse Registry checks at the time of certification and re-certification; at the time a foster home certified by another agency wishes to serve OYA offenders; and when the OYA deems it necessary for the safety of offenders in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

ADMINISTRATIVE RULES

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06

Racing Commission
Chapter 462

Adm. Order No.: RC 2-2005

Filed with Sec. of State: 10-18-2005

Certified to be Effective: 10-18-05

Notice Publication Date: 8-1-05

Rules Amended: 462-140-0340, 462-160-0010

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

Rules Coordinator: Carol N. Morgan—(971) 673-0207

462-140-0340

Jockey

(1) Jockeys shall fulfill all engagements.

(2) A jockey who is engaged to ride shall report to the scale room 1 hour before 1st post time to report any overweight to the scale clerk, unless excused by the board of stewards or a person designated by the board of stewards. No jockey shall leave the jockey room, other than to ride in a race, until all engagements of the day have been fulfilled, except with express authorization of the stewards. After fulfilling all riding engagements, a jockey may leave, but may not re-enter the jockey room without permission of the stewards. A jockey who is not riding on any given day may not enter the jockey room during the time of pari-mutuel or qualifying trial races, except with permission of the stewards. Jockeys must be neat in appearance and must wear the colors of the race meet licensee. Jockeys must wear an approved safety helmet which must be properly secured upon entering the track. Only safety helmets that meet ASTM standards will be approved for use by jockeys. Jockeys must wear an approved safety vest weighing no more than two pounds, which is designed to provide shock absorbing protection to the upper body of at least a rating of five as defined by the British Equestrian Trade Association (BETA). Jockeys in a race shall wear a number on the right arm, and this number shall correspond to the saddle cloth number of the horse in the official program. No jockey shall own any racehorse racing in Oregon. No jockey shall wager on any race or accept the promise or token of any wager with respect to a race in a race meet in which he or she is participating, except from the owner or trainer of the horse the jockey is riding, and only on that horse.

(3) Jockeys shall report to the paddock immediately when summoned by the paddock judge.

(4) A jockey may have one jockey agent. All engagements to ride shall be made by the jockey agent.

(5) No jockey shall have an attendant other than a licensed valet. No jockey attendant shall wager on any race or place a wager for anyone else.

(6) A jockey who is under suspension for a riding infraction will not be permitted to fulfill any engagements, including stakes races, other than designated races. During the period of suspension, a jockey may be permitted to exercise or gallop horses during the morning hours at the discretion of the stewards.

(7) No jockey shall name him/herself on a horse without first having a call from the owner, trainer, or authorized agent.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2005, f. & cert. ef. 10-18-05

462-160-0010

Permitted Medications

Non-Steroidal Anti-Inflammatory Drug (NSAID) and Dimethylsulfoxide (DMSO).

(1) The only non-steroidal anti-inflammatory drug permitted by this rule is phenylbutazone (butazolidin).

(2) Phenylbutazone shall be authorized medication at race meets at which the average daily gross mutuel wagering during the preceding year exceeded \$150,000. If a race meet with average daily gross mutuel wagering during the preceding year of \$150,000 or less desires phenylbutazone be authorized medications at their race meet they may petition the commission to approve the use of phenylbutazone at their race meet. The commission may approve the use of phenylbutazone at such race meet, if in the opinion of the commission the race meet can provide for the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program adequately.

Dimethylsulfoxide (DMSO) shall be permitted medication at any race meet if applied topically.

(3) Phenylbutazone is permitted only in horses three years of age or older. Phenylbutazone is prohibited in two year old horses.

(4) No horse utilizing phenylbutazone may be entered into a race unless the presence of the phenylbutazone in the horse is stated on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, errors must be corrected by noon following entry.

(5) Phenylbutazone shall be administered to the horse at least 24 hours before scheduled post time.

(6) Violations:

(a) Maximum dosage is such dosage amount that the test sample shall contain not more than five (5) micrograms of phenylbutazone or, its metabolites or analogs per milliliter of blood plasma:

(A) The first violation by the trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone, or the sample does not show phenylbutazone or oxyphenylbutazone when the horse was entered to run on phenylbutazone shall result in a fine of \$200.00 without loss of purse.

(B) The second violation and each additional violation by the same trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone or the sample does not show phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer, without loss of purse.

(C) A test sample with a phenylbutazone to oxyphenylbutazone ratio of greater than 3:1 shall be a rebuttable presumption of administration less than 24 hours before scheduled post time.

(D) If any test sample contains more than 10 micrograms of phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer and may result in a loss of purse.

(b) If phenylbutazone is detected in the urine or in any other specimen taken from a horse not stated to have phenylbutazone in its system on the entry form and/or program, the violation will result in a fine of \$250.00 and may result in loss of purse.

(c) If the same horse has three (3) overages of phenylbutazone during a 365 day period the commission veterinarians shall issue a ruling to rule the horse off phenylbutazone.

(7) Horses on phenylbutazone will be designated on the overnight and the daily racing program with a "B". Errors in the listing of phenylbutazone in the program, when discovered, shall be announced to the public and will not result in the horse being scratched.

(8) Dimethylsulfoxide. (DMSO) may be administered to an animal as an external topical application. No authorization or written approval from the commission veterinarians representing the commission is required for the external application of DMSO by either the horse's owner or trainer or licensed veterinarian.

(9) Sulfa drugs. Non-interfering levels of sulfa drugs in urine tests shall not be considered a violation of the prohibited medication statutes or rules. Non-interfering level shall be considered to be anything less than 1 microgram per milliliter.

(10) The following shall be a prohibited substance for possession and/or use for all persons coming onto the racecourse:

(a) In all forms and/or substitutes, Erythropoietin (EPO), Darbopoietin, and all drugs, substances or medications for which a recognized analytical method has not been developed to detect and confirm its administration; or the use of which may endanger the health and welfare of the animal, or the safety of the rider, if any.

(b) Any drug, substance or medication that has not been approved by the United States Food and Drug Administration for use in the United States.

(11) Extracorporeal Shock Wave Therapy (ESWT). ESWT shall only be performed on the racecourse by a licensed veterinarian. Any ESWT device brought onto the racecourse must be registered with a commission veterinarian. Any animal receiving ESWT shall be placed on the Vet's List, ineligible for 14 days from the last treatment and restricted from entry until a commission veterinarian receives a certificate from a licensed veterinarian stating:

(a) The name, age, sex, color and tattoo of the horse;

(b) The name, address, phone number and signature of the veterinarian performing the treatment(s);

(c) Dates of first and last treatment(s);

(d) The fitness of the animal to resume racing;

(e) The name of referring veterinarian, if any.

(12) No horse may be administered any substance, other than foods, by any route or method after entry except: phenylbutazone (by injection,

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feed or blown), lasix (by injection), or electrolytes (by feed or paste) unless approved by the commission veterinarian.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; RC 2-2005, f. & cert. ef. 10-18-05

**Secretary of State,
Corporation Division
Chapter 160**

Adm. Order No.: CORP 3-2005

Filed with Sec. of State: 11-1-2005

Certified to be Effective: 11-1-05

Notice Publication Date: 10-1-05

Rules Adopted: 160-100-0170

Subject: Under extraordinary circumstances, some notaries may need to have more than one seal concurrent with their commission. The proposed rule seeks to establish standards and procedures for issuing one additional, identical seal to certain notaries who qualify.

Rules Coordinator: Kristine T. Hume—(503) 986-2356

160-100-0170

Concurrent Official Seal

(1) In addition to the original official seal, a notary public may apply for one duplicate, concurrent official seal.

(2) A notary public requesting a concurrent official seal under this rule shall personally deliver or mail to the Secretary of State a written request under oath or affirmation for a duplicate Certificate of Authorization to Obtain an Official Seal.

(3) The request shall include:

(a) An explanation that the concurrent official seal is needed due to circumstances that would otherwise hinder or prevent carrying out notarial duties in more than one location. Such circumstances could include duty in a secured facility, e.g. a correctional institution, courthouse or jail.

(b) A statement that the concurrent official seal will be kept in a single, secure location for the remainder of the current notary commission, or until the notary no longer has access to that location.

(c) The address of the concurrent official seal location.

(d) A request that the Secretary of State issue a duplicate Certificate of Authorization to the notary public.

(4) A request for a duplicate Certificate of Authorization may be approved or rejected at the discretion of the Secretary of State. Notification of approval or rejection shall be sent to the applicant within 5 business days of the decision.

(5) The reason(s) for rejection shall be listed on the notification sent to the applicant.

(6) A notary public who is issued a duplicate Certificate of Authorization pursuant to ORS 194.031(5) and this rule shall use it to comply with the requirements of ORS 194.010(4) and OAR 160-100-0140. To comply with OAR 160-100-0140, the notary public shall file with the Secretary of State an imprint of the notary public's concurrent official seal and duplicate Certificate of Authorization within ten days after the notary public receives the completed duplicate Certificate of Authorization from the official seal vendor or vendor's representative.

(7) Every law governing use of the original official seal applies with equal force to use of a concurrent official seal authorized by this rule.

(8) For purposes of this rule, "original official seal" includes any replacement official seal authorized under OAR 160-100-0160.

Stat. Auth.: ORS 194.335

Stats. Implemented: ORS 194.031

Hist.: CORP 3-2005, f. & cert. ef. 11-1-05

**Teacher Standards and Practices Commission
Chapter 584**

Adm. Order No.: TSPC 8-2005

Filed with Sec. of State: 10-21-2005

Certified to be Effective: 10-21-05

Notice Publication Date: 7-1-05

Rules Amended: 584-017-0185

Subject: Amend:584-017-0185: *Evidence of Effectiveness*. Revises work sample requirements to clarify evidence that must be passed.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0185

Evidence of Effectiveness

(1) The unit assures that candidates provide evidence of effectiveness to foster student learning.

(2) Each student teacher preparing for an Initial Teaching License assembles and analyzes two work samples to document the candidate's ability to demonstrate knowledge, skills and competencies as designated in OAR 584-017-0100. If a candidate is seeking more than one authorization level, one work sample must be completed for each authorization level. Work samples include:

(a) Context of the school and classroom is explained, learners with special needs, TAG learners, ESOL learners and learners from diverse cultural and social backgrounds are described, adaptations for their learning needs are discussed, and prerequisite skills required for the unit are considered.

(b) Goals for the unit of study, which is generally two to five weeks in length, that vary in kind and complexity, but that include concept attainment and application of knowledge and skills;

(c) Instructional plans to accomplish the learning goals of the group(s) of students that include differentiation of instruction for all students listed in (a);

(d) Data on learning gains resulting from instruction, analyzed for each student, and summarized in relation to students' level of knowledge prior to instruction;

(e) Interpretation and explanation of the learning gains, or lack thereof; and

(f) A description of the uses to be made of the data on learning gains in planning subsequent instruction and in reporting student progress to the students and their parents.

(g) Purposeful attention to literacy instruction based upon content requirements, appropriate authorization level and student needs in at least one subject.

(3) Each candidate preparing for a Continuing Teaching License assembles a collection of evidence that documents the candidate's advanced knowledge, skills and competencies as designated in OAR 584-017-0160. The collection of evidence includes:

(a) Long term goals of study based on content goals and district standards that determine the knowledge and skills each student needs;

(b) Instructional plans that incorporate knowledge of subject matter, the developmental levels of the students and research-based educational practices that are sensitive to individual differences and diverse cultures;

(c) Evidence of the ability to establish a classroom climate that is conducive to learning for all students;

(d) Data on student progress toward attainment of long term goals, refinement of plans for instruction and establishment of alternative goals for students when necessary;

(e) Evidence of collaboration with parents, colleagues and community members to provide assistance to students and their families to promote learning;

(f) Evidence of the use of emerging research on teaching, learning and school improvement; and

(g) Evidence of participation in designing, evaluating and improving opportunities for teaching.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 7-2004, f. & cert. ef. 8-25-04; TSPC 8-2005, f. & cert. ef. 10-21-05

Adm. Order No.: TSPC 9-2005

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 11-15-05

Notice Publication Date: 2-1-05, 10-1-05

Rules Adopted: 584-019-0003, 584-065-0100

Rules Amended: 584-019-0010, 584-020-0040, 584-036-0055, 584-038-0004, 584-040-0005, 584-100-0046

Rules Repealed: 584-017-0110, 584-060-0011, 584-060-0021

Subject: ADOPT: 584-019-0003: *Notice of Opportunity for Hearing*: Delegates authority to amend Notices of Opportunity for Hearing to the Executive Director.

584-065-0100: *Knowledge Skills & Abilities for English to Speakers of Other Languages*: Adopt a new rule regarding requirements for an ESOL endorsement.

AMEND:584-036-0055: *Fees*: Amends the administrative rule governing fees and incorporates the following fee increases due to

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finger printing cost increases with the Oregon State Police. Amends current finger print fees from \$42 to \$62. Amends charter school registration fees from \$50 to \$75, fingerprint fees inclusive.

584-038-0004: *Adding Endorsements to a Basic or Standard License*: Allows TSPC to add middle-level endorsements onto Basic and Standard Teaching Licenses to assist educators to meet the federal definitions of "highly qualified teacher" under the federal No Child Left Behind Act.

584-040-0005: *Standard Teaching License Requirements*: Amends definition of acceptable Master's degree to make consistent with acceptable Master's degree allowed for Initial and Continuing Teaching licenses.

584-100-0046: *Preliminary Teaching License*: Amends when candidates are eligible to receive Preliminary Teaching Licenses. Previously they were limited to new hires into federal No Child Left Behind Act Title I funded positions. Amendments expand the access to the license to all teachers who otherwise qualify as being highly qualified, but do not immediately qualify for the Initial Teaching License.

584-020-0040: *Grounds for Disciplinary Action*: Allows TSPC to discipline for conduct on or off school premises and housekeeping changes.

584-019-0010: *Discovery and Subpoenas*: Clarify the scope of discovery for disciplinary administrative hearings.

REPEAL: 584-017-0110: *Former Early Childhood Education Authorization*: Should have been repealed when OAR 584-017-0115 was adopted in January, 2005.

584-060-0011: *Former Initial Teaching License Requirements*: Should have been repealed effective July 1, 2005. New rule at 584-060-0012 & 0013.

584-060-0021: *Former Continuing Teaching License*: Should have been repealed effective July 1, 2005. New rule at 584-060-0022.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-019-0003

Notice of Opportunity for Hearing

(1) The Commission delegates to the Executive Director the authority to draft the contents of the Notice of Hearing and Notice of Opportunity for Hearing when the Executive Director denies the issuance, renewal or reinstatement of a license under OAR 584-050-0006 or when the Commission determines that there is sufficient cause to justify a hearing under ORS 342.176(5).

(2) The Commission delegates to the Executive Director the authority to amend the Notice of Hearing or Notice of Opportunity for Hearing.

(3) The Commission shall review, approve or reject all Amended Notices of Hearing at the next Commission meeting following Executive Director's issuance of the Amended Notice. The educator who is the subject of an Amended Notice may file objections to the Amendment prior to the Commission meeting. The Commission's decision to review, approve or reject the Amended Notice shall be in executive session under ORS 342.176.

(4) If the Commission rejects the Amended Notice of Hearing, the Executive Director shall withdraw the Amended Notice, and the prior Notice of Hearing or Notice of Opportunity for Hearing shall stand as the Commission's notice to the educator.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 9-2005, f. & cert. ef. 11-15-05

584-019-0010

Discovery and Subpoenas

(1) Through the Executive Director, the Commission shall consider requests to take the testimony of a material witness by deposition for purposes of discovery or perpetuation of the witness's testimony when the witness is unavailable for hearing. A perpetuation deposition will be authorized only upon agreement of the educator and the Commission or upon a showing that the witness cannot testify at the hearing because of physical or mental illness or extreme hardship.

(2) The Executive Director may issue subpoenas in support of discovery as provided under OAR 137-003-0570 and 137-003-0572.

(3) The educator or the Commission may request that the other party produce for inspection or provide copies of any designated documents or any tangible things which are relevant to the proceeding and are not other-

wise exempt from disclosure. The educator or the Commission may charge a fee to reimburse for the actual cost of producing or copying documents.

(4) The educator or the Commission may issue requests for admissions as provided under OAR 137-003-0570.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TS 7-1989, f. & cert. ef. 12-13-89; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 9-2005, f. & cert. ef. 11-15-05

584-020-0040

Grounds for Disciplinary Action

(1) The Commission shall deny, revoke or deny the right to apply for a license or charter school registration to any applicant or educator who, has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if convicted in another jurisdiction or convicted of attempt to commit such crimes as defined in ORS 161.405. Evaluation of crimes shall be based on Oregon laws in effect at the time of the conviction, regardless of the jurisdiction in which the conviction occurred. The crimes listed in ORS 342.143 are:

- (a) ORS 163.095 — Aggravated Murder;
- (b) ORS 163.115 — Murder;
- (c) ORS 163.185 — Assault in the First Degree;
- (d) ORS 163.235 — Kidnapping in the First Degree;
- (e) ORS 163.355 — Rape in the Third Degree;
- (f) ORS 163.365 — Rape in the Second Degree;
- (g) ORS 163.375 — Rape in the First Degree;
- (h) ORS 163.385 — Sodomy in the Third Degree;
- (i) ORS 163.395 — Sodomy in the Second Degree;
- (j) ORS 163.405 — Sodomy in the First Degree;
- (k) ORS 163.408 — Unlawful Sexual Penetration in the Second

Degree;

- (l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 — Sexual Abuse in the Third Degree;
- (n) ORS 163.425 — Sexual Abuse in the Second Degree;
- (o) ORS 163.427 — Sexual Abuse in the First Degree;
- (p) ORS 163.435 — Contributing to the Sexual Delinquency of a

Minor;

- (q) ORS 163.445 — Sexual Misconduct;
- (r) ORS 163.465 — Public Indecency;
- (s) ORS 163.515 — Bigamy;
- (t) ORS 163.525 — Incest;
- (u) ORS 163.547 — Child Neglect in the First Degree;
- (v) ORS 163.575 — Endangering the Welfare of a Minor;
- (w) ORS 163.670 — Using Child in Display of Sexually Explicit

Conduct;

- (x) ORS 163.675 — Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child;
- (y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a

Child;

- (z) ORS 163.684 — Encouraging Child Sexual Abuse in the First Degree;
- (aa) ORS 163.686 — Encouraging Child Sexual Abuse in the Second

Degree;

- (bb) ORS 163.687 — Encouraging Child Sexual Abuse in the Third Degree;
- (cc) ORS 163.688 — Possession of Materials Depicting Sexually

Explicit Conduct of a Child in the First Degree;

- (dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
- (ee) ORS 164.325 — Arson in the First Degree;
- (ff) ORS 164.415 — Robbery in the First Degree;
- (gg) ORS 166.005 — Treason;
- (hh) ORS 166.087 — Abuse of a Corpse in the First Degree;
- (ii) ORS 167.007 — Prostitution;
- (jj) ORS 167.012 — Promoting Prostitution;
- (kk) ORS 167.017 — Compelling Prostitution;
- (ll) ORS 167.062 — Sadomasochistic Abuse for Sexual Conduct in a

Live Show;

- (mm) ORS 167.065 — Furnishing Obscene Materials to Minors;
- (nn) ORS 167.070 — Sending Obscene Materials to Minors;
- (oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;
- (pp) ORS 167.080 — Displaying Obscene Materials to Minors;
- (qq) ORS 167.087 — Disseminating Obscene Materials ;
- (rr) ORS 167.090 — Publicly Displaying Nudity or Sex for

Advertising Purposes;

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(ss) ORS 475.995 — Distribution of Controlled Substances to Minors;

(tt) ORS 475.999 — Manufacture or Delivery of Controlled Substance to Minor or Student within 1,000 Feet of School.

(2) An applicant fails to meet the requirement of ORS 342.143 “good moral character” if the applicant engages in gross neglect of duty, gross unfitness, or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under ORS 342.143 who:

(a) Has been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license;

(b) Is charged with knowingly making any false statement in the application for a license;

(c) Is charged with gross neglect of duty; or

(d) Is charged with gross unfitness.

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

(a) Knowing and substantial unauthorized use of: school name or financial credit; school materials or equipment for personal purposes; or school personnel to provide personal services unrelated to school business;

(b) Knowing and substantial unauthorized use of employment time or school resources for private purposes;

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

(e) Violent or destructive behavior on school premises or at a school-sponsored activity;

(f) Any sexual conduct with a student;

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

(h) Unauthorized disclosure of student records information received in confidence by the educator under a statutory privilege. (See, subsection 6, below);

(i) Deliberately assigning an educator in violation of licensure requirements;

(j) Resignation from a contract in violation of ORS 342.553, (See, subsection 6, below);

(k) Knowing violation of any order or rule of the Commission;

(l) Sexual harassment;

(m) Knowing and willful failure of a chief administrator to report a violation of Commission standards as required by OAR 584-020-0041;

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035;

(p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative relating to a Commission investigation; or

(q) Knowing and unauthorized use of school computer equipment to receive, store, produce or send sexually explicit materials.

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

(a) Revocation, suspension or denial of a license by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Oregon;

(b) Fraud or misrepresentation;

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

(d) Commission of an act listed in OAR 584-020-0040(1);

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction; or

(f) Violation of a term of probation imposed by a court.

(6) In any proceeding brought under subsection (4)(h) of this rule, the Commission may not impose a sanction more severe than a suspension of the educator's license. In any proceeding brought under subsection (4)(j) of this rule, the Commission may not impose a sanction more severe than suspension of the educator's license for the remainder of the school year.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.143 & 342.175 - 342.190

Hist.: TS 5-1983, f. & ef. 7-21-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 2-1988, f. & cert. ef. 4-7-88; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1993, f. & cert. ef. 9-29-93; TS 5-1996, f. & cert. ef. 9-24-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 8-1998 f. & cert. ef. 12-9-98; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 6-1999(Temp), f. & cert. ef. 9-20-99 thru 3-17-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 9-2005, f. & cert. ef. 11-15-05

584-036-0055

Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within 90 days following evaluation of the application. After 90 days, the applicant may attempt to satisfy the same requirements without paying another fee but must file a new application form. After one year, the applicant must pay another fee, file a new application, and satisfy all license requirements in effect at the time of filing.

(3) The fee for evaluating an application for a license based upon completion of an Oregon approved program is \$75.

(4) The fee for evaluating an application for a license not based upon completion of an Oregon approved program is \$90.

(5) The fee for evaluating an application for renewal of a license is \$75.

(6) The fee for each duplicate license is \$10.

(7) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is \$75. No additional fee is required to add an endorsement in conjunction with an application for renewal or reinstatement of a license.

(8) The fee to evaluate an application for reinstatement of an expired license is \$75 plus a late application fee of \$15 for each month or portion of a month that the license has been expired to a maximum of \$150 total.

(9) The fee for evaluating an application for reinstatement of a suspended license is \$75.

(10) The fee for evaluating an application for reinstatement of a revoked license is \$150 in addition to the \$75 application fee.

(11) Forfeiture for a check which the applicant's bank will not honor is \$25, unrelated to any evaluation fees. The total amount due shall be paid in cash or credit at the Commission's office or by a Money Order.

(12) There is no fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries.

(13) The fee for alternative assessment in lieu of the test of educational specialty is \$200.

(14) An employer and an applicant may jointly request expedited service by submitting a license application, which must include the C-1 and C-3 forms, accompanied by the regular application fee and an additional service fee of \$100.

(a) Qualified applicants will be authorized to perform all duties of the position upon receipt of the emergency license issued by the Commission. This emergency license and future licensure is conditional upon determination that all requirements for the license have been met.

(b) The Commission may limit the number of applications from an employing district to a maximum of 100 in any two-day period.

(15) The fee for registration of a charter school teacher is \$75 which includes the fee for required criminal records and fingerprinting costs.

(16) The fee for renewal of a charter school registration is \$25.

(17) The fee for a criminal records check including fingerprinting is \$62.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05

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584-038-0004

Adding Endorsements to a Basic or Standard License

(1) An endorsement will be added on a basic or standard license upon documentation of a passing score as currently specified by the commission on a designated test of subject mastery, together with completion of one of the following practical experiences: (For Basic or Standard Elementary License practicum exceptions, see subsection (4) below.)

(a) A practicum of two semester hours or three quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the specialty, in an institution approved to prepare teachers for that endorsement; or

(b) Verification of teaching experience on either an optional assignment of ten hours or less or an approved conditional assignment permit as allowed by OAR 584-060-0081 if teaching in Oregon; or

(c) Verification of one year of half-time or more teaching experience in the endorsement; or

(d) Completion of an approved program in the new specialty area.

(2) Alternately, the applicant may qualify for a new endorsement through completion of academic requirements, together with completion of either of the following practical experiences:

(a) Verification of five years of experience teaching the new specialty on a license valid for the assignment. However, all ESOL, ESOL/bilingual experience must be completed outside of Oregon on a license valid for the assignment.

(b) Verification of teaching experience on either an optional assignment of ten hours or less or an approved conditional assignment permit as allowed by OAR 584-060-0081 if teaching in Oregon.

(3) Middle-School Endorsements: Middle-School Endorsements may be added to a Basic or Standard Teaching License under the conditions specified in subsection (1) above with passage of any of the middle-school Commission approved tests in Language Arts, Social Studies or Science. The endorsement will be limited to teaching those subjects in grades 5 through 9 only. (See, OAR 584-036-0015 for rules on assignments.)

(4) Endorsements on Elementary Licenses: A subject-matter endorsement may be added to a Basic or Standard Elementary License in the core academic areas of Language Arts; Social Studies; and Science by passage of a Commission-approved test in the subject-matter area only. An additional practicum is not required.

(5) In addition to the requirements described in subsection (1)(a) above, an approved institutional program including content and methods courses is always required as preparation for added endorsement in elementary education, special education, communication disorders, hearing impairment, or visual impairment.

(6) Approved course preparation is required for adding endorsement in subjects for which no subject mastery test is available.

(7) Subjects in which the commission does not offer endorsement may be taught by anyone whose basic or standard license authorizes teaching at the grade level of the course.

(8) Academic requirements for basic endorsement are detailed in sections of OAR 584-038 below, and academic requirements for standard endorsement are detailed in OAR 584-040. Also, professional-technical endorsements to basic, standard, and pre-1965 licenses are discussed in OAR 584-042-0009.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05

584-040-0005

Standard Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Standard Teaching License.

(2) The Standard Teaching 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.

(3) The applicant must provide verification of successful teaching experience in Oregon schools while holding a Basic Teaching License or a Five-Year Regular License valid for the assignment in one of the following ways:

(a) Three years of one-half time or more experience is required; or

(b) For persons holding a Basic Teaching License prior to January 1, 1990, two years of experience or three years of one-half time or more experience, whichever is less.

(4) The applicant must provide evidence of one of the following:

(a) Completion of an approved Standard Teaching License program which culminates with forty-five quarter hours of upper-division or graduate study beyond the bachelor's degree and includes the following:

(A) Verification of completion of the professional preparation described in OAR 584-040-0008 unless the application is for a Standard Teaching License with a standard special education endorsement, in which case the professional preparation in OAR 584-040-0008 is not required; and

(B) Evidence of completion of the academic preparation for one of the standard endorsements outlined in OAR 584-040-0010 through 584-040-0300 in a field in which the basic endorsement is held, or completion of two of the basic subject matter endorsements outlined in OAR 584-038-0010 through 584-038-0280. Fifteen of the quarter hours that are required for the endorsement(s) must be at graduate level; or

(b) Completion of 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 a degree approved by the Commission;

(c) Completion of an inservice program offered by an approved teacher education program granting credit for the experience, culminating in either a master's degree or 45 quarter hours of upper-division or graduate study beyond the bachelor's degree.

(5) An applicant who does not complete the requirements of (4)(a)(ii) above, will not be given a Standard Endorsement, but would retain any Basic Endorsement that the applicant holds.

(6) The applicant must have 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.

(7) The applicant must verify recent education experience 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; 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.

(8) The Standard Teaching License may be renewed under the provisions of 584-048-0035 together with completion of the professional development requirements as described in 584-090-0005.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05

584-065-0100

Knowledge Skills and Abilities for English to Speakers of Other Languages

(1) Language: Candidates know, understand, and use the major concepts, theories, and research related to the nature and acquisition of language to construct learning environments that support English Speakers of Other Languages (ESOL) and bilingual students' language and literacy development and content area achievement.

(a) Describing Language: Candidates demonstrate understanding of language as a system and demonstrate a high level of competence in helping ESOL and bilingual students acquire and use English in listening, speaking, reading, and writing for social and academic purposes. Candidates:

(A) Apply knowledge of phonology (the sound system) to help ESOL and bilingual students develop oral, reading and writing (including spelling) skills in English;

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(B) Apply knowledge of morphology (the structure of words) to assist ESOL and bilingual students' development of oral and literacy skills in English;

(C) Apply knowledge of syntax (phrase and sentence structure) to assist ESOL and bilingual students in developing written and spoken English;

(D) Apply understanding of semantics (word/sentence meaning) to assist ESOL and bilingual students in acquiring and productively using a wide range of vocabulary in English;

(E) Apply knowledge of pragmatics (the effect of context on language) to help ESOL and bilingual students communicate effectively and use English appropriately for a variety of purposes in spoken and written language and in formal and informal settings;

(F) Demonstrate ability to help ESOL and bilingual students develop social and academic language skills in English;

(G) Demonstrate ability to help ESOL and bilingual students acquire a range of genres, rhetorical and discourse structures and writing conventions in English;

(H) Demonstrate understanding of the nature and value of World Englishes and dialect variation, and build on the language that ESOL and bilingual students bring in order to extend their linguistic repertoire;

(I) Locate and use linguistic resources to learn about the structure of English and of students' home language; and

(J) Demonstrate proficiency in English and serve as a good language model for ESOL and bilingual students.

(b) Language Acquisition and Development: Candidates understand and apply concepts, theories, research, and practice to facilitate the acquisition of a primary and a new language in and out of classroom settings. Candidates:

(A) Provide rich exposure to English;

(B) Provide comprehensible input and scaffolding;

(C) Provide opportunities for meaningful interaction;

(D) Create a secure, positive, and motivating learning environment;

(E) Understand and apply current theories and research in language and literacy development;

(F) Recognize and build on the processes and stages of English language literacy development;

(G) Recognize the importance of ESOL and bilingual students' home languages and language varieties and build on these skills on a foundation for learning English;

(H) Understand and apply knowledge of sociocultural and political variable to facilitate the process of learning English;

(I) Understand and apply knowledge of the role of individual learner variable in the process of learning English;

(J) Provide appropriate instruction and feedback;

(K) Help ESOL and bilingual students to communicate in socially and culturally appropriate ways while being sensitive to the student's native culture;

(L) Help ESOL and bilingual students develop academic language proficiency; and

(M) Help ESOL and bilingual students develop effective language learning strategies.

(2) Culture: Candidates know, understand, and use the major concepts, principles, theories, and research related to the nature and role of culture and cultural groups to construct learning environments that support ESOL and bilingual students' cultural identities, language and literacy development, and content area achievement.

(a) Nature and Role of Culture: Candidates know, understand, and use the major concepts, principles, theories, and research related to the nature and role of culture in language development and academic achievement that support individual students' learning. Candidates:

(A) Understand and apply knowledge about cultural values and beliefs in the context of teaching and learning English as a Second Language (ESL);

(B) Understand and apply knowledge about the effects of racism, stereotyping, and discrimination to ESL teaching and learning;

(C) Understand and apply knowledge about home/school communication to enhance ESL teaching and build partnerships with ESOL and bilingual families; and

(D) Understand and apply concepts about the interrelationship between language and culture.

(b) Cultural Groups and Identity: Candidates know, understand, and use knowledge of how cultural groups and students' cultural identities affect language learning and school achievement. Candidates:

(A) Use a range of resources, including the Internet, to learn about world cultures and cultures of students in their classrooms and apply that learning to instruction;

(B) Understand and apply knowledge about how an individual's cultural identity affects their ESL learning and how levels of cultural identity will vary widely among students;

(C) Understand and apply knowledge about cultural conflicts and home-area events that can have an impact on ESOL and bilingual students' learning;

(D) Understand and apply knowledge about the impact of students' socioeconomic status, native language, race, religion, class, national origin disability an gender on learning and teaching ESL; and

(E) Understand and apply knowledge of U.S. immigration history and patterns in teaching ESL.

(3) Planning, Implementing, and Managing Instruction: Candidates know, understand, and use standards-based practices and strategies related to planning, implementing, and managing ESL and content instruction, including classroom organization, teaching strategies for developing and integrating language skills, and choosing and adapting classroom resources.

(a) Planning for Standards-Based ESL and Content Instruction: Candidates know, understand, and apply concepts, research, and best practices to plan classroom instruction in a supportive learning environment for ESOL and bilingual students. Candidates serve as effective English language models, as they plan for multilevel classrooms with learners from diverse backgrounds using standards-based ESL and content curriculum. Candidates:

(A) Plan standards-based ESL and content instruction;

(B) Create environments that promote standards-based language learning in supportive, accepting classrooms and schools;

(C) Plan students' learning experiences based on assessment of language proficiency and prior knowledge; and

(D) Provide for particular needs of students with limited formal schooling (LFS) in their first language.

(b) Managing and Implementing Standards-Based ESL and Content Instruction. Candidates know, manage, and implement a variety of standards-based teaching strategies and techniques for developing and integrating English listening, speaking, reading, and writing, and for accessing the core curriculum. Candidates support ESOL and bilingual students in accessing the core curriculum as they learn language and academic content together. Candidates:

(A) Organize learning around standards-based subject matter and language learning objectives;

(B) Incorporate activities, tasks, and assignments that develop authentic uses of language, as students learn about content-area material;

(C) Provide activities and materials that integrate listening, speaking, reading and writing;

(D) Develop students' listening skills for a variety of academic and social purposes;

(E) Develop students' speaking skills for a variety of academic and social purposes;

(F) Provide standards-based instruction that builds on students' oral English to support learning to read and write;

(G) Provide standards-based reading instruction adapted to ESOL and bilingual learners; and

(H) Provide standards-based writing instruction adapted to ESOL and bilingual learners. Develop students' writing through a range of activities from sentence formation to expository writing.

(c) Using Resources Effectively in ESL and Content Instruction. Candidates are familiar with a wide range of standards-based materials, resources, and technologies, and choose, adapt, and use them in effective ESL and content teaching. Candidates:

(A) Select, adapt and use culturally responsive, age-appropriate and linguistically accessible materials;

(B) Select materials and other resources that are appropriate to students' developing language and content-area abilities, including appropriate use of the student's first language;

(C) Employ an appropriate variety of materials for language learning, including books, visual aids, props and realia.

(D) Use appropriate technological resources to enhance language and content-area instruction for ESOL and bilingual students (e.g., Web, software, computers, and related devices); and

(E) Use software and Internet resources effectively in ESL and content instruction.

(4) Assessment: Candidates understand issues of assessment and use standards-based assessment measures with ESOL and bilingual students.

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(a) Issues of Assessment for ESL. Candidates understand various issues of assessment (e.g., cultural and linguistic bias; political, social, and psychological factors) in assessment, IQ, and special education testing (including gifted and talented); the importance of standards; and the difference between language proficiency and other types of assessment (e.g., standardized achievement tests of overall mastery), as they affect ESOL and bilingual student learning. Candidates:

(A) Demonstrate an understanding of the purposes of assessment as they relate to ESOL and bilingual learners and use results appropriately;

(B) Demonstrate an understanding of the quality indicators of assessment instruments;

(C) Demonstrate understanding of the limitations of assessment situations and make accommodations for ESOL and bilingual students; and

(D) Distinguish between a language difference, gifted and talented and special education needs for ESOL and bilingual students.

(b) Language Proficiency Assessment. Candidates know and use a variety of standards-based language proficiency instruments to inform their instruction and understand their uses for identification, placement, and demonstration of language growth of ESOL and bilingual students. Candidates:

(A) Understand and implement national and state requirements for identification, reclassification and exit of ESOL and bilingual students from language support programs;

(B) Understand, develop and use norm-referenced assessments appropriately with ESOL and bilingual learners;

(C) Understand, develop and use criterion referenced assessments appropriately with ESOL and bilingual learners;

(D) Understand, construct and use assessment measures for a variety of purposes for ESOL and bilingual students; and

(E) Assess ESOL and bilingual learners' language skills and communicative competence using multiple sources of information.

(c) Classroom-Based Assessment for ESL. Candidates know and use a variety of performance-based assessment tools and techniques to inform instruction. Candidates:

(A) Use performance-based assessment tools and tasks that measure ESOL and bilingual learners' progress toward state and national standards;

(B) Use various instruments and techniques to assess content-area learning (e.g. math, science, social studies) for ESOL and bilingual learners at varying levels of language and literacy development; and

(C) Prepare ESOL and bilingual students to use self- and peer-assessment techniques when appropriate.

(5) Professionalism: Candidates demonstrate knowledge of the history of ESL teaching. Candidates keep current with new instructional techniques, research results, advances in the ESL field, and public policy issues. Candidates use such information to reflect upon and improve their instructional practices. Candidates provide support and advocate for ESOL and bilingual students and their families and work collaboratively to improve the learning environment.

(a) ESL Research and History: Candidates demonstrate knowledge of history, research, and current practice in the field of ESL teaching and apply this knowledge to improve teaching and learning. Candidates:

(A) Demonstrate knowledge of language teaching methods in their historical contexts; and

(B) Demonstrate knowledge of the evolution of laws and policy in the ESL profession.

(b) Partnerships and Advocacy. Candidates serve as professional resources, advocate for ESOL and bilingual students, and build partnerships with students' families. Candidates:

(A) Advocate and serve as language and education resources for students and families in their schools and communities;

(B) Serve as professional resources personnel in their education communities; and

(C) Advocate for ESOL and bilingual students' access to all available academic resources, including instructional technology.

(c) Professional Development and Collaboration. Candidates collaborate with and are prepared to serve as a resource to all staff, including para-professionals, to improve learning for all ESOL and bilingual students. Candidates:

(A) Establish professional goals and pursue opportunities to grow in the field of ESL;

(B) Work with other teachers and staff to provide comprehensive, challenging educational opportunities for ESOL and bilingual students in the school;

(C) Engage in collaborative teaching in general education and content-area classrooms; and

(D) Model academic proficiency in the English language.

(6) Technology: Candidates use information technology to enhance learning and to enhance personal and professional productivity. Candidates:

(a) Demonstrate knowledge of current technologies and their application in ESOL;

(b) Design, develop, and implement student learning activities that integrate information technology; and

(c) Use technologies to communicate, network, locate resources, and enhance continuing professional development.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 9-2005, f. & cert. ef. 11-15-05

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; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05

Adm. Order No.: TSPC 10-2005(Temp)

Filed with Sec. of State: 11-15-2005

Certified to be Effective: 11-15-05 thru 4-30-06

Notice Publication Date:

Rules Amended: 584-021-0177, 584-023-0025, 584-036-0062

Subject: 584-021-0177: *Criminal Records Check Requirement* — Amends Record Check administrative rule for School Nurses to incorporate reduced number of fingerprint cards required and increased fingerprint fees required.

584-023-0025: *Fees* — Increases fees for Charter School Registrations to incorporate increased fingerprint fees.

584-036-0062: *Criminal Records Check Requirement* — Amends Record Check administrative rule for licensed educators to incorporate reduced number of fingerprint cards required and increased fingerprint fees required.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-021-0177

Criminal Records Check Requirement

(1) For the first Oregon license as a school nurse, or for reinstatement of a license that has been expired for more than three years, the applicant must submit one fingerprint card in a manner specified in the Commission's application packet for checking Oregon and Federal Bureau of Investigation criminal history.

(2) The fee to submit fingerprints for a criminal records check is \$62.

(3) The Commission may issue a temporary license valid until receipt of fingerprint reports from the Oregon State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181 & 342

Stats. Implemented: ORS 181.525, 342.223 & 342.455 - 342.495

ADMINISTRATIVE RULES

Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TS 2-1994, f. & cert. ef. 7-19-94; TS 2-1995(Temp), f. 8-16-95, cert. ef. 9-11-95; TS 4-1995, f. & cert. ef. 11-9-95; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06

584-023-0025

Fees

TSPC shall charge a fee of \$75, or such other amount as may hereafter be allowed by law, for each original application and for each renewal application. This fee shall include the costs of fingerprints and criminal history checks.

Stat. Auth.: 342.175

Stats. Implemented: HB 2550 (1999)

Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06

584-036-0062

Criminal Records Check Requirement

(1) For the first Oregon license as an educator, or for reinstatement of a license that has been expired for more than three years, the applicant must submit two fingerprint cards for checking Oregon and Federal Bureau of Investigation criminal history records as follows:

(a) Secure two original FBI fingerprint cards from TSPC, an Oregon school district or Education Service District, or an Oregon Approved Teacher Education Institution.

(b) Arrange to have fingerprints taken by any local or state police jurisdiction in the United States, or by authorized personnel at an Oregon school district or Education Service District, or an Oregon Approved Teacher Education Institution which provides this service.

(c) Provide for the authorized fingerprinter at least one form of picture identification, such as a photo driver's license, Division of Motor Vehicles photo identification card, military identification card, student body card, etc.

(d) Submit to the authorized fingerprinter the 8-1/2" x 10" envelope furnished by TSPC and the form entitled "Instructions for Handling Fingerprint Cards."

(e) Submit to TSPC as a part of the complete application, the fingerprint cards and a personal check, money order, or cashier's check in the amount of \$42 to cover the actual cost of acquiring and processing the fingerprint information.

(2) A criminal history records check as specified in section (1) of this rule, is required for renewal of licensure if the applicant has not previously submitted to a records check with TSPC.

(3) An applicant may only be fingerprinted through the process described in subsection (1) of this rule. A fingerprint check for employment in an Oregon school district does not qualify as a TSPC verified fingerprint and criminal background check.

(4) The Commission may issue a temporary license valid until receipt of fingerprint reports from the Oregon State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181 & 342

Stats. Implemented: ORS 181.525, 342.120-342.200, 342.223, 342.400 & 342.985

Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TS 2-1994, f. & cert. ef. 7-19-94; TS 2-1995(Temp), f. 8-16-95, cert. ef. 9-11-95; TS 4-1995, f. & cert. ef. 11-9-95; TSPC 5-2003(Temp), f. & cert. ef. 9-17-03 thru 1-15-04; TSPC 3-2004, f. & cert. ef. 5-14-04; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06

Water Resources Department Chapter 690

Adm. Order No.: WRD 1-2005

Filed with Sec. of State: 11-7-2005

Certified to be Effective: 11-7-05

Notice Publication Date: 8-1-05

Rules Repealed: 690-050-0005, 690-050-0010, 690-050-0015, 690-050-0020, 690-050-0025, 690-050-0030, 690-050-0035, 690-050-0040, 690-050-0045, 690-050-0050, 690-050-0055, 690-050-0060, 690-050-0070, 690-050-0075, 690-050-0080, 690-050-0085, 690-050-0090, 690-050-0095, 690-050-0100, 690-050-0105, 690-050-0110, 690-050-0115, 690-050-0120, 690-050-0125, 690-050-0130, 690-050-0135, 690-074-0005, 690-074-0010, 690-074-0015, 690-074-0020, 690-074-0025, 690-074-0030, 690-074-0035, 690-074-0040, 690-074-0045, 690-074-0050, 690-074-0055, 690-074-0060, 690-074-0065, 690-074-0070, 690-074-0075, 690-074-0080, 690-074-0085, 690-074-0090, 690-074-0095

Subject: The Water Resources Commission repealed OAR Chapter 690, Divisions 50 and 74 regarding hydroelectric projects because they are no longer necessary.

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 Chapter 690-051-0020(3) specifies that rules divisions 690-050 and 690-074 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 were repealed. All hydroelectric projects will be reviewed under OAR Chapter 690, Division 51.

Rules Coordinator: Debbie Colbert—(503) 986-0878

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101-020-0040	9-1-05	Amend	10-1-05	123-018-0110	10-24-05	Amend	12-1-05
101-020-0045	9-1-05	Amend	10-1-05	123-018-0120	10-24-05	Amend	12-1-05
101-030-0022	9-1-05	Amend	10-1-05	123-018-0130	10-24-05	Amend	12-1-05
101-030-0040	9-1-05	Amend	10-1-05	123-018-0140	10-24-05	Amend	12-1-05
101-040-0005	9-1-05	Amend	10-1-05	123-018-0150	10-24-05	Amend	12-1-05
101-040-0010	9-1-05	Amend	10-1-05	123-018-0160	10-24-05	Amend	12-1-05
101-040-0020	9-1-05	Amend	10-1-05	123-018-0170	10-24-05	Amend	12-1-05
101-040-0030	9-1-05	Amend	10-1-05	123-018-0180	10-24-05	Amend	12-1-05
101-040-0035	9-1-05	Amend	10-1-05	123-018-0190	10-24-05	Amend	12-1-05
101-040-0040	9-1-05	Amend	10-1-05	123-018-0200	10-24-05	Amend	12-1-05
101-040-0045	9-1-05	Amend	10-1-05	123-021-0090	8-5-05	Amend(T)	9-1-05
101-040-0050	9-1-05	Amend	10-1-05	123-024-0031	4-21-05	Amend(T)	6-1-05
101-040-0055	9-1-05	Amend	10-1-05	123-024-0031	10-24-05	Amend(T)	12-1-05
101-040-0080	4-14-05	Amend	5-1-05	123-024-0031	11-4-05	Amend(T)	12-1-05
101-040-0080	9-1-05	Amend	10-1-05	123-024-0031(T)	11-4-05	Suspend	12-1-05
101-050-0005	9-1-05	Amend	10-1-05	123-065-0000	2-25-05	Amend	4-1-05
101-050-0015	4-14-05	Amend	5-1-05	123-065-0005	2-25-05	Adopt	4-1-05
101-050-0025	9-1-05	Amend	10-1-05	123-065-0010	2-25-05	Amend	4-1-05
115-045-0005	1-24-05	Amend	3-1-05	123-065-0048	2-25-05	Am. & Ren.	4-1-05
115-045-0010	1-24-05	Amend	3-1-05	123-065-0080	2-25-05	Amend	4-1-05
115-045-0020	1-24-05	Amend	3-1-05	123-065-0090	2-25-05	Amend	4-1-05
115-045-0021	1-24-05	Amend	3-1-05	123-065-0095	2-25-05	Adopt	4-1-05
115-045-0023	1-24-05	Amend	3-1-05	123-065-0100	2-25-05	Amend	4-1-05
115-045-0025	1-24-05	Amend	3-1-05	123-065-0140	2-25-05	Amend	4-1-05
122-001-0026	6-17-05	Adopt(T)	8-1-05	123-065-0150	2-25-05	Amend	4-1-05
122-001-0027	8-1-05	Adopt(T)	9-1-05	123-065-0200	2-25-05	Amend	4-1-05
123-011-0020	5-5-05	Amend	6-1-05	123-065-0210	2-25-05	Amend	4-1-05
123-011-0021	5-5-05	Amend	6-1-05	123-065-0220	2-25-05	Amend	4-1-05
123-011-0025	5-5-05	Amend	6-1-05	123-065-0230	2-25-05	Amend	4-1-05
123-011-0027	5-5-05	Amend	6-1-05	123-065-0240	2-25-05	Amend	4-1-05
123-011-0030	5-5-05	Amend	6-1-05	123-065-0255	2-25-05	Adopt	4-1-05
123-011-0035	5-5-05	Amend	6-1-05	123-065-0300	2-25-05	Amend	4-1-05

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123-065-0320	2-25-05	Amend	4-1-05	123-065-3430	2-25-05	Amend	4-1-05
123-065-0330	2-25-05	Amend	4-1-05	123-065-3445	2-25-05	Adopt	4-1-05
123-065-0350	2-25-05	Amend	4-1-05	123-065-3460	2-25-05	Amend	4-1-05
123-065-0360	2-25-05	Repeal	4-1-05	123-065-3480	2-25-05	Amend	4-1-05
123-065-0365	2-25-05	Adopt	4-1-05	123-065-3500	2-25-05	Amend	4-1-05
123-065-0400	2-25-05	Am. & Ren.	4-1-05	123-065-3530	2-25-05	Amend	4-1-05
123-065-0410	2-25-05	Am. & Ren.	4-1-05	123-065-3545	2-25-05	Adopt	4-1-05
123-065-0420	2-25-05	Am. & Ren.	4-1-05	123-065-3560	2-25-05	Amend	4-1-05
123-065-0430	2-25-05	Am. & Ren.	4-1-05	123-065-3600	2-25-05	Amend	4-1-05
123-065-0440	2-25-05	Am. & Ren.	4-1-05	123-065-3800	2-25-05	Amend	4-1-05
123-065-1000	2-25-05	Adopt	4-1-05	123-065-3830	2-25-05	Amend	4-1-05
123-065-1050	2-25-05	Adopt	4-1-05	123-065-3850	2-25-05	Amend	4-1-05
123-065-1500	2-25-05	Amend	4-1-05	123-065-4000	2-25-05	Amend	4-1-05
123-065-1510	2-25-05	Amend	4-1-05	123-065-4010	2-25-05	Amend	4-1-05
123-065-1520	2-25-05	Amend	4-1-05	123-065-4020	2-25-05	Amend	4-1-05
123-065-1530	2-25-05	Amend	4-1-05	123-065-4050	2-25-05	Amend	4-1-05
123-065-1540	2-25-05	Amend	4-1-05	123-065-4060	2-25-05	Amend	4-1-05
123-065-1550	2-25-05	Amend	4-1-05	123-065-4070	2-25-05	Amend	4-1-05
123-065-1553	2-25-05	Adopt	4-1-05	123-065-4100	2-25-05	Amend	4-1-05
123-065-1557	2-25-05	Adopt	4-1-05	123-065-4110	2-25-05	Amend	4-1-05
123-065-1560	2-25-05	Amend	4-1-05	123-065-4120	2-25-05	Amend	4-1-05
123-065-1570	2-25-05	Amend	4-1-05	123-065-4130	2-25-05	Amend	4-1-05
123-065-1580	2-25-05	Amend	4-1-05	123-065-4140	2-25-05	Amend	4-1-05
123-065-1590	2-25-05	Amend	4-1-05	123-065-4150	2-25-05	Repeal	4-1-05
123-065-1600	2-25-05	Amend	4-1-05	123-065-4160	2-25-05	Repeal	4-1-05
123-065-1610	2-25-05	Amend	4-1-05	123-065-4200	2-25-05	Amend	4-1-05
123-065-1620	2-25-05	Amend	4-1-05	123-065-4220	2-25-05	Amend	4-1-05
123-065-1650	2-25-05	Amend	4-1-05	123-065-4230	2-25-05	Amend	4-1-05
123-065-1670	2-25-05	Adopt	4-1-05	123-065-4240	2-25-05	Amend	4-1-05
123-065-1700	2-25-05	Amend	4-1-05	123-065-4250	2-25-05	Amend	4-1-05
123-065-1710	2-25-05	Amend	4-1-05	123-065-4260	2-25-05	Amend	4-1-05
123-065-1720	2-25-05	Amend	4-1-05	123-065-4270	2-25-05	Amend	4-1-05
123-065-1730	2-25-05	Amend	4-1-05	123-065-4280	2-25-05	Amend	4-1-05
123-065-1740	2-25-05	Amend	4-1-05	123-065-4300	2-25-05	Amend	4-1-05
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123-065-2000	2-25-05	Repeal	4-1-05	123-065-4315	2-25-05	Amend	4-1-05
123-065-2500	2-25-05	Amend	4-1-05	123-065-4318	2-25-05	Adopt	4-1-05
123-065-2510	2-25-05	Amend	4-1-05	123-065-4320	2-25-05	Amend	4-1-05
123-065-2520	2-25-05	Amend	4-1-05	123-065-4323	2-25-05	Adopt	4-1-05
123-065-2530	2-25-05	Amend	4-1-05	123-065-4325	2-25-05	Adopt	4-1-05
123-065-2540	2-25-05	Amend	4-1-05	123-065-4328	2-25-05	Adopt	4-1-05
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123-065-2700	2-25-05	Amend	4-1-05	123-065-4340	2-25-05	Amend	4-1-05
123-065-3000	2-25-05	Amend	4-1-05	123-065-4343	2-25-05	Repeal	4-1-05
123-065-3030	2-25-05	Amend	4-1-05	123-065-4345	2-25-05	Adopt	4-1-05
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123-065-3130	2-25-05	Amend	4-1-05	123-065-4360	2-25-05	Repeal	4-1-05
123-065-3140	2-25-05	Amend	4-1-05	123-065-4365	2-25-05	Adopt	4-1-05
123-065-3170	2-25-05	Amend	4-1-05	123-065-4370	2-25-05	Repeal	4-1-05
123-065-3200	2-25-05	Amend	4-1-05	123-065-4375	2-25-05	Adopt	4-1-05
123-065-3230	2-25-05	Amend	4-1-05	123-065-4380	2-25-05	Amend	4-1-05
123-065-3300	2-25-05	Amend	4-1-05	123-065-4390	2-25-05	Am. & Ren.	4-1-05
123-065-3330	2-25-05	Amend	4-1-05	123-065-4400	2-25-05	Amend	4-1-05
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123-065-4430	2-25-05	Amend	4-1-05	123-070-2200	2-25-05	Amend	4-1-05
123-065-4440	2-25-05	Amend	4-1-05	123-070-2300	2-25-05	Amend	4-1-05
123-065-4450	2-25-05	Amend	4-1-05	123-070-2400	2-25-05	Amend	4-1-05
123-065-4460	2-25-05	Amend	4-1-05	123-155-0000	11-4-05	Amend	12-1-05
123-065-4470	2-25-05	Amend	4-1-05	123-155-0050	11-4-05	Adopt	12-1-05
123-065-4480	2-25-05	Amend	4-1-05	123-155-0100	11-4-05	Amend	12-1-05
123-065-4500	2-25-05	Amend	4-1-05	123-155-0150	11-4-05	Amend	12-1-05
123-065-4510	2-25-05	Amend	4-1-05	123-155-0175	11-4-05	Adopt	12-1-05
123-065-4520	2-25-05	Amend	4-1-05	123-155-0200	11-4-05	Amend	12-1-05
123-065-4530	2-25-05	Amend	4-1-05	123-155-0250	11-4-05	Amend	12-1-05
123-065-4540	2-25-05	Amend	4-1-05	123-155-0270	11-4-05	Amend	12-1-05
123-065-4550	2-25-05	Amend	4-1-05	123-155-0300	11-4-05	Amend	12-1-05
123-065-4560	2-25-05	Amend	4-1-05	123-155-0350	11-4-05	Adopt	12-1-05
123-065-4570	2-25-05	Amend	4-1-05	123-155-0400	11-4-05	Amend	12-1-05
123-065-4580	2-25-05	Amend	4-1-05	125-020-0100	3-1-05	Repeal	3-1-05
123-065-4590	2-25-05	Amend	4-1-05	125-020-0110	3-1-05	Repeal	3-1-05
123-065-4600	2-25-05	Adopt	4-1-05	125-020-0120	3-1-05	Repeal	3-1-05
123-065-4690	2-25-05	Am. & Ren.	4-1-05	125-020-0130	3-1-05	Repeal	3-1-05
123-065-4700	2-25-05	Amend	4-1-05	125-020-0140	3-1-05	Repeal	3-1-05
123-065-4710	2-25-05	Amend	4-1-05	125-020-0200	3-1-05	Repeal	3-1-05
123-065-4720	2-25-05	Amend	4-1-05	125-020-0210	3-1-05	Repeal	3-1-05
123-065-4730	2-25-05	Amend	4-1-05	125-020-0220	3-1-05	Repeal	3-1-05
123-065-4740	2-25-05	Amend	4-1-05	125-020-0225	3-1-05	Repeal	3-1-05
123-065-4750	2-25-05	Amend	4-1-05	125-020-0300	3-1-05	Repeal	3-1-05
123-065-4760	2-25-05	Amend	4-1-05	125-020-0310	3-1-05	Repeal	3-1-05
123-065-4800	2-25-05	Adopt	4-1-05	125-020-0320	3-1-05	Repeal	3-1-05
123-065-4950	2-25-05	Amend	4-1-05	125-020-0330	3-1-05	Repeal	3-1-05
123-065-4960	2-25-05	Amend	4-1-05	125-020-0335	3-1-05	Repeal	3-1-05
123-065-4970	2-25-05	Amend	4-1-05	125-020-0340	3-1-05	Repeal	3-1-05
123-065-4980	2-25-05	Amend	4-1-05	125-020-0350	3-1-05	Repeal	3-1-05
123-065-4990	2-25-05	Amend	4-1-05	125-020-0360	3-1-05	Repeal	3-1-05
123-065-7000	2-25-05	Amend	4-1-05	125-020-0400	3-1-05	Repeal	3-1-05
123-065-7100	2-25-05	Amend	4-1-05	125-020-0410	3-1-05	Repeal	3-1-05
123-065-7200	2-25-05	Amend	4-1-05	125-020-0430	3-1-05	Repeal	3-1-05
123-065-7300	2-25-05	Amend	4-1-05	125-020-0440	3-1-05	Repeal	3-1-05
123-065-7400	2-25-05	Amend	4-1-05	125-020-0500	3-1-05	Repeal	3-1-05
123-065-7500	2-25-05	Amend	4-1-05	125-020-0510	3-1-05	Repeal	3-1-05
123-065-7600	2-25-05	Amend	4-1-05	125-020-0520	3-1-05	Repeal	3-1-05
123-065-7700	2-25-05	Amend	4-1-05	125-020-0530	3-1-05	Repeal	3-1-05
123-065-8000	2-25-05	Adopt	4-1-05	125-020-0540	3-1-05	Repeal	3-1-05
123-065-8100	2-25-05	Adopt	4-1-05	125-020-0550	3-1-05	Repeal	3-1-05
123-065-8200	2-25-05	Adopt	4-1-05	125-020-0600	3-1-05	Repeal	3-1-05
123-065-8300	2-25-05	Adopt	4-1-05	125-020-0610	3-1-05	Repeal	3-1-05
123-065-8400	2-25-05	Adopt	4-1-05	125-020-0620	3-1-05	Repeal	3-1-05
123-070-1000	2-25-05	Amend	4-1-05	125-020-0700	3-1-05	Repeal	3-1-05
123-070-1100	2-25-05	Amend	4-1-05	125-025-0000	3-1-05	Repeal	3-1-05
123-070-1150	2-25-05	Amend	4-1-05	125-025-0010	3-1-05	Repeal	3-1-05
123-070-1200	2-25-05	Amend	4-1-05	125-025-0030	3-1-05	Repeal	3-1-05
123-070-1300	2-25-05	Amend	4-1-05	125-025-0040	3-1-05	Repeal	3-1-05
123-070-1500	2-25-05	Amend	4-1-05	125-025-0050	3-1-05	Repeal	3-1-05
123-070-1600	2-25-05	Amend	4-1-05	125-025-0060	3-1-05	Repeal	3-1-05
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125-025-0100	3-1-05	Repeal	3-1-05	125-055-0100	4-20-05	Amend(T)	6-1-05
125-025-0110	3-1-05	Repeal	3-1-05	125-055-0100	10-22-05	Amend	12-1-05
125-030-0000	3-1-05	Repeal	3-1-05	125-055-0105	4-20-05	Amend(T)	6-1-05
125-030-0001	3-1-05	Repeal	3-1-05	125-055-0105	10-22-05	Amend	12-1-05
125-030-0002	3-1-05	Repeal	3-1-05	125-055-0110	4-20-05	Suspend	6-1-05
125-030-0003	3-1-05	Repeal	3-1-05	125-055-0110	11-4-05	Suspend	12-1-05
125-030-0004	3-1-05	Repeal	3-1-05	125-055-0115	4-20-05	Amend(T)	6-1-05
125-030-0005	3-1-05	Repeal	3-1-05	125-055-0115	10-22-05	Amend	12-1-05
125-030-0007	3-1-05	Repeal	3-1-05	125-055-0120	4-20-05	Amend(T)	6-1-05
125-030-0009	3-1-05	Repeal	3-1-05	125-055-0120	10-22-05	Amend	12-1-05
125-030-0014	3-1-05	Repeal	3-1-05	125-055-0125	4-20-05	Amend(T)	6-1-05
125-030-0028	3-1-05	Repeal	3-1-05	125-055-0125	10-22-05	Amend	12-1-05
125-030-0029	3-1-05	Repeal	3-1-05	125-055-0130	4-20-05	Amend(T)	6-1-05
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125-030-0082	3-1-05	Repeal	3-1-05	125-145-0010(T)	5-27-05	Repeal	7-1-05
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125-031-0005	3-1-05	Repeal	3-1-05	125-145-0020	5-27-05	Adopt	7-1-05
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125-050-0000	3-1-05	Repeal	3-1-05	125-145-0020(T)	5-27-05	Repeal	7-1-05
125-050-0020	3-1-05	Repeal	3-1-05	125-145-0030	12-1-04	Adopt(T)	1-1-05
125-050-0040	3-1-05	Repeal	3-1-05	125-145-0030	2-24-05	Amend(T)	4-1-05
125-050-0060	3-1-05	Repeal	3-1-05	125-145-0030	5-27-05	Adopt	7-1-05
125-055-0005	12-28-04	Amend(T)	2-1-05	125-145-0030	11-4-05	Suspend	12-1-05
125-055-0005	6-21-05	Amend	8-1-05	125-145-0030(T)	2-24-05	Suspend	4-1-05
125-055-0005(T)	6-21-05	Repeal	8-1-05	125-145-0030(T)	5-27-05	Repeal	7-1-05
125-055-0010	12-28-04	Amend(T)	2-1-05	125-145-0040	12-1-04	Adopt(T)	1-1-05
125-055-0010	6-21-05	Amend	8-1-05	125-145-0040	2-24-05	Amend(T)	4-1-05
125-055-0010(T)	6-21-05	Repeal	8-1-05	125-145-0040	5-27-05	Adopt	7-1-05
125-055-0015	12-28-04	Amend(T)	2-1-05	125-145-0040	11-4-05	Suspend	12-1-05
125-055-0015	6-21-05	Amend	8-1-05	125-145-0040(T)	2-24-05	Suspend	4-1-05
125-055-0015(T)	6-21-05	Repeal	8-1-05	125-145-0040(T)	5-27-05	Repeal	7-1-05
125-055-0020	12-28-04	Amend(T)	2-1-05	125-145-0045	12-1-04	Adopt(T)	1-1-05
125-055-0020	6-21-05	Amend	8-1-05	125-145-0045	2-24-05	Amend(T)	4-1-05
125-055-0020(T)	6-21-05	Repeal	8-1-05	125-145-0045	5-27-05	Adopt	7-1-05
125-055-0025	12-28-04	Amend(T)	2-1-05	125-145-0045	11-4-05	Suspend	12-1-05
125-055-0025	6-21-05	Amend	8-1-05	125-145-0045(T)	2-24-05	Suspend	4-1-05
125-055-0025(T)	6-21-05	Repeal	8-1-05	125-145-0045(T)	5-27-05	Repeal	7-1-05
125-055-0030	12-28-04	Amend(T)	2-1-05	125-145-0050	12-1-04	Adopt(T)	1-1-05
125-055-0030	6-21-05	Amend	8-1-05	125-145-0050	2-24-05	Suspend	4-1-05
125-055-0030(T)	6-21-05	Repeal	8-1-05	125-145-0060	12-1-04	Adopt(T)	1-1-05
125-055-0035	12-28-04	Amend(T)	2-1-05	125-145-0060	2-24-05	Amend(T)	4-1-05
125-055-0035	6-21-05	Amend	8-1-05	125-145-0060	5-27-05	Adopt	7-1-05
125-055-0035(T)	6-21-05	Repeal	8-1-05	125-145-0060	11-4-05	Suspend	12-1-05
125-055-0040	12-28-04	Amend(T)	2-1-05	125-145-0060(T)	2-24-05	Suspend	4-1-05
125-055-0040	6-21-05	Amend	8-1-05	125-145-0060(T)	5-27-05	Repeal	7-1-05
125-055-0040(T)	6-21-05	Repeal	8-1-05	125-145-0080	12-1-04	Adopt(T)	1-1-05
125-055-0045	12-28-04	Amend(T)	2-1-05	125-145-0080	2-24-05	Amend(T)	4-1-05

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125-145-0080	11-4-05	Suspend	12-1-05	125-246-0353	3-1-05	Adopt	1-1-05
125-145-0080(T)	2-24-05	Suspend	4-1-05	125-246-0355	3-1-05	Adopt	1-1-05
125-145-0080(T)	5-27-05	Repeal	7-1-05	125-246-0360	3-1-05	Adopt	1-1-05
125-145-0090	12-1-04	Adopt(T)	1-1-05	125-246-0400	3-1-05	Adopt	1-1-05
125-145-0090	2-24-05	Amend(T)	4-1-05	125-246-0410	3-1-05	Adopt	1-1-05
125-145-0090	5-27-05	Adopt	7-1-05	125-246-0420	3-1-05	Adopt	1-1-05
125-145-0090	11-4-05	Suspend	12-1-05	125-246-0430	3-1-05	Adopt	1-1-05
125-145-0090(T)	2-24-05	Suspend	4-1-05	125-246-0440	3-1-05	Adopt	1-1-05
125-145-0090(T)	5-27-05	Repeal	7-1-05	125-246-0450	3-1-05	Adopt	1-1-05
125-145-0100	12-1-04	Adopt(T)	1-1-05	125-246-0460	3-1-05	Adopt	1-1-05
125-145-0100	2-24-05	Amend(T)	4-1-05	125-246-0470	3-1-05	Adopt	1-1-05
125-145-0100	5-27-05	Adopt	7-1-05	125-246-0500	3-1-05	Adopt	1-1-05
125-145-0100	11-4-05	Suspend	12-1-05	125-246-0550	3-1-05	Adopt	1-1-05
125-145-0100(T)	2-24-05	Suspend	4-1-05	125-246-0555	3-1-05	Adopt	1-1-05
125-145-0100(T)	5-27-05	Repeal	7-1-05	125-246-0560	3-1-05	Adopt	1-1-05
125-145-0105	12-1-04	Adopt(T)	1-1-05	125-246-0560	6-6-05	Amend	5-1-05
125-145-0105	2-24-05	Amend(T)	4-1-05	125-246-0560	6-6-05	Amend	7-1-05
125-145-0105	5-27-05	Adopt	7-1-05	125-246-0560	8-3-05	Amend	9-1-05
125-145-0105	11-4-05	Suspend	12-1-05	125-246-0570	3-1-05	Adopt	1-1-05
125-145-0105(T)	2-24-05	Suspend	4-1-05	125-246-0575	3-1-05	Adopt	1-1-05
125-145-0105(T)	5-27-05	Repeal	7-1-05	125-246-0575	8-3-05	Amend	9-1-05
125-145-0110	12-1-04	Adopt(T)	1-1-05	125-246-0580	3-1-05	Adopt	1-1-05
125-145-0110	2-24-05	Suspend	4-1-05	125-246-0600	3-1-05	Adopt	1-1-05
125-145-0120	12-1-04	Adopt(T)	1-1-05	125-246-0605	3-1-05	Adopt	1-1-05
125-145-0120	2-24-05	Suspend	4-1-05	125-246-0610	3-1-05	Adopt	1-1-05
125-145-0130	2-24-05	Adopt(T)	4-1-05	125-246-0615	3-1-05	Adopt	1-1-05
125-145-0130(T)	5-27-05	Repeal	7-1-05	125-246-0620	3-1-05	Adopt	1-1-05
125-246-0100	3-1-05	Adopt	1-1-05	125-246-0625	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	5-1-05	125-246-0630	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	7-1-05	125-246-0635	3-1-05	Adopt	1-1-05
125-246-0100	8-3-05	Amend	9-1-05	125-246-0700	3-1-05	Adopt	1-1-05
125-246-0110	3-1-05	Adopt	1-1-05	125-246-0710	3-1-05	Adopt	1-1-05
125-246-0110	8-3-05	Amend	9-1-05	125-246-0720	3-1-05	Adopt	1-1-05
125-246-0120	3-1-05	Adopt	1-1-05	125-246-0730	3-1-05	Adopt	1-1-05
125-246-0120	8-3-05	Amend	9-1-05	125-246-0800	3-1-05	Adopt	1-1-05
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125-246-0140	3-1-05	Adopt	1-1-05	125-247-0005	3-1-05	Adopt	1-1-05
125-246-0150	3-1-05	Adopt	1-1-05	125-247-0010	3-1-05	Adopt	1-1-05
125-246-0170	3-1-05	Adopt	1-1-05	125-247-0010	8-3-05	Amend	9-1-05
125-246-0170	8-3-05	Amend	9-1-05	125-247-0100	3-1-05	Adopt	1-1-05
125-246-0200	3-1-05	Adopt	1-1-05	125-247-0165	3-1-05	Adopt	1-1-05
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125-246-0310	3-1-05	Adopt	1-1-05	125-247-0256	3-1-05	Adopt	1-1-05
125-246-0320	3-1-05	Adopt	1-1-05	125-247-0260	3-1-05	Adopt	1-1-05
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125-246-0330	3-1-05	Adopt	1-1-05	125-247-0270	8-3-05	Amend	9-1-05
125-246-0335	3-1-05	Adopt	1-1-05	125-247-0275	3-1-05	Adopt	1-1-05
125-246-0345	3-1-05	Adopt	1-1-05	125-247-0280	3-1-05	Adopt	1-1-05
125-246-0350	3-1-05	Adopt	1-1-05	125-247-0285	3-1-05	Adopt	1-1-05
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125-247-0287	8-3-05	Amend	9-1-05	125-249-0120	3-1-05	Adopt	1-1-05
125-247-0288	3-1-05	Adopt	1-1-05	125-249-0130	3-1-05	Adopt	1-1-05
125-247-0296	3-1-05	Adopt	1-1-05	125-249-0140	3-1-05	Adopt	1-1-05
125-247-0300	3-1-05	Adopt	1-1-05	125-249-0150	3-1-05	Adopt	1-1-05
125-247-0305	3-1-05	Adopt	1-1-05	125-249-0160	3-1-05	Adopt	1-1-05
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125-247-0320	3-1-05	Adopt	1-1-05	125-249-0200	3-1-05	Adopt	1-1-05
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125-247-0400	3-1-05	Adopt	1-1-05	125-249-0220	3-1-05	Adopt	1-1-05
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125-247-0440	3-1-05	Adopt	1-1-05	125-249-0260	3-1-05	Adopt	1-1-05
125-247-0450	3-1-05	Adopt	1-1-05	125-249-0270	3-1-05	Adopt	1-1-05
125-247-0460	3-1-05	Adopt	1-1-05	125-249-0280	3-1-05	Adopt	1-1-05
125-247-0470	3-1-05	Adopt	1-1-05	125-249-0290	3-1-05	Adopt	1-1-05
125-247-0480	3-1-05	Adopt	1-1-05	125-249-0300	3-1-05	Adopt	1-1-05
125-247-0490	3-1-05	Adopt	1-1-05	125-249-0310	3-1-05	Adopt	1-1-05
125-247-0500	3-1-05	Adopt	1-1-05	125-249-0310	8-3-05	Amend	9-1-05
125-247-0525	3-1-05	Adopt	1-1-05	125-249-0320	3-1-05	Adopt	1-1-05
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125-247-0660	3-1-05	Adopt	1-1-05	125-249-0410	3-1-05	Adopt	1-1-05
125-247-0670	3-1-05	Adopt	1-1-05	125-249-0420	3-1-05	Adopt	1-1-05
125-247-0700	3-1-05	Adopt	1-1-05	125-249-0430	3-1-05	Adopt	1-1-05
125-247-0710	3-1-05	Adopt	1-1-05	125-249-0440	3-1-05	Adopt	1-1-05
125-247-0720	3-1-05	Adopt	1-1-05	125-249-0450	3-1-05	Adopt	1-1-05
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125-247-0770	3-1-05	Adopt	1-1-05	125-249-0610	3-1-05	Adopt	1-1-05
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125-248-0340	3-1-05	Adopt	1-1-05	125-249-0870	3-1-05	Adopt	1-1-05
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125-249-0900	3-1-05	Adopt	1-1-05	137-003-0001	1-1-06	Amend	12-1-05
125-249-0910	3-1-05	Adopt	1-1-05	137-003-0075	1-1-06	Amend	12-1-05
125-249-0910	8-3-05	Amend	9-1-05	137-003-0515	1-1-06	Amend	12-1-05
125-300-0000	3-1-05	Repeal	3-1-05	137-003-0520	1-1-06	Amend	12-1-05
125-300-0010	3-1-05	Repeal	3-1-05	137-003-0528	1-1-06	Amend	12-1-05
125-300-0050	3-1-05	Repeal	3-1-05	137-003-0550	1-1-06	Amend	12-1-05
125-300-0100	3-1-05	Repeal	3-1-05	137-003-0570	1-1-06	Amend	12-1-05
125-310-0005	3-1-05	Repeal	3-1-05	137-003-0580	1-1-06	Amend	12-1-05
125-310-0010	3-1-05	Repeal	3-1-05	137-003-0600	1-1-06	Amend	12-1-05
125-310-0012	3-1-05	Repeal	3-1-05	137-003-0615	1-1-06	Amend	12-1-05
125-310-0030	3-1-05	Repeal	3-1-05	137-003-0635	1-1-06	Amend	12-1-05
125-310-0035	3-1-05	Repeal	3-1-05	137-003-0655	1-1-06	Amend	12-1-05
125-310-0040	3-1-05	Repeal	3-1-05	137-003-0670	1-1-06	Amend	12-1-05
125-310-0044	3-1-05	Repeal	3-1-05	137-003-0672	1-1-06	Adopt	12-1-05
125-310-0060	3-1-05	Repeal	3-1-05	137-003-0690	1-1-06	Amend	12-1-05
125-310-0090	3-1-05	Repeal	3-1-05	137-004-0800	1-1-06	Amend	12-1-05
125-310-0135	3-1-05	Repeal	3-1-05	137-005-0040	10-31-05	Amend	12-1-05
125-310-0180	3-1-05	Repeal	3-1-05	137-005-0300	10-31-05	Repeal	12-1-05
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125-310-0300	3-1-05	Repeal	3-1-05	137-008-0010	2-1-05	Amend	3-1-05
125-310-0400	3-1-05	Repeal	3-1-05	137-008-0010	11-2-05	Amend(T)	12-1-05
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125-320-0010	3-1-05	Repeal	3-1-05	137-008-0120	2-2-06	Adopt	12-1-05
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125-320-0025	3-1-05	Repeal	3-1-05	137-009-0000	9-2-05	Repeal	10-1-05
125-330-0030	3-1-05	Repeal	3-1-05	137-009-0005	3-18-05	Suspend	5-1-05
125-330-0140	3-1-05	Repeal	3-1-05	137-009-0005	9-2-05	Repeal	10-1-05
125-330-0200	3-1-05	Repeal	3-1-05	137-009-0010	3-18-05	Suspend	5-1-05
125-330-0260	3-1-05	Repeal	3-1-05	137-009-0010	9-2-05	Repeal	10-1-05
125-330-0330	3-1-05	Repeal	3-1-05	137-009-0045	3-18-05	Suspend	5-1-05
125-330-0340	3-1-05	Repeal	3-1-05	137-009-0045	9-2-05	Repeal	10-1-05
125-330-0450	3-1-05	Repeal	3-1-05	137-009-0060	3-18-05	Suspend	5-1-05
125-330-0500	3-1-05	Repeal	3-1-05	137-009-0060	9-2-05	Repeal	10-1-05
125-330-0600	3-1-05	Repeal	3-1-05	137-009-0065	3-18-05	Suspend	5-1-05
125-330-0700	3-1-05	Repeal	3-1-05	137-009-0065	9-2-05	Repeal	10-1-05
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125-360-0020	3-1-05	Repeal	3-1-05	137-009-0100	9-2-05	Repeal	10-1-05
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137-001-0009	1-1-06	Amend	12-1-05	137-009-0135	9-2-05	Adopt	10-1-05
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137-001-0070	1-1-06	Amend	12-1-05	137-009-0150	9-2-05	Adopt	10-1-05
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137-009-0165	9-2-05	Adopt	10-1-05	137-055-6120	10-3-05	Amend	11-1-05
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137-055-1090	4-1-05	Adopt	5-1-05	137-055-6210	1-3-05	Amend	2-1-05
137-055-1100	4-1-05	Amend	5-1-05	137-055-6210	10-3-05	Amend	11-1-05
137-055-1100	10-3-05	Amend	11-1-05	137-055-6220	1-3-05	Amend	2-1-05
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137-055-1120	9-1-05	Amend(T)	10-1-05	137-055-6240	1-3-05	Amend	2-1-05
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137-055-1160	9-1-05	Amend(T)	10-1-05	137-076-0016	11-22-04	Adopt	1-1-05
137-055-1180	7-15-05	Amend	8-1-05	137-076-0018	11-22-04	Adopt	1-1-05
137-055-1180	9-1-05	Amend(T)	10-1-05	137-076-0020	11-22-04	Amend	1-1-05
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137-055-2140	7-15-05	Amend	8-1-05	137-086-0010	11-22-04	Adopt	1-1-05
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150-285B.722	12-31-04	Repeal	2-1-05	150-321.358(2)	12-31-04	Am. & Ren.	2-1-05
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167-001-0600	3-1-05	Adopt(T)	4-1-05	177-037-0010	11-3-05	Adopt(T)	12-1-05
167-001-0600	6-15-05	Adopt	7-1-05	177-037-0020	11-3-05	Adopt(T)	12-1-05
167-001-0605	3-1-05	Adopt(T)	4-1-05	177-037-0030	11-3-05	Adopt(T)	12-1-05
167-001-0605	6-15-05	Adopt	7-1-05	177-037-0040	11-3-05	Adopt(T)	12-1-05
167-001-0620	3-1-05	Adopt(T)	4-1-05	177-037-0050	11-3-05	Adopt(T)	12-1-05
167-001-0620	6-15-05	Adopt	7-1-05	177-037-0060	11-3-05	Adopt(T)	12-1-05
167-001-0625	3-1-05	Adopt(T)	4-1-05	177-037-0070	11-3-05	Adopt(T)	12-1-05
167-001-0625	6-15-05	Adopt	7-1-05	177-040-0017	9-7-05	Amend(T)	10-1-05
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167-001-0630	6-15-05	Adopt	7-1-05	177-040-0026	7-31-05	Amend	5-1-05
167-001-0635	3-1-05	Adopt(T)	4-1-05	177-040-0026	7-31-05	Amend(T)	9-1-05
167-001-0635	6-15-05	Adopt	7-1-05	177-040-0027	7-31-05	Adopt	5-1-05
170-060-1010	11-18-04	Amend	1-1-05	177-040-0028	7-31-05	Adopt	5-1-05
170-060-1010	10-6-05	Amend(T)	11-1-05	177-040-0029	7-31-05	Adopt	5-1-05
170-061-0015	4-22-05	Amend	6-1-05	177-046-0020	11-2-05	Amend(T)	12-1-05
177-035-0000	11-3-05	Suspend	12-1-05	177-046-0110	11-2-05	Amend(T)	12-1-05
177-035-0110	11-3-05	Suspend	12-1-05	177-050-0025	11-2-05	Amend(T)	12-1-05

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177-050-0027	4-28-05	Amend	6-1-05	257-070-0040	8-21-05	Amend	8-1-05
177-050-0027	11-2-05	Amend(T)	12-1-05	257-090-0010	9-22-05	Adopt	11-1-05
177-070-0025	11-2-05	Amend(T)	12-1-05	259-008-0040	8-5-05	Amend	9-1-05
177-070-0035	11-2-05	Amend(T)	12-1-05	259-008-0068	4-1-05	Amend(T)	5-1-05
177-085-0005	8-28-05	Amend(T)	9-1-05	259-008-0068	9-28-05	Amend	11-1-05
177-085-0015	8-28-05	Amend(T)	9-1-05	259-008-0068(T)	9-28-05	Repeal	11-1-05
177-085-0020	8-28-05	Amend(T)	9-1-05	259-009-0060	1-28-05	Adopt(T)	3-1-05
177-085-0025	8-28-05	Amend(T)	9-1-05	259-009-0061	8-4-05	Adopt(T)	9-1-05
177-085-0030	8-28-05	Amend(T)	9-1-05	259-009-0080	5-24-05	Amend	7-1-05
177-085-0035	8-28-05	Amend(T)	9-1-05	259-009-0085	5-24-05	Amend	7-1-05
177-085-0065	8-28-05	Amend(T)	9-1-05	259-060-0010	10-14-05	Amend	11-1-05
177-100-0010	5-20-05	Amend(T)	7-1-05	259-060-0015	10-14-05	Amend	11-1-05
177-100-0010	9-1-05	Amend	10-1-05	259-060-0020	10-14-05	Amend	11-1-05
177-100-0180	5-20-05	Amend(T)	7-1-05	259-060-0120	5-1-05	Amend(T)	6-1-05
177-100-0180	9-1-05	Amend	10-1-05	259-060-0120	10-14-05	Amend	11-1-05
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177-200-0065	5-1-05	Amend	5-1-05	259-060-0300	8-3-05	Amend(T)	9-1-05
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213-019-0008	10-14-05	Amend(T)	11-1-05	259-060-0500	10-14-05	Amend	11-1-05
213-019-0010	10-14-05	Amend(T)	11-1-05	259-060-0500(T)	10-14-05	Repeal	11-1-05
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257-010-0035	9-12-05	Amend	10-1-05	274-028-0035	4-22-05	Amend	6-1-05
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274-045-0080	7-22-05	Amend	9-1-05	291-086-0047	3-21-05	Adopt	5-1-05
274-045-0080	10-24-05	Amend	12-1-05	291-086-0050	3-21-05	Amend	5-1-05
274-045-0080(T)	7-22-05	Repeal	9-1-05	291-086-0060	3-21-05	Adopt	5-1-05
274-045-0090	10-24-05	Amend	12-1-05	291-100-0005	4-13-05	Amend	5-1-05
274-045-0150	4-22-05	Amend	6-1-05	291-100-0008	4-13-05	Amend	5-1-05
274-045-0190	4-22-05	Amend	6-1-05	291-100-0013	4-13-05	Amend	5-1-05
274-045-0220	4-22-05	Amend	6-1-05	291-100-0070	4-13-05	Amend	5-1-05
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291-022-0130	5-24-05	Adopt	7-1-05	291-100-0160	4-13-05	Adopt	5-1-05
291-022-0140	5-24-05	Adopt	7-1-05	291-104-0010	9-7-05	Amend(T)	10-1-05
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291-062-0150	8-22-05	Amend	10-1-05	291-105-0072	7-24-05	Amend	9-1-05
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291-082-0030	1-7-05	Amend(T)	2-1-05	291-127-0260	3-14-05	Amend	4-1-05
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291-180-0065	2-24-05	Repeal	4-1-05	291-180-0565	2-24-05	Adopt	4-1-05
291-180-0070	2-24-05	Repeal	4-1-05	291-180-0575	2-24-05	Adopt	4-1-05
291-180-0071	2-24-05	Repeal	4-1-05	291-180-0585	2-24-05	Adopt	4-1-05
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291-180-0073	2-24-05	Repeal	4-1-05	291-180-0605	2-24-05	Adopt	4-1-05
291-180-0075	2-24-05	Repeal	4-1-05	291-180-0615	2-24-05	Adopt	4-1-05
291-180-0080	2-24-05	Repeal	4-1-05	291-180-0625	2-24-05	Adopt	4-1-05
291-180-0085	2-24-05	Repeal	4-1-05	291-180-0635	2-24-05	Adopt	4-1-05
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291-180-0095	2-24-05	Repeal	4-1-05	291-180-0655	2-24-05	Adopt	4-1-05
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291-180-0295	2-24-05	Adopt	4-1-05	309-032-1265	7-1-05	Adopt	8-1-05
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291-180-0425	2-24-05	Adopt	4-1-05	309-032-1300	1-3-05	Adopt(T)	2-1-05
291-180-0435	2-24-05	Adopt	4-1-05	309-032-1300	7-1-05	Adopt	8-1-05
291-180-0445	2-24-05	Adopt	4-1-05	309-032-1305	1-3-05	Adopt(T)	2-1-05
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

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309-035-0130	4-1-05	Amend	5-1-05	309-040-0090	4-1-05	Am. & Ren.	5-1-05
309-035-0135	4-1-05	Amend	5-1-05	309-040-0092	4-1-05	Am. & Ren.	5-1-05
309-035-0140	4-1-05	Amend	5-1-05	309-040-0093	4-1-05	Am. & Ren.	5-1-05
309-035-0145	4-1-05	Amend	5-1-05	309-040-0095	4-1-05	Am. & Ren.	5-1-05
309-035-0150	4-1-05	Amend	5-1-05	309-040-0097	4-1-05	Am. & Ren.	5-1-05
309-035-0155	4-1-05	Amend	5-1-05	309-040-0098	4-1-05	Am. & Ren.	5-1-05
309-035-0157	4-1-05	Amend	5-1-05	309-040-0099	4-1-05	Am. & Ren.	5-1-05
309-035-0159	4-1-05	Amend	5-1-05	309-040-0100	4-1-05	Am. & Ren.	5-1-05
309-035-0165	4-1-05	Amend	5-1-05	309-040-0370	4-1-05	Adopt	5-1-05
309-035-0167	4-1-05	Amend	5-1-05	309-040-0375	4-1-05	Adopt	5-1-05
309-035-0170	4-1-05	Amend	5-1-05	309-040-0380	4-1-05	Adopt	5-1-05
309-035-0175	4-1-05	Amend	5-1-05	309-040-0385	4-1-05	Adopt	5-1-05
309-035-0185	4-1-05	Amend	5-1-05	309-046-0100	1-1-05	Am. & Ren.	1-1-05
309-035-0190	4-1-05	Amend	5-1-05	309-046-0110	1-1-05	Am. & Ren.	1-1-05
309-035-0250	4-1-05	Amend	5-1-05	309-046-0120	1-1-05	Am. & Ren.	1-1-05
309-035-0260	4-1-05	Amend	5-1-05	309-046-0130	1-1-05	Am. & Ren.	1-1-05
309-035-0270	4-1-05	Amend	5-1-05	309-046-0140	1-1-05	Am. & Ren.	1-1-05
309-035-0280	4-1-05	Amend	5-1-05	309-046-0150	1-1-05	Am. & Ren.	1-1-05
309-035-0290	4-1-05	Amend	5-1-05	309-046-0160	1-1-05	Am. & Ren.	1-1-05
309-035-0300	4-1-05	Amend	5-1-05	309-046-0170	1-1-05	Am. & Ren.	1-1-05
309-035-0310	4-1-05	Amend	5-1-05	309-046-0180	1-1-05	Am. & Ren.	1-1-05
309-035-0320	4-1-05	Amend	5-1-05	309-046-0190	1-1-05	Am. & Ren.	1-1-05
309-035-0330	4-1-05	Amend	5-1-05	309-046-0200	1-1-05	Am. & Ren.	1-1-05
309-035-0340	4-1-05	Amend	5-1-05	309-046-0210	1-1-05	Am. & Ren.	1-1-05
309-035-0350	4-1-05	Amend	5-1-05	309-046-0220	1-1-05	Am. & Ren.	1-1-05
309-035-0360	4-1-05	Amend	5-1-05	309-046-0230	1-1-05	Repeal	1-1-05
309-035-0370	4-1-05	Amend	5-1-05	309-046-0240	1-1-05	Am. & Ren.	1-1-05
309-035-0380	4-1-05	Amend	5-1-05	309-120-0000	7-7-05	Amend(T)	8-1-05
309-035-0390	4-1-05	Amend	5-1-05	309-120-0005	7-7-05	Amend(T)	8-1-05
309-035-0400	4-1-05	Amend	5-1-05	309-120-0015	7-7-05	Suspend	8-1-05
309-035-0410	4-1-05	Amend	5-1-05	309-120-0020	7-7-05	Suspend	8-1-05
309-035-0420	4-1-05	Amend	5-1-05	309-120-0021	7-7-05	Adopt(T)	8-1-05
309-035-0430	4-1-05	Amend	5-1-05	309-120-0070	7-15-05	Adopt(T)	8-1-05
309-035-0440	4-1-05	Amend	5-1-05	309-120-0075	7-15-05	Adopt(T)	8-1-05
309-035-0450	4-1-05	Amend	5-1-05	309-120-0080	7-15-05	Adopt(T)	8-1-05
309-035-0460	4-1-05	Amend	5-1-05	325-001-0001	9-26-05	Adopt	11-1-05
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309-040-0005	4-1-05	Am. & Ren.	5-1-05	325-005-0010	7-1-05	Adopt(T)	7-1-05
309-040-0010	4-1-05	Am. & Ren.	5-1-05	330-100-0000	12-20-04	Amend	2-1-05
309-040-0011	4-1-05	Am. & Ren.	5-1-05	330-100-0005	12-20-04	Amend	2-1-05
309-040-0012	4-1-05	Am. & Ren.	5-1-05	330-105-0005	12-20-04	Amend	2-1-05
309-040-0015	4-1-05	Am. & Ren.	5-1-05	330-105-0007	12-20-04	Amend	2-1-05
309-040-0020	4-1-05	Am. & Ren.	5-1-05	330-105-0008	12-20-04	Amend	2-1-05
309-040-0025	4-1-05	Am. & Ren.	5-1-05	330-105-0015	12-20-04	Amend	2-1-05
309-040-0030	4-1-05	Am. & Ren.	5-1-05	330-105-0020	12-20-04	Amend	2-1-05
309-040-0035	4-1-05	Am. & Ren.	5-1-05	330-105-0025	12-20-04	Amend	2-1-05
309-040-0040	4-1-05	Am. & Ren.	5-1-05	330-105-0030	12-20-04	Amend	2-1-05
309-040-0045	4-1-05	Am. & Ren.	5-1-05	330-105-0035	12-20-04	Amend	2-1-05
309-040-0050	4-1-05	Am. & Ren.	5-1-05	330-105-0040	12-20-04	Amend	2-1-05
309-040-0052	4-1-05	Am. & Ren.	5-1-05	330-105-0045	12-20-04	Amend	2-1-05
309-040-0055	4-1-05	Am. & Ren.	5-1-05	330-110-0005	12-20-04	Amend	2-1-05
309-040-0057	4-1-05	Am. & Ren.	5-1-05	330-110-0010	12-20-04	Amend	2-1-05
309-040-0060	4-1-05	Am. & Ren.	5-1-05	330-110-0015	12-20-04	Amend	2-1-05
309-040-0065	4-1-05	Am. & Ren.	5-1-05	330-110-0016	12-20-04	Amend	2-1-05
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330-110-0030	12-20-04	Amend	2-1-05	333-024-0232	12-7-04	Amend	1-1-05
330-110-0035	12-20-04	Amend	2-1-05	333-024-0232(T)	12-7-04	Repeal	1-1-05
330-110-0036	12-20-04	Amend	2-1-05	333-024-0235	12-7-04	Amend	1-1-05
330-110-0040	12-20-04	Amend	2-1-05	333-024-0235(T)	12-7-04	Repeal	1-1-05
330-110-0042	12-20-04	Amend	2-1-05	333-024-0240	12-7-04	Amend	1-1-05
330-110-0045	12-20-04	Amend	2-1-05	333-024-0240(T)	12-7-04	Repeal	1-1-05
330-110-0050	12-20-04	Amend	2-1-05	333-024-0241	12-7-04	Adopt	1-1-05
330-110-0055	12-20-04	Amend	2-1-05	333-024-0241(T)	12-7-04	Repeal	1-1-05
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331-715-0010	3-1-05	Amend	4-1-05	333-029-0050	1-14-05	Amend	2-1-05
331-720-0010	3-1-05	Amend	4-1-05	333-029-0075	1-14-05	Amend	2-1-05
333-004-0000	2-18-05	Adopt	4-1-05	333-030-0015	1-14-05	Amend	2-1-05
333-004-0010	2-18-05	Adopt	4-1-05	333-030-0040	1-14-05	Amend	2-1-05
333-004-0020	2-18-05	Adopt	4-1-05	333-030-0045	1-14-05	Amend	2-1-05
333-004-0030	2-18-05	Adopt	4-1-05	333-030-0050	1-14-05	Amend	2-1-05
333-004-0040	2-18-05	Adopt	4-1-05	333-030-0080	1-14-05	Amend	2-1-05
333-004-0050	2-18-05	Adopt	4-1-05	333-030-0085	1-14-05	Amend	2-1-05
333-004-0060	2-18-05	Adopt	4-1-05	333-030-0120	1-14-05	Amend	2-1-05
333-004-0070	2-18-05	Adopt	4-1-05	333-031-0002	1-14-05	Amend	2-1-05
333-004-0080	2-18-05	Adopt	4-1-05	333-031-0004	1-14-05	Amend	2-1-05
333-004-0090	2-18-05	Adopt	4-1-05	333-031-0006	1-14-05	Amend	2-1-05
333-004-0100	2-18-05	Adopt	4-1-05	333-031-0010	1-14-05	Amend	2-1-05
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333-004-0140	2-18-05	Adopt	4-1-05	333-039-0015	7-21-05	Amend(T)	9-1-05
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333-004-0170	2-18-05	Adopt	4-1-05	333-050-0010	2-3-05	Amend	3-1-05
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333-004-0190	2-18-05	Adopt	4-1-05	333-050-0020	2-3-05	Amend	3-1-05
333-008-0020	1-1-05	Amend	2-1-05	333-050-0020(T)	2-3-05	Repeal	3-1-05
333-012-0250	6-21-05	Amend	7-1-05	333-050-0030	2-3-05	Amend	3-1-05
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333-018-0005	7-5-05	Amend	8-1-05	333-050-0040	2-3-05	Amend	3-1-05
333-018-0010	7-5-05	Amend	8-1-05	333-050-0040(T)	2-3-05	Repeal	3-1-05
333-018-0015	7-5-05	Amend	8-1-05	333-050-0050	2-3-05	Amend	3-1-05
333-018-0018	7-5-05	Amend	8-1-05	333-050-0050(T)	2-3-05	Repeal	3-1-05
333-019-0002	7-5-05	Amend	8-1-05	333-050-0060	2-3-05	Amend	3-1-05
333-019-0005	7-5-05	Amend	8-1-05	333-050-0060(T)	2-3-05	Repeal	3-1-05
333-019-0010	7-5-05	Amend	8-1-05	333-050-0080	2-3-05	Amend	3-1-05
333-019-0015	7-5-05	Repeal	8-1-05	333-050-0080(T)	2-3-05	Repeal	3-1-05
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333-019-0041	6-21-05	Amend	7-1-05	333-050-0090(T)	2-3-05	Repeal	3-1-05
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333-024-0215	12-7-04	Amend	1-1-05	333-050-0130	2-3-05	Amend	3-1-05
333-024-0215(T)	12-7-04	Repeal	1-1-05	333-050-0130(T)	2-3-05	Repeal	3-1-05
333-024-0220	12-7-04	Amend	1-1-05	333-050-0140	2-3-05	Amend	3-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-050-0140(T)	2-3-05	Repeal	3-1-05
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333-024-0225(T)	12-7-04	Repeal	1-1-05	333-054-0010	5-2-05	Amend(T)	6-1-05
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333-054-0030	5-2-05	Amend(T)	6-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-054-0030	10-28-05	Amend	12-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-054-0030(T)	10-28-05	Repeal	12-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-054-0040	10-28-05	Amend	12-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-054-0050	5-2-05	Amend(T)	6-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-054-0050	10-28-05	Amend	12-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-054-0050(T)	10-28-05	Repeal	12-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-054-0060	5-2-05	Amend(T)	6-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-054-0060	10-28-05	Amend	12-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-054-0060(T)	10-28-05	Repeal	12-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-054-0070	10-28-05	Amend	12-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-054-0100	5-2-05	Amend(T)	6-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-054-0100	10-28-05	Repeal	12-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-064-0025	7-1-05	Amend	7-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-064-0035	7-1-05	Amend	7-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-064-0070	7-1-05	Amend	7-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-100-0001	12-1-04	Amend	1-1-05	333-102-0135(T)	12-1-04	Repeal	1-1-05
333-100-0001(T)	12-1-04	Repeal	1-1-05	333-102-0190	12-1-04	Adopt	1-1-05
333-100-0005	12-1-04	Amend	1-1-05	333-102-0190(T)	12-1-04	Repeal	1-1-05
333-100-0005(T)	12-1-04	Repeal	1-1-05	333-102-0200	12-1-04	Amend	1-1-05
333-100-0057	12-1-04	Adopt	1-1-05	333-102-0200(T)	12-1-04	Repeal	1-1-05
333-100-0057(T)	12-1-04	Repeal	1-1-05	333-102-0203	12-1-04	Amend	1-1-05
333-100-0060	12-1-04	Amend	1-1-05	333-102-0203(T)	12-1-04	Repeal	1-1-05
333-100-0060(T)	12-1-04	Repeal	1-1-05	333-102-0225	12-1-04	Repeal	1-1-05
333-100-0065	12-1-04	Amend	1-1-05	333-102-0235	12-1-04	Amend	1-1-05
333-100-0065(T)	12-1-04	Repeal	1-1-05	333-102-0235(T)	12-1-04	Repeal	1-1-05
333-100-0070	12-1-04	Amend	1-1-05	333-102-0240	12-1-04	Repeal	1-1-05
333-100-0070(T)	12-1-04	Repeal	1-1-05	333-102-0245	12-1-04	Amend	1-1-05
333-100-0080	12-1-04	Adopt	1-1-05	333-102-0245(T)	12-1-04	Repeal	1-1-05
333-100-0080(T)	12-1-04	Repeal	1-1-05	333-102-0247	12-1-04	Adopt	1-1-05
333-101-0001	12-1-04	Amend	1-1-05	333-102-0247(T)	12-1-04	Repeal	1-1-05
333-101-0001(T)	12-1-04	Repeal	1-1-05	333-102-0250	12-1-04	Amend	1-1-05
333-101-0003	12-1-04	Adopt	1-1-05	333-102-0250(T)	12-1-04	Repeal	1-1-05
333-101-0003(T)	12-1-04	Repeal	1-1-05	333-102-0255	12-1-04	Amend	1-1-05
333-101-0010	12-1-04	Amend	1-1-05	333-102-0255(T)	12-1-04	Repeal	1-1-05
333-101-0010(T)	12-1-04	Repeal	1-1-05	333-102-0260	12-1-04	Amend	1-1-05
333-101-0020	4-11-05	Amend	5-1-05	333-102-0260(T)	12-1-04	Repeal	1-1-05
333-102-0001	12-1-04	Amend	1-1-05	333-102-0265	12-1-04	Amend	1-1-05
333-102-0001(T)	12-1-04	Repeal	1-1-05	333-102-0265(T)	12-1-04	Repeal	1-1-05
333-102-0005	12-1-04	Amend	1-1-05	333-102-0270	12-1-04	Amend	1-1-05
333-102-0005(T)	12-1-04	Repeal	1-1-05	333-102-0270(T)	12-1-04	Repeal	1-1-05
333-102-0010	12-1-04	Amend	1-1-05	333-102-0275	12-1-04	Amend	1-1-05
333-102-0010(T)	12-1-04	Repeal	1-1-05	333-102-0275(T)	12-1-04	Repeal	1-1-05
333-102-0015	12-1-04	Amend	1-1-05	333-102-0285	12-1-04	Amend	1-1-05
333-102-0015(T)	12-1-04	Repeal	1-1-05	333-102-0285(T)	12-1-04	Repeal	1-1-05
333-102-0020	12-1-04	Amend	1-1-05	333-102-0287	12-1-04	Repeal	1-1-05
333-102-0020(T)	12-1-04	Repeal	1-1-05	333-102-0290	12-1-04	Amend	1-1-05
333-102-0025	12-1-04	Amend	1-1-05	333-102-0290(T)	12-1-04	Repeal	1-1-05
333-102-0025(T)	12-1-04	Repeal	1-1-05	333-102-0293	12-1-04	Amend	1-1-05
333-102-0030	12-1-04	Amend	1-1-05	333-102-0293(T)	12-1-04	Repeal	1-1-05
333-102-0030(T)	12-1-04	Repeal	1-1-05	333-102-0295	12-1-04	Repeal	1-1-05
333-102-0035	12-1-04	Amend	1-1-05	333-102-0300	12-1-04	Amend	1-1-05
333-102-0035(T)	12-1-04	Repeal	1-1-05	333-102-0300(T)	12-1-04	Repeal	1-1-05
333-102-0040	12-1-04	Adopt	1-1-05	333-102-0305	12-1-04	Amend	1-1-05

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333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05
333-102-0330	12-1-04	Amend	1-1-05	333-105-0460(T)	12-1-04	Repeal	1-1-05
333-102-0330(T)	12-1-04	Repeal	1-1-05	333-105-0470	12-1-04	Adopt	1-1-05
333-102-0335	12-1-04	Amend	1-1-05	333-105-0470(T)	12-1-04	Repeal	1-1-05
333-102-0335(T)	12-1-04	Repeal	1-1-05	333-105-0480	12-1-04	Adopt	1-1-05
333-102-0340	12-1-04	Amend	1-1-05	333-105-0480(T)	12-1-04	Repeal	1-1-05
333-102-0340(T)	12-1-04	Repeal	1-1-05	333-105-0490	12-1-04	Adopt	1-1-05
333-102-0350	12-1-04	Adopt	1-1-05	333-105-0490(T)	12-1-04	Repeal	1-1-05
333-102-0350(T)	12-1-04	Repeal	1-1-05	333-105-0500	12-1-04	Adopt	1-1-05
333-102-0355	12-1-04	Adopt	1-1-05	333-105-0500(T)	12-1-04	Repeal	1-1-05
333-102-0355(T)	12-1-04	Repeal	1-1-05	333-105-0510	12-1-04	Adopt	1-1-05
333-102-0360	12-1-04	Adopt	1-1-05	333-105-0510(T)	12-1-04	Repeal	1-1-05
333-102-0360(T)	12-1-04	Repeal	1-1-05	333-105-0520	12-1-04	Adopt	1-1-05
333-102-0365	12-1-04	Adopt	1-1-05	333-105-0520(T)	12-1-04	Repeal	1-1-05
333-102-0365(T)	12-1-04	Repeal	1-1-05	333-105-0530	12-1-04	Adopt	1-1-05
333-103-0015	12-1-04	Amend	1-1-05	333-105-0530(T)	12-1-04	Repeal	1-1-05
333-103-0015(T)	12-1-04	Repeal	1-1-05	333-105-0540	12-1-04	Adopt	1-1-05
333-105-0001	12-1-04	Amend	1-1-05	333-105-0540(T)	12-1-04	Repeal	1-1-05
333-105-0001(T)	12-1-04	Repeal	1-1-05	333-105-0550	12-1-04	Adopt	1-1-05
333-105-0003	12-1-04	Adopt	1-1-05	333-105-0550(T)	12-1-04	Repeal	1-1-05
333-105-0003(T)	12-1-04	Repeal	1-1-05	333-105-0560	12-1-04	Adopt	1-1-05
333-105-0005	12-1-04	Amend	1-1-05	333-105-0560(T)	12-1-04	Repeal	1-1-05
333-105-0005(T)	12-1-04	Repeal	1-1-05	333-105-0570	12-1-04	Adopt	1-1-05
333-105-0050	12-1-04	Adopt	1-1-05	333-105-0570(T)	12-1-04	Repeal	1-1-05
333-105-0050(T)	12-1-04	Repeal	1-1-05	333-105-0580	12-1-04	Adopt	1-1-05
333-105-0075	12-1-04	Adopt	1-1-05	333-105-0580(T)	12-1-04	Repeal	1-1-05
333-105-0075(T)	12-1-04	Repeal	1-1-05	333-105-0590	12-1-04	Adopt	1-1-05
333-105-0101	12-1-04	Repeal	1-1-05	333-105-0590(T)	12-1-04	Repeal	1-1-05
333-105-0105	12-1-04	Repeal	1-1-05	333-105-0600	12-1-04	Adopt	1-1-05
333-105-0110	12-1-04	Repeal	1-1-05	333-105-0600(T)	12-1-04	Repeal	1-1-05
333-105-0115	12-1-04	Repeal	1-1-05	333-105-0610	12-1-04	Adopt	1-1-05
333-105-0120	12-1-04	Repeal	1-1-05	333-105-0610(T)	12-1-04	Repeal	1-1-05
333-105-0125	12-1-04	Repeal	1-1-05	333-105-0620	12-1-04	Adopt	1-1-05
333-105-0130	12-1-04	Repeal	1-1-05	333-105-0620(T)	12-1-04	Repeal	1-1-05
333-105-0135	12-1-04	Repeal	1-1-05	333-105-0630	12-1-04	Adopt	1-1-05
333-105-0140	12-1-04	Repeal	1-1-05	333-105-0630(T)	12-1-04	Repeal	1-1-05
333-105-0201	12-1-04	Repeal	1-1-05	333-105-0640	12-1-04	Adopt	1-1-05
333-105-0202	12-1-04	Repeal	1-1-05	333-105-0640(T)	12-1-04	Repeal	1-1-05
333-105-0205	12-1-04	Repeal	1-1-05	333-105-0650	12-1-04	Adopt	1-1-05
333-105-0210	12-1-04	Repeal	1-1-05	333-105-0650(T)	12-1-04	Repeal	1-1-05
333-105-0301	12-1-04	Repeal	1-1-05	333-105-0660	12-1-04	Adopt	1-1-05
333-105-0305	12-1-04	Repeal	1-1-05	333-105-0660(T)	12-1-04	Repeal	1-1-05
333-105-0310	12-1-04	Repeal	1-1-05	333-105-0670	12-1-04	Adopt	1-1-05
333-105-0315	12-1-04	Repeal	1-1-05	333-105-0670(T)	12-1-04	Repeal	1-1-05
333-105-0320	12-1-04	Repeal	1-1-05	333-105-0680	12-1-04	Adopt	1-1-05
333-105-0325	12-1-04	Repeal	1-1-05	333-105-0680(T)	12-1-04	Repeal	1-1-05
333-105-0330	12-1-04	Repeal	1-1-05	333-105-0690	12-1-04	Adopt	1-1-05
333-105-0335	12-1-04	Repeal	1-1-05	333-105-0690(T)	12-1-04	Repeal	1-1-05
333-105-0420	12-1-04	Adopt	1-1-05	333-105-0700	12-1-04	Adopt	1-1-05
333-105-0420(T)	12-1-04	Repeal	1-1-05	333-105-0700(T)	12-1-04	Repeal	1-1-05

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333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0025	12-1-04	Adopt	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0025(T)	12-1-04	Repeal	1-1-05
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0035	12-1-04	Adopt	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0035(T)	12-1-04	Repeal	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0040	12-1-04	Amend	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0040(T)	12-1-04	Repeal	1-1-05
333-105-0740(T)	12-1-04	Repeal	1-1-05	333-116-0050	12-1-04	Amend	1-1-05
333-105-0750	12-1-04	Adopt	1-1-05	333-116-0050(T)	12-1-04	Repeal	1-1-05
333-105-0750(T)	12-1-04	Repeal	1-1-05	333-116-0055	12-1-04	Adopt	1-1-05
333-105-0760	12-1-04	Adopt	1-1-05	333-116-0055(T)	12-1-04	Repeal	1-1-05
333-105-0760(T)	12-1-04	Repeal	1-1-05	333-116-0057	12-1-04	Adopt	1-1-05
333-106-0005	12-1-04	Amend	1-1-05	333-116-0057(T)	12-1-04	Repeal	1-1-05
333-106-0005	4-11-05	Amend	5-1-05	333-116-0059	12-1-04	Adopt	1-1-05
333-106-0005(T)	12-1-04	Repeal	1-1-05	333-116-0059(T)	12-1-04	Repeal	1-1-05
333-106-0035	12-1-04	Amend	1-1-05	333-116-0070	12-1-04	Amend	1-1-05
333-106-0035(T)	12-1-04	Repeal	1-1-05	333-116-0070(T)	12-1-04	Repeal	1-1-05
333-106-0045	12-1-04	Amend	1-1-05	333-116-0080	12-1-04	Amend	1-1-05
333-106-0045	4-11-05	Amend	5-1-05	333-116-0080(T)	12-1-04	Repeal	1-1-05
333-106-0045(T)	12-1-04	Repeal	1-1-05	333-116-0090	12-1-04	Amend	1-1-05
333-106-0055	12-1-04	Amend	1-1-05	333-116-0090(T)	12-1-04	Repeal	1-1-05
333-106-0055	4-11-05	Amend	5-1-05	333-116-0100	12-1-04	Amend	1-1-05
333-106-0055(T)	12-1-04	Repeal	1-1-05	333-116-0100(T)	12-1-04	Repeal	1-1-05
333-106-0101	12-1-04	Amend	1-1-05	333-116-0105	12-1-04	Adopt	1-1-05
333-106-0101	4-11-05	Amend	5-1-05	333-116-0105(T)	12-1-04	Repeal	1-1-05
333-106-0101(T)	12-1-04	Repeal	1-1-05	333-116-0107	12-1-04	Adopt	1-1-05
333-106-0105	12-1-04	Amend	1-1-05	333-116-0107(T)	12-1-04	Repeal	1-1-05
333-106-0105(T)	12-1-04	Repeal	1-1-05	333-116-0120	12-1-04	Amend	1-1-05
333-106-0210	12-1-04	Amend	1-1-05	333-116-0120(T)	12-1-04	Repeal	1-1-05
333-106-0210(T)	12-1-04	Repeal	1-1-05	333-116-0125	12-1-04	Amend	1-1-05
333-106-0220	12-1-04	Amend	1-1-05	333-116-0125(T)	12-1-04	Repeal	1-1-05
333-106-0220(T)	12-1-04	Repeal	1-1-05	333-116-0140	12-1-04	Amend	1-1-05
333-106-0325	12-1-04	Amend	1-1-05	333-116-0140(T)	12-1-04	Repeal	1-1-05
333-106-0325(T)	12-1-04	Repeal	1-1-05	333-116-0150	12-1-04	Amend	1-1-05
333-106-0370	4-11-05	Amend	5-1-05	333-116-0150(T)	12-1-04	Repeal	1-1-05
333-106-0512	4-11-05	Amend	5-1-05	333-116-0160	12-1-04	Amend	1-1-05
333-106-0575	12-1-04	Amend	1-1-05	333-116-0160(T)	12-1-04	Repeal	1-1-05
333-106-0575(T)	12-1-04	Repeal	1-1-05	333-116-0165	12-1-04	Adopt	1-1-05
333-106-0700	12-1-04	Amend	1-1-05	333-116-0165(T)	12-1-04	Repeal	1-1-05
333-106-0700(T)	12-1-04	Repeal	1-1-05	333-116-0170	12-1-04	Amend	1-1-05
333-106-0710	12-1-04	Amend	1-1-05	333-116-0170(T)	12-1-04	Repeal	1-1-05
333-106-0710	4-11-05	Amend	5-1-05	333-116-0180	12-1-04	Amend	1-1-05
333-106-0710(T)	12-1-04	Repeal	1-1-05	333-116-0180(T)	12-1-04	Repeal	1-1-05
333-106-0720	12-1-04	Amend	1-1-05	333-116-0190	12-1-04	Amend	1-1-05
333-106-0720	4-11-05	Amend	5-1-05	333-116-0190(T)	12-1-04	Repeal	1-1-05
333-106-0720(T)	12-1-04	Repeal	1-1-05	333-116-0200	12-1-04	Amend	1-1-05
333-106-0730	12-1-04	Amend	1-1-05	333-116-0200(T)	12-1-04	Repeal	1-1-05
333-106-0730	4-11-05	Amend	5-1-05	333-116-0250	12-1-04	Amend	1-1-05
333-106-0730(T)	12-1-04	Repeal	1-1-05	333-116-0250(T)	12-1-04	Repeal	1-1-05
333-106-0750	12-1-04	Adopt	1-1-05	333-116-0260	12-1-04	Amend	1-1-05
333-106-0750(T)	12-1-04	Repeal	1-1-05	333-116-0260(T)	12-1-04	Repeal	1-1-05
333-111-0010	12-1-04	Amend	1-1-05	333-116-0265	12-1-04	Adopt	1-1-05
333-111-0010(T)	12-1-04	Repeal	1-1-05	333-116-0265(T)	12-1-04	Repeal	1-1-05
333-116-0010	12-1-04	Amend	1-1-05	333-116-0290	12-1-04	Amend	1-1-05
333-116-0010(T)	12-1-04	Repeal	1-1-05	333-116-0290(T)	12-1-04	Repeal	1-1-05
333-116-0020	12-1-04	Amend	1-1-05	333-116-0300	12-1-04	Amend	1-1-05

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333-116-0310	12-1-04	Amend	1-1-05	333-116-0577(T)	12-1-04	Repeal	1-1-05
333-116-0310(T)	12-1-04	Repeal	1-1-05	333-116-0580	12-1-04	Amend	1-1-05
333-116-0320	12-1-04	Amend	1-1-05	333-116-0580(T)	12-1-04	Repeal	1-1-05
333-116-0320(T)	12-1-04	Repeal	1-1-05	333-116-0583	12-1-04	Adopt	1-1-05
333-116-0330	12-1-04	Amend	1-1-05	333-116-0583(T)	12-1-04	Repeal	1-1-05
333-116-0330(T)	12-1-04	Repeal	1-1-05	333-116-0585	12-1-04	Adopt	1-1-05
333-116-0340	12-1-04	Amend	1-1-05	333-116-0585(T)	12-1-04	Repeal	1-1-05
333-116-0340(T)	12-1-04	Repeal	1-1-05	333-116-0587	12-1-04	Adopt	1-1-05
333-116-0350	12-1-04	Amend	1-1-05	333-116-0587(T)	12-1-04	Repeal	1-1-05
333-116-0350(T)	12-1-04	Repeal	1-1-05	333-116-0590	12-1-04	Amend	1-1-05
333-116-0360	12-1-04	Amend	1-1-05	333-116-0590(T)	12-1-04	Repeal	1-1-05
333-116-0360(T)	12-1-04	Repeal	1-1-05	333-116-0600	12-1-04	Amend	1-1-05
333-116-0370	12-1-04	Amend	1-1-05	333-116-0600(T)	12-1-04	Repeal	1-1-05
333-116-0370(T)	12-1-04	Repeal	1-1-05	333-116-0605	12-1-04	Adopt	1-1-05
333-116-0380	12-1-04	Amend	1-1-05	333-116-0605(T)	12-1-04	Repeal	1-1-05
333-116-0380(T)	12-1-04	Repeal	1-1-05	333-116-0610	12-1-04	Amend	1-1-05
333-116-0390	12-1-04	Amend	1-1-05	333-116-0610(T)	12-1-04	Repeal	1-1-05
333-116-0390(T)	12-1-04	Repeal	1-1-05	333-116-0640	12-1-04	Amend	1-1-05
333-116-0410	12-1-04	Amend	1-1-05	333-116-0640(T)	12-1-04	Repeal	1-1-05
333-116-0410(T)	12-1-04	Repeal	1-1-05	333-116-0660	12-1-04	Amend	1-1-05
333-116-0420	12-1-04	Amend	1-1-05	333-116-0660	4-11-05	Amend	5-1-05
333-116-0420(T)	12-1-04	Repeal	1-1-05	333-116-0660(T)	12-1-04	Repeal	1-1-05
333-116-0430	12-1-04	Amend	1-1-05	333-116-0670	12-1-04	Amend	1-1-05
333-116-0430(T)	12-1-04	Repeal	1-1-05	333-116-0670(T)	12-1-04	Repeal	1-1-05
333-116-0440	12-1-04	Amend	1-1-05	333-116-0680	12-1-04	Amend	1-1-05
333-116-0440(T)	12-1-04	Repeal	1-1-05	333-116-0680	4-11-05	Amend	5-1-05
333-116-0450	12-1-04	Amend	1-1-05	333-116-0680(T)	12-1-04	Repeal	1-1-05
333-116-0450(T)	12-1-04	Repeal	1-1-05	333-116-0720	12-1-04	Amend	1-1-05
333-116-0460	12-1-04	Amend	1-1-05	333-116-0720(T)	12-1-04	Repeal	1-1-05
333-116-0460(T)	12-1-04	Repeal	1-1-05	333-116-0730	12-1-04	Amend	1-1-05
333-116-0470	12-1-04	Amend	1-1-05	333-116-0730(T)	12-1-04	Repeal	1-1-05
333-116-0470(T)	12-1-04	Repeal	1-1-05	333-116-0830	12-1-04	Amend	1-1-05
333-116-0480	12-1-04	Amend	1-1-05	333-116-0830(T)	12-1-04	Repeal	1-1-05
333-116-0480(T)	12-1-04	Repeal	1-1-05	333-116-0860	4-11-05	Amend	5-1-05
333-116-0490	12-1-04	Amend	1-1-05	333-116-0880	4-11-05	Amend	5-1-05
333-116-0490	4-11-05	Amend	5-1-05	333-116-0905	12-1-04	Adopt	1-1-05
333-116-0490(T)	12-1-04	Repeal	1-1-05	333-116-0905(T)	12-1-04	Repeal	1-1-05
333-116-0495	12-1-04	Adopt	1-1-05	333-116-0910	12-1-04	Adopt	1-1-05
333-116-0495(T)	12-1-04	Repeal	1-1-05	333-116-0910(T)	12-1-04	Repeal	1-1-05
333-116-0510	12-1-04	Repeal	1-1-05	333-116-0915	12-1-04	Adopt	1-1-05
333-116-0515	12-1-04	Adopt	1-1-05	333-116-0915(T)	12-1-04	Repeal	1-1-05
333-116-0515(T)	12-1-04	Repeal	1-1-05	333-118-0020	12-1-04	Amend	1-1-05
333-116-0525	12-1-04	Adopt	1-1-05	333-118-0020(T)	12-1-04	Repeal	1-1-05
333-116-0525(T)	12-1-04	Repeal	1-1-05	333-118-0040	12-1-04	Amend	1-1-05
333-116-0530	12-1-04	Amend	1-1-05	333-118-0040(T)	12-1-04	Repeal	1-1-05
333-116-0530(T)	12-1-04	Repeal	1-1-05	333-118-0050	12-1-04	Amend	1-1-05
333-116-0540	12-1-04	Amend	1-1-05	333-118-0050(T)	12-1-04	Repeal	1-1-05
333-116-0540	4-11-05	Amend	5-1-05	333-118-0060	12-1-04	Amend	1-1-05
333-116-0540(T)	12-1-04	Repeal	1-1-05	333-118-0060(T)	12-1-04	Repeal	1-1-05
333-116-0560	12-1-04	Amend	1-1-05	333-118-0070	12-1-04	Amend	1-1-05
333-116-0560(T)	12-1-04	Repeal	1-1-05	333-118-0070(T)	12-1-04	Repeal	1-1-05
333-116-0570	12-1-04	Amend	1-1-05	333-118-0080	12-1-04	Amend	1-1-05
333-116-0570(T)	12-1-04	Repeal	1-1-05	333-118-0080(T)	12-1-04	Repeal	1-1-05
333-116-0573	12-1-04	Adopt	1-1-05	333-118-0090	12-1-04	Amend	1-1-05
333-116-0573(T)	12-1-04	Repeal	1-1-05	333-118-0090(T)	12-1-04	Repeal	1-1-05

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333-118-0100	12-1-04	Amend	1-1-05	333-120-0215	12-1-04	Adopt	1-1-05
333-118-0100(T)	12-1-04	Repeal	1-1-05	333-120-0215(T)	12-1-04	Repeal	1-1-05
333-118-0110	12-1-04	Amend	1-1-05	333-120-0220	12-1-04	Amend	1-1-05
333-118-0110(T)	12-1-04	Repeal	1-1-05	333-120-0220(T)	12-1-04	Repeal	1-1-05
333-118-0120	12-1-04	Amend	1-1-05	333-120-0230	12-1-04	Amend	1-1-05
333-118-0120(T)	12-1-04	Repeal	1-1-05	333-120-0230(T)	12-1-04	Repeal	1-1-05
333-118-0130	12-1-04	Amend	1-1-05	333-120-0240	12-1-04	Amend	1-1-05
333-118-0130(T)	12-1-04	Repeal	1-1-05	333-120-0240(T)	12-1-04	Repeal	1-1-05
333-118-0140	12-1-04	Amend	1-1-05	333-120-0250	12-1-04	Amend	1-1-05
333-118-0140(T)	12-1-04	Repeal	1-1-05	333-120-0250(T)	12-1-04	Repeal	1-1-05
333-118-0150	12-1-04	Amend	1-1-05	333-120-0320	12-1-04	Amend	1-1-05
333-118-0150(T)	12-1-04	Repeal	1-1-05	333-120-0320(T)	12-1-04	Repeal	1-1-05
333-118-0160	12-1-04	Amend	1-1-05	333-120-0400	12-1-04	Amend	1-1-05
333-118-0160(T)	12-1-04	Repeal	1-1-05	333-120-0400(T)	12-1-04	Repeal	1-1-05
333-118-0170	12-1-04	Amend	1-1-05	333-120-0420	12-1-04	Amend	1-1-05
333-118-0170(T)	12-1-04	Repeal	1-1-05	333-120-0420(T)	12-1-04	Repeal	1-1-05
333-118-0180	12-1-04	Amend	1-1-05	333-120-0430	12-1-04	Amend	1-1-05
333-118-0180(T)	12-1-04	Repeal	1-1-05	333-120-0430(T)	12-1-04	Repeal	1-1-05
333-118-0190	12-1-04	Amend	1-1-05	333-120-0450	12-1-04	Amend	1-1-05
333-118-0190(T)	12-1-04	Repeal	1-1-05	333-120-0450(T)	12-1-04	Repeal	1-1-05
333-118-0200	12-1-04	Amend	1-1-05	333-120-0460	12-1-04	Amend	1-1-05
333-118-0200(T)	12-1-04	Repeal	1-1-05	333-120-0460(T)	12-1-04	Repeal	1-1-05
333-118-0800	12-1-04	Adopt	1-1-05	333-120-0520	12-1-04	Amend	1-1-05
333-118-0800(T)	12-1-04	Repeal	1-1-05	333-120-0520(T)	12-1-04	Repeal	1-1-05
333-119-0030	12-1-04	Amend	1-1-05	333-120-0540	12-1-04	Amend	1-1-05
333-119-0030(T)	12-1-04	Repeal	1-1-05	333-120-0540(T)	12-1-04	Repeal	1-1-05
333-119-0040	12-1-04	Amend	1-1-05	333-120-0550	12-1-04	Amend	1-1-05
333-119-0040(T)	12-1-04	Repeal	1-1-05	333-120-0550(T)	12-1-04	Repeal	1-1-05
333-119-0080	12-1-04	Amend	1-1-05	333-120-0560	12-1-04	Amend	1-1-05
333-119-0080(T)	12-1-04	Repeal	1-1-05	333-120-0560(T)	12-1-04	Repeal	1-1-05
333-119-0090	12-1-04	Amend	1-1-05	333-120-0600	12-1-04	Amend	1-1-05
333-119-0090(T)	12-1-04	Repeal	1-1-05	333-120-0600(T)	12-1-04	Repeal	1-1-05
333-119-0100	12-1-04	Amend	1-1-05	333-120-0610	12-1-04	Amend	1-1-05
333-119-0100(T)	12-1-04	Repeal	1-1-05	333-120-0610(T)	12-1-04	Repeal	1-1-05
333-119-0120	12-1-04	Amend	1-1-05	333-120-0640	12-1-04	Amend	1-1-05
333-119-0120(T)	12-1-04	Repeal	1-1-05	333-120-0640(T)	12-1-04	Repeal	1-1-05
333-120-0015	12-1-04	Adopt	1-1-05	333-120-0650	12-1-04	Amend	1-1-05
333-120-0015(T)	12-1-04	Repeal	1-1-05	333-120-0650(T)	12-1-04	Repeal	1-1-05
333-120-0017	12-1-04	Adopt	1-1-05	333-120-0660	12-1-04	Amend	1-1-05
333-120-0017(T)	12-1-04	Repeal	1-1-05	333-120-0660(T)	12-1-04	Repeal	1-1-05
333-120-0100	12-1-04	Amend	1-1-05	333-120-0670	12-1-04	Amend	1-1-05
333-120-0100(T)	12-1-04	Repeal	1-1-05	333-120-0670(T)	12-1-04	Repeal	1-1-05
333-120-0110	12-1-04	Amend	1-1-05	333-120-0680	12-1-04	Amend	1-1-05
333-120-0110(T)	12-1-04	Repeal	1-1-05	333-120-0680(T)	12-1-04	Repeal	1-1-05
333-120-0130	12-1-04	Amend	1-1-05	333-120-0700	12-1-04	Amend	1-1-05
333-120-0130(T)	12-1-04	Repeal	1-1-05	333-120-0700(T)	12-1-04	Repeal	1-1-05
333-120-0170	12-1-04	Amend	1-1-05	333-120-0710	12-1-04	Amend	1-1-05
333-120-0170(T)	12-1-04	Repeal	1-1-05	333-120-0710(T)	12-1-04	Repeal	1-1-05
333-120-0180	12-1-04	Amend	1-1-05	333-120-0720	12-1-04	Amend	1-1-05
333-120-0180(T)	12-1-04	Repeal	1-1-05	333-120-0720(T)	12-1-04	Repeal	1-1-05
333-120-0190	12-1-04	Amend	1-1-05	333-121-0001	4-11-05	Adopt	5-1-05
333-120-0190(T)	12-1-04	Repeal	1-1-05	333-121-0010	4-11-05	Adopt	5-1-05
333-120-0200	12-1-04	Amend	1-1-05	333-121-0020	4-11-05	Adopt	5-1-05
333-120-0200(T)	12-1-04	Repeal	1-1-05	333-121-0030	4-11-05	Adopt	5-1-05
333-120-0210	12-1-04	Amend	1-1-05	333-121-0040	4-11-05	Adopt	5-1-05
333-120-0210(T)	12-1-04	Repeal	1-1-05	333-121-0050	4-11-05	Adopt	5-1-05

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333-121-0100	4-11-05	Adopt	5-1-05	339-020-0010	8-11-05	Amend	9-1-05
333-121-0110	4-11-05	Adopt	5-1-05	339-020-0020	8-11-05	Amend	9-1-05
333-121-0120	4-11-05	Adopt	5-1-05	339-020-0030	8-11-05	Repeal	9-1-05
333-121-0130	4-11-05	Adopt	5-1-05	339-020-0040	8-11-05	Repeal	9-1-05
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333-121-0170	4-11-05	Adopt	5-1-05	339-020-0100	8-11-05	Amend	9-1-05
333-121-0180	4-11-05	Adopt	5-1-05	340-012-0026	6-1-05	Amend	6-1-05
333-121-0190	4-11-05	Adopt	5-1-05	340-012-0027	6-1-05	Adopt	6-1-05
333-121-0200	4-11-05	Adopt	5-1-05	340-012-0028	6-1-05	Amend	6-1-05
333-121-0300	4-11-05	Adopt	5-1-05	340-012-0030	6-1-05	Amend	6-1-05
333-121-0310	4-11-05	Adopt	5-1-05	340-012-0040	6-1-05	Am. & Ren.	6-1-05
333-121-0320	4-11-05	Adopt	5-1-05	340-012-0041	6-1-05	Amend	6-1-05
333-121-0330	4-11-05	Adopt	5-1-05	340-012-0042	6-1-05	Am. & Ren.	6-1-05
333-121-0340	4-11-05	Adopt	5-1-05	340-012-0045	6-1-05	Amend	6-1-05
333-121-0350	4-11-05	Adopt	5-1-05	340-012-0046	6-1-05	Repeal	6-1-05
333-121-0360	4-11-05	Adopt	5-1-05	340-012-0047	6-1-05	Am. & Ren.	6-1-05
333-121-0370	4-11-05	Adopt	5-1-05	340-012-0048	6-1-05	Am. & Ren.	6-1-05
333-121-0380	4-11-05	Adopt	5-1-05	340-012-0049	6-1-05	Am. & Ren.	6-1-05
333-121-0390	4-11-05	Adopt	5-1-05	340-012-0050	6-1-05	Am. & Ren.	6-1-05
333-121-0500	4-11-05	Adopt	5-1-05	340-012-0052	6-1-05	Repeal	6-1-05
333-121-0510	4-11-05	Adopt	5-1-05	340-012-0053	6-1-05	Adopt	6-1-05
333-150-0000	1-14-05	Amend	2-1-05	340-012-0055	6-1-05	Amend	6-1-05
333-505-0007	2-4-05	Amend	3-1-05	340-012-0060	3-1-05	Amend	3-1-05
333-535-0025	8-15-05	Amend	9-1-05	340-012-0065	6-1-05	Amend	6-1-05
333-535-0061	8-15-05	Amend	9-1-05	340-012-0066	6-1-05	Amend	6-1-05
333-535-0080	8-15-05	Amend	9-1-05	340-012-0067	6-1-05	Amend	6-1-05
333-535-0085	8-15-05	Amend	9-1-05	340-012-0068	6-1-05	Amend	6-1-05
333-535-0090	8-15-05	Amend	9-1-05	340-012-0071	6-1-05	Amend	6-1-05
333-535-0100	8-15-05	Amend	9-1-05	340-012-0072	6-1-05	Amend	6-1-05
333-535-0110	8-15-05	Amend	9-1-05	340-012-0073	6-1-05	Amend	6-1-05
333-535-0115	8-15-05	Amend	9-1-05	340-012-0074	6-1-05	Adopt	6-1-05
333-535-0120	8-15-05	Amend	9-1-05	340-012-0079	6-1-05	Adopt	6-1-05
333-535-0260	8-15-05	Amend	9-1-05	340-012-0081	6-1-05	Amend	6-1-05
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333-535-0300	8-15-05	Amend	9-1-05	340-012-0083	6-1-05	Amend	6-1-05
333-535-0310	8-15-05	Amend	9-1-05	340-012-0090	6-1-05	Am. & Ren.	6-1-05
333-700-0130	8-15-05	Amend	9-1-05	340-012-0097	6-1-05	Adopt	6-1-05
334-001-0012	6-24-05	Amend(T)	8-1-05	340-012-0130	6-1-05	Adopt	6-1-05
334-001-0012	7-1-05	Amend	8-1-05	340-012-0145	6-1-05	Adopt	6-1-05
334-001-0045	7-1-05	Amend	8-1-05	340-012-0150	6-1-05	Adopt	6-1-05
334-010-0010	9-19-05	Amend(T)	11-1-05	340-012-0160	6-1-05	Adopt	6-1-05
334-010-0050	2-23-05	Amend	4-1-05	340-012-0162	6-1-05	Adopt	6-1-05
335-005-0025	9-13-05	Amend	10-1-05	340-016-0055	11-19-04	Amend	1-1-05
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335-060-0060	9-13-05	Amend	10-1-05	340-045-0070	7-1-05	Amend	8-1-05
335-070-0040	9-13-05	Amend	10-1-05	340-045-0075	7-1-05	Amend	8-1-05
335-070-0060	9-13-05	Amend	10-1-05	340-071-0100	3-1-05	Amend	2-1-05
335-070-0080	9-13-05	Amend	10-1-05	340-071-0110	3-1-05	Amend	2-1-05
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335-095-0020	9-13-05	Repeal	10-1-05	340-071-0116	3-1-05	Am. & Ren.	2-1-05
335-095-0055	9-13-05	Adopt	10-1-05	340-071-0117	3-1-05	Am. & Ren.	2-1-05
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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
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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
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340-071-0285	3-1-05	Amend	2-1-05	340-142-0130	7-14-05	Amend	8-1-05
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340-071-0302	3-1-05	Amend	2-1-05	340-177-0095	7-14-05	Amend	8-1-05
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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	340-200-0040	9-9-05	Amend	10-1-05
340-071-0340	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0345	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
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340-071-0401	3-1-05	Repeal	2-1-05	340-204-0040	9-9-05	Amend	10-1-05
340-071-0410	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
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340-071-0520	3-1-05	Amend	2-1-05	340-225-0090	1-4-05	Amend	2-1-05
340-071-0600	3-1-05	Amend	2-1-05	340-230-0030	2-10-05	Amend	3-1-05
340-071-0650	3-1-05	Adopt	2-1-05	340-230-0410	2-10-05	Amend	3-1-05
340-073-0025	3-1-05	Amend	2-1-05	340-238-0040	2-10-05	Amend	3-1-05
340-073-0026	3-1-05	Amend	2-1-05	340-238-0060	2-10-05	Amend	3-1-05
340-073-0030	3-1-05	Amend	2-1-05	340-240-0030	1-4-05	Amend	2-1-05
340-073-0035	3-1-05	Amend	2-1-05	340-240-0100	1-4-05	Amend	2-1-05
340-073-0040	3-1-05	Amend	2-1-05	340-240-0110	1-4-05	Amend	2-1-05

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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
340-256-0340	7-12-05	Amend	8-1-05	350-081-0126	7-1-05	Adopt	7-1-05
340-256-0350	7-12-05	Amend	8-1-05	350-081-0170	7-1-05	Adopt	7-1-05
340-256-0380	7-12-05	Amend	8-1-05	350-081-0180	7-1-05	Adopt	7-1-05
340-256-0390	7-12-05	Amend	8-1-05	350-081-0182	7-1-05	Adopt	7-1-05
345-026-0170	5-23-05	Amend	7-1-05	350-081-0190	7-1-05	Adopt	7-1-05
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345-026-0330	5-23-05	Amend	7-1-05	350-081-0220	7-1-05	Adopt	7-1-05
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345-026-0360	5-23-05	Repeal	7-1-05	350-081-0234	7-1-05	Adopt	7-1-05
345-026-0370	5-23-05	Amend	7-1-05	350-081-0236	7-1-05	Adopt	7-1-05
345-026-0380	5-23-05	Repeal	7-1-05	350-081-0240	7-1-05	Adopt	7-1-05
345-026-0390	5-23-05	Amend	7-1-05	350-081-0250	7-1-05	Adopt	7-1-05
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350-081-0052	7-1-05	Adopt	7-1-05	350-081-0380	7-1-05	Adopt	7-1-05
350-081-0054	7-1-05	Adopt	7-1-05	350-081-0390	7-1-05	Adopt	7-1-05

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350-081-0410	7-1-05	Adopt	7-1-05	410-050-0481	2-1-05	Adopt	3-1-05
350-081-0415	7-1-05	Adopt	7-1-05	410-050-0491	2-1-05	Adopt	3-1-05
350-081-0420	7-1-05	Adopt	7-1-05	410-050-0501	2-1-05	Adopt	3-1-05
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350-081-0440	7-1-05	Adopt	7-1-05	410-050-0521	2-1-05	Adopt	3-1-05
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350-081-0530	7-1-05	Adopt	7-1-05	410-050-0730	5-7-05	Adopt	5-1-05
350-081-0540	7-1-05	Adopt	7-1-05	410-050-0740	5-7-05	Adopt	5-1-05
350-081-0550	7-1-05	Adopt	7-1-05	410-050-0750	5-7-05	Adopt	5-1-05
350-081-0560	7-1-05	Adopt	7-1-05	410-050-0760	5-7-05	Adopt	5-1-05
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350-081-0590	7-1-05	Adopt	7-1-05	410-050-0790	5-7-05	Adopt	5-1-05
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350-081-0620	7-1-05	Adopt	7-1-05	410-050-0820	5-7-05	Adopt	5-1-05
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410-003-0001	8-27-05	Repeal	10-1-05	410-050-0850	5-7-05	Adopt	5-1-05
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410-003-0003	8-27-05	Repeal	10-1-05	410-050-0860	5-7-05	Adopt	5-1-05
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410-007-0270	3-29-05	Amend	5-1-05	410-120-0000	10-1-05	Amend	10-1-05
410-007-0280	3-29-05	Amend	5-1-05	410-120-0025	10-1-05	Adopt	10-1-05
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410-007-0300	3-29-05	Amend	5-1-05	410-120-1140	10-1-05	Amend	10-1-05
410-007-0310	3-29-05	Amend	5-1-05	410-120-1160	10-1-05	Amend	10-1-05
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410-007-0330	3-29-05	Amend	5-1-05	410-120-1195	10-1-05	Amend	10-1-05
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410-007-0380	3-29-05	Amend	5-1-05	410-120-1210	10-1-05	Amend	10-1-05
410-050-0401	2-1-05	Adopt	3-1-05	410-120-1230	10-1-05	Amend	10-1-05
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410-050-0421	2-1-05	Adopt	3-1-05	410-120-1260	10-1-05	Amend	10-1-05
410-050-0431	2-1-05	Adopt	3-1-05	410-120-1280	4-1-05	Amend	4-1-05
410-050-0441	2-1-05	Adopt	3-1-05	410-120-1280	10-1-05	Amend	10-1-05
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410-120-1320	4-1-05	Amend	4-1-05	410-121-0157	11-1-05	Amend	12-1-05
410-120-1320	10-1-05	Amend	10-1-05	410-121-0157(T)	3-31-05	Repeal	4-1-05
410-120-1340	10-1-05	Amend	10-1-05	410-121-0157(T)	6-6-05	Repeal	7-1-05
410-120-1350	10-1-05	Amend	10-1-05	410-121-0160	4-1-05	Amend	5-1-05
410-120-1360	10-1-05	Amend	10-1-05	410-121-0185	4-1-05	Amend	4-1-05
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410-120-1385	10-1-05	Amend	10-1-05	410-121-0300	12-10-04	Amend(T)	1-1-05
410-120-1390	10-1-05	Amend	10-1-05	410-121-0300	2-1-05	Amend	3-1-05
410-120-1395	10-1-05	Adopt	10-1-05	410-121-0300	4-1-05	Amend(T)	5-1-05
410-120-1397	10-1-05	Adopt	10-1-05	410-121-0300	6-6-05	Amend	7-1-05
410-120-1400	10-1-05	Amend	10-1-05	410-121-0300	11-1-05	Amend	12-1-05
410-120-1420	10-1-05	Repeal	10-1-05	410-121-0300	11-12-05	Amend(T)	12-1-05
410-120-1440	10-1-05	Repeal	10-1-05	410-121-0300(T)	6-6-05	Repeal	7-1-05
410-120-1460	10-1-05	Amend	10-1-05	410-121-0320	1-1-05	Amend	2-1-05
410-120-1480	10-1-05	Repeal	10-1-05	410-122-0010	4-1-05	Amend	4-1-05
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410-120-1540	10-1-05	Repeal	10-1-05	410-122-0080	10-1-05	Amend	10-1-05
410-120-1560	10-1-05	Amend	10-1-05	410-122-0184	10-1-05	Amend	10-1-05
410-120-1565	10-1-05	Repeal	10-1-05	410-122-0186	10-1-05	Amend	10-1-05
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410-120-1580	10-1-05	Amend	10-1-05	410-122-0190	10-1-05	Amend	10-1-05
410-120-1600	10-1-05	Amend	10-1-05	410-122-0200	4-1-05	Amend	4-1-05
410-120-1640	10-1-05	Repeal	10-1-05	410-122-0202	1-1-05	Amend	2-1-05
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410-120-1680	10-1-05	Amend	10-1-05	410-122-0202	10-1-05	Amend	10-1-05
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410-120-1720	10-1-05	Repeal	10-1-05	410-122-0204	4-1-05	Amend	4-1-05
410-120-1820	10-1-05	Repeal	10-1-05	410-122-0205	10-1-05	Amend	10-1-05
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410-122-0590	10-1-05	Amend	10-1-05	410-133-0040	4-5-05	Amend(T)	5-1-05
410-122-0625	4-1-05	Amend	4-1-05	410-133-0040	10-1-05	Amend	11-1-05
410-122-0630	1-1-05	Amend	2-1-05	410-133-0060	4-5-05	Amend(T)	5-1-05
410-122-0630	10-1-05	Amend	10-1-05	410-133-0060	10-1-05	Amend	11-1-05
410-122-0660	4-1-05	Amend	4-1-05	410-133-0080	4-5-05	Amend(T)	5-1-05
410-122-0720	1-1-05	Amend	2-1-05	410-133-0080	10-1-05	Amend	11-1-05
410-122-0720	10-1-05	Amend	10-1-05	410-133-0090	4-5-05	Amend(T)	5-1-05
410-123-1040	8-1-05	Amend	9-1-05	410-133-0090	10-1-05	Amend	11-1-05
410-123-1085	4-1-05	Amend	4-1-05	410-133-0100	4-5-05	Amend(T)	5-1-05
410-123-1240	8-1-05	Amend	9-1-05	410-133-0100	10-1-05	Amend	11-1-05
410-123-1260	4-1-05	Amend	4-1-05	410-133-0120	4-5-05	Amend(T)	5-1-05
410-123-1670	4-1-05	Amend	4-1-05	410-133-0120	10-1-05	Amend	11-1-05
410-124-0000	12-10-04	Amend(T)	1-1-05	410-133-0140	4-5-05	Amend(T)	5-1-05
410-124-0000	12-30-04	Amend(T)	2-1-05	410-133-0140	10-1-05	Amend	11-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	410-133-0160	4-5-05	Amend(T)	5-1-05
410-124-0000(T)	12-30-04	Suspend	2-1-05	410-133-0160	10-1-05	Amend	11-1-05
410-124-0105	4-1-05	Adopt	5-1-05	410-133-0180	4-5-05	Amend(T)	5-1-05
410-125-0080	10-1-05	Amend	11-1-05	410-133-0180	10-1-05	Amend	11-1-05
410-125-0141	4-1-05	Amend	5-1-05	410-133-0200	4-5-05	Amend(T)	5-1-05
410-125-0141	8-15-05	Amend(T)	9-1-05	410-133-0200	10-1-05	Amend	11-1-05
410-125-0145	10-1-05	Amend	11-1-05	410-133-0220	4-5-05	Amend(T)	5-1-05
410-125-0195	4-1-05	Amend	5-1-05	410-133-0220	10-1-05	Amend	11-1-05
410-125-0220	4-1-05	Amend	4-1-05	410-133-0245	4-5-05	Adopt(T)	5-1-05
410-125-0410	4-1-05	Amend	4-1-05	410-133-0245	10-1-05	Adopt	11-1-05
410-125-1070	7-1-05	Amend	8-1-05	410-133-0280	4-5-05	Amend(T)	5-1-05
410-127-0000	10-1-05	Amend	10-1-05	410-133-0280	10-1-05	Amend	11-1-05
410-129-0000	10-1-05	Repeal	10-1-05	410-133-0300	4-5-05	Amend(T)	5-1-05
410-129-0070	4-1-05	Amend	4-1-05	410-133-0300	10-1-05	Amend	11-1-05
410-129-0200	4-1-05	Amend	4-1-05	410-133-0320	4-5-05	Amend(T)	5-1-05
410-129-0240	4-1-05	Amend	4-1-05	410-133-0320	10-1-05	Amend	11-1-05
410-130-0010	4-1-05	Repeal	4-1-05	410-133-0340	4-5-05	Amend(T)	5-1-05
410-130-0020	4-1-05	Repeal	4-1-05	410-133-0340	10-1-05	Amend	11-1-05
410-130-0040	4-1-05	Repeal	4-1-05	410-136-0200	10-1-05	Amend	10-1-05
410-130-0160	4-1-05	Amend	4-1-05	410-140-0000	10-1-05	Repeal	10-1-05
410-130-0180	4-1-05	Amend	4-1-05	410-141-0000	5-1-05	Amend	6-1-05
410-130-0200	4-1-05	Amend	4-1-05	410-141-0000	10-1-05	Amend	10-1-05
410-130-0200	10-1-05	Amend	11-1-05	410-141-0010	10-1-05	Adopt(T)	11-1-05
410-130-0220	4-1-05	Amend	4-1-05	410-141-0020	10-1-05	Amend	10-1-05
410-130-0220	10-1-05	Amend	10-1-05	410-141-0060	5-1-05	Amend	6-1-05
410-130-0240	12-1-04	Amend	1-1-05	410-141-0060	10-1-05	Amend	10-1-05
410-130-0240	4-1-05	Amend	4-1-05	410-141-0065	4-1-05	Repeal	4-1-05
410-130-0255	10-1-05	Amend	10-1-05	410-141-0070	5-1-05	Amend	6-1-05
410-130-0368	4-1-05	Adopt	4-1-05	410-141-0070	11-1-05	Amend	12-1-05
410-130-0585	10-1-05	Amend	10-1-05	410-141-0080	5-1-05	Amend	6-1-05
410-130-0587	4-1-05	Amend	4-1-05	410-141-0080	10-1-05	Amend	10-1-05
410-130-0587	10-1-05	Amend	10-1-05	410-141-0110	5-1-05	Amend	6-1-05
410-130-0610	4-1-05	Adopt	4-1-05	410-141-0120	5-1-05	Amend	6-1-05
410-130-0680	4-1-05	Amend	4-1-05	410-141-0140	5-1-05	Amend	6-1-05
410-130-0680	10-1-05	Amend	11-1-05	410-141-0160	5-1-05	Amend	6-1-05
410-130-0700	4-1-05	Amend	4-1-05	410-141-0180	5-1-05	Amend	6-1-05
410-131-0000	10-1-05	Repeal	10-1-05	410-141-0180	10-1-05	Amend	10-1-05
410-131-0120	4-1-05	Amend	4-1-05	410-141-0200	5-1-05	Amend	6-1-05
410-131-0280	4-1-05	Amend	4-1-05	410-141-0220	5-1-05	Amend	6-1-05
410-132-0000	10-1-05	Amend	10-1-05	410-141-0220	10-1-05	Amend	10-1-05
410-133-0000	4-5-05	Amend(T)	5-1-05	410-141-0263	10-1-05	Amend	10-1-05

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410-141-0280	5-1-05	Amend	6-1-05	411-034-0035	12-1-04	Adopt	1-1-05
410-141-0300	5-1-05	Amend	6-1-05	411-034-0040	12-1-04	Adopt	1-1-05
410-141-0300	10-1-05	Amend	10-1-05	411-034-0050	12-1-04	Amend	1-1-05
410-141-0320	5-1-05	Amend	6-1-05	411-034-0055	12-1-04	Adopt	1-1-05
410-141-0340	5-1-05	Amend	6-1-05	411-034-0055	7-1-05	Amend	8-1-05
410-141-0400	5-1-05	Amend	6-1-05	411-034-0070	12-1-04	Amend	1-1-05
410-141-0405	5-1-05	Amend	6-1-05	411-034-0070	7-1-05	Amend	8-1-05
410-141-0420	5-1-05	Amend	6-1-05	411-034-0090	12-1-04	Amend	1-1-05
410-141-0420	10-1-05	Amend	10-1-05	411-045-0000	1-4-05	Amend	2-1-05
410-141-0440	5-1-05	Amend	6-1-05	411-045-0010	1-4-05	Amend	2-1-05
410-141-0480	5-1-05	Amend	6-1-05	411-045-0020	1-4-05	Amend	2-1-05
410-141-0520	5-1-05	Amend	6-1-05	411-045-0030	1-4-05	Amend	2-1-05
410-141-0520	10-14-05	Amend(T)	11-1-05	411-045-0040	1-4-05	Amend	2-1-05
410-142-0000	10-1-05	Amend	10-1-05	411-045-0050	1-4-05	Amend	2-1-05
410-142-0040	10-1-05	Amend	10-1-05	411-045-0060	1-4-05	Amend	2-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-045-0070	1-4-05	Amend	2-1-05
410-142-0300	10-1-05	Amend	10-1-05	411-045-0080	1-4-05	Amend	2-1-05
410-142-0320	10-1-05	Repeal	10-1-05	411-045-0090	1-4-05	Amend	2-1-05
410-142-0380	10-1-05	Amend	10-1-05	411-045-0100	1-4-05	Amend	2-1-05
410-146-0080	4-1-05	Amend	4-1-05	411-045-0110	1-4-05	Amend	2-1-05
410-147-0000	10-1-05	Amend	10-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-147-0365	3-18-05	Adopt(T)	4-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-147-0365	6-1-05	Adopt	6-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-147-0365	9-15-05	Amend(T)	10-1-05	411-048-0000	8-1-05	Amend	9-1-05
410-148-0090	4-1-05	Amend	4-1-05	411-048-0130	8-1-05	Amend	9-1-05
411-002-0155	6-6-05	Adopt	7-1-05	411-055-0003	10-26-05	Amend(T)	12-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-056-0007	10-26-05	Amend(T)	12-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-070-0033	4-19-05	Adopt	6-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-070-0359	12-28-04	Amend	2-1-05
411-020-0000	7-1-05	Amend	6-1-05	411-070-0428	12-28-04	Amend	2-1-05
411-020-0002	7-1-05	Amend	6-1-05	411-070-0440	12-28-04	Repeal	2-1-05
411-020-0010	7-1-05	Amend	6-1-05	411-070-0442	12-28-04	Adopt	2-1-05
411-020-0015	7-1-05	Amend	6-1-05	411-070-0446	12-28-04	Repeal	2-1-05
411-020-0020	7-1-05	Amend	6-1-05	411-070-0465	12-28-04	Amend	2-1-05
411-020-0030	7-1-05	Amend	6-1-05	411-200-0010	9-26-05	Amend	11-1-05
411-020-0040	7-1-05	Amend	6-1-05	411-200-0020	9-26-05	Amend	11-1-05
411-020-0050	7-1-05	Am. & Ren.	6-1-05	411-200-0030	9-26-05	Amend	11-1-05
411-020-0060	7-1-05	Adopt	6-1-05	411-200-0040	9-26-05	Amend	11-1-05
411-020-0070	7-1-05	Adopt	6-1-05	411-335-0010	1-1-05	Adopt	1-1-05
411-020-0080	7-1-05	Adopt	6-1-05	411-335-0020	1-1-05	Adopt	1-1-05
411-020-0090	7-1-05	Adopt	6-1-05	411-335-0030	1-1-05	Adopt	1-1-05
411-020-0100	7-1-05	Adopt	6-1-05	411-335-0040	1-1-05	Adopt	1-1-05
411-020-0110	7-1-05	Adopt	6-1-05	411-335-0050	1-1-05	Adopt	1-1-05
411-020-0130	7-1-05	Adopt	6-1-05	411-335-0060	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0070	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0080	1-1-05	Adopt	1-1-05
411-031-0020	7-1-05	Amend	8-1-05	411-335-0090	1-1-05	Adopt	1-1-05
411-031-0040	1-1-05	Amend(T)	2-1-05	411-335-0100	1-1-05	Adopt	1-1-05
411-031-0040	7-1-05	Amend	8-1-05	411-335-0110	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0120	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0130	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0140	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0150	1-1-05	Adopt	1-1-05
411-034-0020	7-1-05	Amend	8-1-05	411-335-0160	1-1-05	Adopt	1-1-05
411-034-0030	12-1-04	Amend	1-1-05	411-335-0170	1-1-05	Adopt	1-1-05
411-034-0030	7-1-05	Amend	8-1-05	411-335-0180	1-1-05	Adopt	1-1-05

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411-335-0200	1-1-05	Adopt	1-1-05	411-360-0190	2-1-05	Adopt	2-1-05
411-335-0210	1-1-05	Adopt	1-1-05	411-360-0200	2-1-05	Adopt	2-1-05
411-335-0220	1-1-05	Adopt	1-1-05	411-360-0210	2-1-05	Adopt	2-1-05
411-335-0230	1-1-05	Adopt	1-1-05	411-360-0220	2-1-05	Adopt	2-1-05
411-335-0240	1-1-05	Adopt	1-1-05	411-360-0230	2-1-05	Adopt	2-1-05
411-335-0250	1-1-05	Adopt	1-1-05	411-360-0240	2-1-05	Adopt	2-1-05
411-335-0260	1-1-05	Adopt	1-1-05	411-360-0250	2-1-05	Adopt	2-1-05
411-335-0270	1-1-05	Adopt	1-1-05	411-360-0260	2-1-05	Adopt	2-1-05
411-335-0280	1-1-05	Adopt	1-1-05	411-360-0270	2-1-05	Adopt	2-1-05
411-335-0290	1-1-05	Adopt	1-1-05	411-360-0275	2-1-05	Adopt	2-1-05
411-335-0300	1-1-05	Adopt	1-1-05	411-360-0280	2-1-05	Adopt	2-1-05
411-335-0310	1-1-05	Adopt	1-1-05	411-360-0290	2-1-05	Adopt	2-1-05
411-335-0320	1-1-05	Adopt	1-1-05	411-360-0300	2-1-05	Adopt	2-1-05
411-335-0330	1-1-05	Adopt	1-1-05	411-360-0310	2-1-05	Adopt	2-1-05
411-335-0340	1-1-05	Adopt	1-1-05	411-999-0025	6-1-05	Adopt(T)	6-1-05
411-335-0350	1-1-05	Adopt	1-1-05	413-010-0705	2-1-05	Amend	3-1-05
411-335-0360	1-1-05	Adopt	1-1-05	413-010-0710	2-1-05	Adopt	3-1-05
411-335-0370	1-1-05	Adopt	1-1-05	413-010-0712	2-1-05	Amend	3-1-05
411-335-0380	1-1-05	Adopt	1-1-05	413-010-0714	2-1-05	Amend	3-1-05
411-335-0390	1-1-05	Adopt	1-1-05	413-010-0715	2-1-05	Amend	3-1-05
411-340-0010	6-23-05	Amend	8-1-05	413-010-0716	2-1-05	Amend	3-1-05
411-340-0020	1-1-05	Amend(T)	2-1-05	413-010-0717	2-1-05	Amend	3-1-05
411-340-0020	6-23-05	Amend	8-1-05	413-010-0718	2-1-05	Amend	3-1-05
411-340-0030	6-23-05	Amend	8-1-05	413-010-0720	2-1-05	Amend	3-1-05
411-340-0040	6-23-05	Amend	8-1-05	413-010-0721	2-1-05	Amend	3-1-05
411-340-0050	6-23-05	Amend	8-1-05	413-010-0722	2-1-05	Amend	3-1-05
411-340-0060	6-23-05	Amend	8-1-05	413-010-0723	2-1-05	Amend	3-1-05
411-340-0080	6-23-05	Amend	8-1-05	413-010-0732	2-1-05	Amend	3-1-05
411-340-0090	6-23-05	Amend	8-1-05	413-010-0735	2-1-05	Amend	3-1-05
411-340-0110	6-23-05	Amend	8-1-05	413-010-0738	2-1-05	Amend	3-1-05
411-340-0120	6-23-05	Amend	8-1-05	413-010-0740	2-1-05	Amend	3-1-05
411-340-0130	1-1-05	Amend(T)	2-1-05	413-010-0743	2-1-05	Amend	3-1-05
411-340-0130	6-23-05	Amend	8-1-05	413-010-0745	2-1-05	Amend	3-1-05
411-340-0140	6-23-05	Amend	8-1-05	413-010-0746	2-1-05	Amend	3-1-05
411-340-0150	6-23-05	Amend	8-1-05	413-010-0748	2-1-05	Amend	3-1-05
411-340-0160	6-23-05	Amend	8-1-05	413-010-0750	2-1-05	Amend	3-1-05
411-340-0170	6-23-05	Amend	8-1-05	413-015-0115	2-1-05	Amend	3-1-05
411-346-0165	1-1-05	Adopt	1-1-05	413-015-0205	2-1-05	Amend	3-1-05
411-360-0010	2-1-05	Adopt	2-1-05	413-015-0210	2-1-05	Amend	3-1-05
411-360-0020	2-1-05	Adopt	2-1-05	413-015-0215	2-1-05	Amend	3-1-05
411-360-0030	2-1-05	Adopt	2-1-05	413-015-0305	2-1-05	Amend	3-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-015-0405	10-20-05	Amend(T)	12-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-015-0505	2-1-05	Amend	3-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-015-0505	9-15-05	Amend(T)	10-1-05
411-360-0070	2-1-05	Adopt	2-1-05	413-015-0505	9-30-05	Amend(T)	11-1-05
411-360-0080	2-1-05	Adopt	2-1-05	413-015-0505(T)	9-30-05	Suspend	11-1-05
411-360-0090	2-1-05	Adopt	2-1-05	413-015-0510	9-15-05	Amend(T)	10-1-05
411-360-0100	2-1-05	Adopt	2-1-05	413-015-0511	2-1-05	Amend	3-1-05
411-360-0110	2-1-05	Adopt	2-1-05	413-015-0511	9-15-05	Amend(T)	10-1-05
411-360-0120	2-1-05	Adopt	2-1-05	413-015-0512	9-15-05	Amend(T)	10-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-015-0513	9-15-05	Amend(T)	10-1-05
411-360-0140	2-1-05	Adopt	2-1-05	413-015-0514	9-15-05	Amend(T)	10-1-05
411-360-0150	2-1-05	Adopt	2-1-05	413-015-0710	10-20-05	Amend(T)	12-1-05
411-360-0160	2-1-05	Adopt	2-1-05	413-015-0725	2-1-05	Amend	3-1-05
411-360-0170	2-1-05	Adopt	2-1-05	413-015-1000	4-1-05	Amend	5-1-05

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413-015-1100	7-28-05	Adopt	9-1-05	413-080-0130	9-1-05	Suspend	10-1-05
413-015-1105	1-28-05	Adopt(T)	3-1-05	413-080-0140	9-1-05	Suspend	10-1-05
413-015-1105	7-28-05	Adopt	9-1-05	413-080-0150	9-1-05	Suspend	10-1-05
413-015-1110	1-28-05	Adopt(T)	3-1-05	413-120-0440	1-28-05	Amend(T)	3-1-05
413-015-1110	7-28-05	Adopt	9-1-05	413-120-0440	7-28-05	Amend	9-1-05
413-015-1115	1-28-05	Adopt(T)	3-1-05	413-330-0070	3-1-05	Suspend	4-1-05
413-015-1115	7-28-05	Adopt	9-1-05	413-330-0070	8-27-05	Repeal	10-1-05
413-015-1120	1-28-05	Adopt(T)	3-1-05	414-061-0080	12-17-04	Amend	2-1-05
413-015-1120	7-28-05	Adopt	9-1-05	414-061-0080	8-16-05	Amend(T)	10-1-05
413-015-1125	1-28-05	Adopt(T)	3-1-05	414-061-0100	11-16-04	Amend	1-1-05
413-015-1125	7-28-05	Adopt	9-1-05	414-061-0110	11-16-04	Amend	1-1-05
413-030-0140	6-1-05	Repeal	7-1-05	414-205-0170	11-16-04	Amend	1-1-05
413-030-0145	6-1-05	Repeal	7-1-05	414-205-0170	4-29-05	Amend	6-1-05
413-030-0150	6-1-05	Repeal	7-1-05	414-700-0060	6-16-05	Amend(T)	8-1-05
413-030-0155	6-1-05	Repeal	7-1-05	416-120-0000	9-19-05	Repeal	11-1-05
413-030-0160	6-1-05	Repeal	7-1-05	416-120-0010	9-19-05	Repeal	11-1-05
413-030-0165	6-1-05	Repeal	7-1-05	416-120-0020	9-19-05	Repeal	11-1-05
413-050-0100	9-12-05	Suspend	10-1-05	416-140-0000	10-12-05	Amend	11-1-05
413-050-0110	9-12-05	Suspend	10-1-05	416-140-0010	10-12-05	Amend	11-1-05
413-050-0120	9-12-05	Suspend	10-1-05	416-140-0020	10-12-05	Amend	11-1-05
413-050-0130	9-12-05	Suspend	10-1-05	416-140-0030	10-12-05	Amend	11-1-05
413-050-0140	9-12-05	Suspend	10-1-05	416-140-0040	10-12-05	Amend	11-1-05
413-050-0500	1-1-05	Amend	2-1-05	416-170-0000	1-11-05	Amend	2-1-05
413-050-0510	1-1-05	Amend	2-1-05	416-170-0010	1-11-05	Amend	2-1-05
413-050-0515	1-1-05	Amend	2-1-05	416-170-0020	1-11-05	Amend	2-1-05
413-050-0525	1-1-05	Repeal	2-1-05	416-170-0030	1-11-05	Amend	2-1-05
413-050-0530	1-1-05	Amend	2-1-05	416-170-0050	1-11-05	Adopt	2-1-05
413-050-0535	1-1-05	Amend	2-1-05	416-170-0050	1-13-05	Renumber	2-1-05
413-050-0540	1-1-05	Repeal	2-1-05	416-250-0000	1-11-05	Amend	2-1-05
413-050-0545	1-1-05	Repeal	2-1-05	416-250-0010	1-11-05	Amend	2-1-05
413-050-0550	1-1-05	Repeal	2-1-05	416-250-0020	1-11-05	Amend	2-1-05
413-050-0555	1-1-05	Amend	2-1-05	416-250-0030	1-11-05	Amend	2-1-05
413-050-0560	1-1-05	Amend	2-1-05	416-250-0040	1-11-05	Amend	2-1-05
413-050-0565	1-1-05	Amend	2-1-05	416-250-0050	1-11-05	Amend	2-1-05
413-050-0570	1-1-05	Amend	2-1-05	416-250-0060	1-11-05	Amend	2-1-05
413-050-0575	1-1-05	Amend	2-1-05	416-250-0070	1-11-05	Amend	2-1-05
413-050-0580	1-1-05	Repeal	2-1-05	416-250-0080	1-11-05	Amend	2-1-05
413-050-0585	1-1-05	Amend	2-1-05	416-250-0090	1-11-05	Amend	2-1-05
413-055-0100	1-1-05	Amend	2-1-05	416-300-0000	11-8-05	Amend	12-1-05
413-055-0105	1-1-05	Amend	2-1-05	416-300-0010	11-8-05	Amend	12-1-05
413-055-0105	8-1-05	Amend	9-1-05	416-300-0020	11-8-05	Amend	12-1-05
413-055-0110	1-1-05	Amend	2-1-05	416-300-0030	11-8-05	Amend	12-1-05
413-055-0115	1-1-05	Repeal	2-1-05	416-300-0040	11-8-05	Amend	12-1-05
413-055-0120	1-1-05	Amend	2-1-05	416-300-0050	11-8-05	Amend	12-1-05
413-055-0125	1-1-05	Repeal	2-1-05	416-300-0060	11-8-05	Amend	12-1-05
413-055-0130	1-1-05	Repeal	2-1-05	416-300-0070	11-8-05	Repeal	12-1-05
413-055-0135	1-1-05	Repeal	2-1-05	416-300-0080	11-8-05	Amend	12-1-05
413-055-0140	1-1-05	Amend	2-1-05	416-300-0090	11-8-05	Repeal	12-1-05
413-055-0145	1-1-05	Amend	2-1-05	416-300-0100	11-8-05	Repeal	12-1-05
413-055-0150	1-1-05	Amend	2-1-05	416-300-0110	11-8-05	Repeal	12-1-05
413-055-0155	1-1-05	Repeal	2-1-05	416-300-0120	11-8-05	Repeal	12-1-05
413-055-0160	1-1-05	Amend	2-1-05	416-315-0000	6-13-05	Adopt	7-1-05
413-055-0165	1-1-05	Amend	2-1-05	416-315-0010	6-13-05	Adopt	7-1-05
413-080-0100	9-1-05	Suspend	10-1-05	416-315-0020	6-13-05	Adopt	7-1-05
413-080-0110	9-1-05	Suspend	10-1-05	416-315-0030	6-13-05	Adopt	7-1-05

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416-340-0020	3-25-05	Amend	5-1-05	416-490-0030	4-20-05	Adopt	6-1-05
416-340-0030	3-25-05	Amend	5-1-05	416-490-0040	4-20-05	Adopt	6-1-05
416-340-0040	3-25-05	Amend	5-1-05	416-490-0050	4-20-05	Adopt	6-1-05
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416-340-0080	3-25-05	Repeal	5-1-05	416-530-0040	11-8-05	Amend	12-1-05
416-340-0090	3-25-05	Repeal	5-1-05	416-550-0000	3-25-05	Amend	5-1-05
416-340-0100	3-25-05	Repeal	5-1-05	416-550-0010	3-25-05	Amend	5-1-05
416-340-0110	3-25-05	Repeal	5-1-05	416-550-0020	3-25-05	Amend	5-1-05
416-350-0000	6-13-05	Repeal	7-1-05	416-550-0030	3-25-05	Amend	5-1-05
416-350-0010	6-13-05	Repeal	7-1-05	416-550-0040	3-25-05	Amend	5-1-05
416-350-0020	6-13-05	Repeal	7-1-05	416-550-0050	3-25-05	Amend	5-1-05
416-350-0030	6-13-05	Repeal	7-1-05	416-550-0060	3-25-05	Amend	5-1-05
416-380-0000	8-12-05	Repeal	9-1-05	416-550-0070	3-25-05	Amend	5-1-05
416-380-0010	8-12-05	Repeal	9-1-05	416-550-0080	3-25-05	Amend	5-1-05
416-380-0020	8-12-05	Repeal	9-1-05	416-630-0000	3-25-05	Repeal	5-1-05
416-380-0030	8-12-05	Repeal	9-1-05	416-630-0010	3-25-05	Repeal	5-1-05
416-380-0040	8-12-05	Repeal	9-1-05	416-630-0020	3-25-05	Repeal	5-1-05
416-380-0050	8-12-05	Repeal	9-1-05	416-630-0030	3-25-05	Repeal	5-1-05
416-380-0060	8-12-05	Repeal	9-1-05	416-630-0040	3-25-05	Repeal	5-1-05
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416-400-0000	1-11-05	Repeal	2-1-05	416-800-0000	4-20-05	Amend	6-1-05
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416-410-0030	9-19-05	Amend	11-1-05	416-800-0050	6-30-05	Amend	8-1-05
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416-420-0040	9-19-05	Repeal	11-1-05	436-001-0019	1-2-06	Am. & Ren.	12-1-05
416-420-0050	9-19-05	Repeal	11-1-05	436-001-0023	1-2-06	Adopt	12-1-05
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416-425-0010	7-14-05	Adopt(T)	8-1-05	436-001-0030	1-2-06	Amend	12-1-05
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416-430-0000	9-19-05	Amend	11-1-05	436-001-0150	1-2-06	Repeal	12-1-05
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436-009-0004	4-1-05	Amend	5-1-05	436-085-0030	4-1-05	Amend	5-1-05
436-009-0008	4-1-05	Amend	5-1-05	436-085-0035	4-1-05	Amend	5-1-05
436-009-0008	1-2-06	Amend	12-1-05	436-085-0060	4-1-05	Amend	5-1-05
436-009-0010	4-1-05	Amend	5-1-05	436-085-0065	4-1-05	Repeal	5-1-05
436-009-0015	4-1-05	Amend	5-1-05	436-085-0070	4-1-05	Repeal	5-1-05
436-009-0020	4-1-05	Amend	5-1-05	436-105-0003	7-1-05	Amend	7-1-05
436-009-0030	4-1-05	Amend	5-1-05	436-105-0005	7-1-05	Amend	7-1-05
436-009-0040	4-1-05	Amend	5-1-05	436-105-0500	7-1-05	Amend	7-1-05
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436-010-0008	4-1-05	Amend	5-1-05	436-110-0240	7-1-05	Amend	7-1-05
436-010-0200	4-1-05	Amend	5-1-05	436-110-0290	7-1-05	Adopt	7-1-05
436-010-0210	4-1-05	Amend	5-1-05	436-110-0310	7-1-05	Amend	7-1-05
436-010-0220	4-1-05	Amend	5-1-05	436-110-0320	7-1-05	Amend	7-1-05
436-010-0230	4-1-05	Amend	5-1-05	436-110-0325	7-1-05	Amend	7-1-05
436-010-0240	4-1-05	Amend	5-1-05	436-110-0326	7-1-05	Adopt	7-1-05
436-010-0250	4-1-05	Amend	5-1-05	436-110-0327	7-1-05	Adopt	7-1-05
436-010-0260	4-1-05	Amend	5-1-05	436-110-0330	7-1-05	Amend	7-1-05
436-010-0265	4-1-05	Amend	5-1-05	436-110-0335	7-1-05	Amend	7-1-05
436-010-0270	4-1-05	Amend	5-1-05	436-110-0336	7-1-05	Adopt	7-1-05
436-010-0275	4-1-05	Amend	5-1-05	436-110-0337	7-1-05	Adopt	7-1-05
436-010-0280	4-1-05	Amend	5-1-05	436-110-0345	7-1-05	Amend	7-1-05
436-010-0290	4-1-05	Amend	5-1-05	436-110-0346	7-1-05	Adopt	7-1-05
436-010-0300	4-1-05	Amend	5-1-05	436-110-0347	7-1-05	Adopt	7-1-05
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437-007-0215	6-1-05	Amend	7-1-05	440-045-0020	1-1-06	Amend	12-1-05
437-007-0230	6-1-05	Amend	7-1-05	440-045-0025	1-1-06	Amend	12-1-05
437-007-0235	6-1-05	Amend	7-1-05	441-710-0000	8-25-05	Amend	10-1-05
437-007-0640	6-1-05	Amend	7-1-05	441-710-0010	3-4-05	Amend(T)	4-1-05
437-007-0650	6-1-05	Amend	7-1-05	441-710-0020	8-25-05	Amend	10-1-05
437-007-0660	6-1-05	Amend	7-1-05	441-710-0030	8-25-05	Repeal	10-1-05
437-007-0665	6-1-05	Amend	7-1-05	441-710-0036	8-25-05	Repeal	10-1-05
437-007-0685	6-1-05	Amend	7-1-05	441-710-0045	11-30-04	Adopt	1-1-05
437-007-0905	6-1-05	Amend	7-1-05	441-710-0045	8-25-05	Renumber	10-1-05
437-007-0935	6-1-05	Amend	7-1-05	441-710-0070	8-25-05	Amend	10-1-05
437-007-1115	6-1-05	Amend	7-1-05	441-710-0075	8-25-05	Amend	10-1-05
437-007-1300	6-1-05	Adopt	7-1-05	441-710-0090	8-25-05	Renumber	10-1-05
437-007-1303	6-1-05	Adopt	7-1-05	441-710-0120	8-25-05	Renumber	10-1-05
437-007-1305	6-1-05	Adopt	7-1-05	441-710-0130	8-25-05	Repeal	10-1-05
437-007-1310	6-1-05	Adopt	7-1-05	441-710-0160	8-25-05	Renumber	10-1-05
437-007-1315	6-1-05	Adopt	7-1-05	441-710-0170	8-25-05	Repeal	10-1-05
437-007-1320	6-1-05	Adopt	7-1-05	441-710-0210	8-25-05	Repeal	10-1-05
437-007-1325	6-1-05	Adopt	7-1-05	441-710-0230	8-25-05	Repeal	10-1-05
437-007-1330	6-1-05	Adopt	7-1-05	441-710-0240	8-25-05	Amend	10-1-05
437-007-1335	6-1-05	Adopt	7-1-05	441-710-0250	8-25-05	Repeal	10-1-05
437-007-1340	6-1-05	Adopt	7-1-05	441-710-0260	8-25-05	Amend	10-1-05
437-007-1345	6-1-05	Adopt	7-1-05	441-710-0270	8-25-05	Amend	10-1-05
437-007-1391	6-1-05	Repeal	7-1-05	441-710-0300	8-25-05	Repeal	10-1-05
437-007-1392	6-1-05	Repeal	7-1-05	441-710-0310	8-25-05	Repeal	10-1-05
437-007-1393	6-1-05	Repeal	7-1-05	441-710-0320	8-25-05	Repeal	10-1-05
437-007-1394	6-1-05	Repeal	7-1-05	441-710-0325	8-25-05	Amend	10-1-05
437-007-1395	6-1-05	Repeal	7-1-05	441-710-0330	8-25-05	Repeal	10-1-05
437-007-1396	6-1-05	Repeal	7-1-05	441-710-0400	8-25-05	Amend	10-1-05
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437-007-1398	6-1-05	Repeal	7-1-05	441-710-0500	8-25-05	Am. & Ren.	10-1-05
437-007-1399	6-1-05	Repeal	7-1-05	441-710-0505	8-25-05	Am. & Ren.	10-1-05
438-005-0005	1-1-06	Amend	12-1-05	441-710-0510	8-25-05	Am. & Ren.	10-1-05
438-005-0011	1-1-06	Amend	12-1-05	441-710-0520	8-25-05	Am. & Ren.	10-1-05
438-005-0050	1-1-06	Amend	12-1-05	441-710-0525	8-25-05	Am. & Ren.	10-1-05
438-005-0053	1-1-06	Amend	12-1-05	441-710-0535	8-25-05	Am. & Ren.	10-1-05
438-005-0055	1-1-06	Amend	12-1-05	441-720-0000	8-25-05	Repeal	10-1-05

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441-720-0090	8-25-05	Repeal	10-1-05	443-002-0110	1-1-05	Adopt	2-1-05
441-720-0210	8-25-05	Adopt	10-1-05	443-002-0120	1-1-05	Adopt	2-1-05
441-720-0215	8-25-05	Am. & Ren.	10-1-05	443-002-0130	1-1-05	Adopt	2-1-05
441-720-0220	8-25-05	Am. & Ren.	10-1-05	443-002-0140	1-1-05	Adopt	2-1-05
441-720-0225	8-25-05	Am. & Ren.	10-1-05	443-002-0150	1-1-05	Adopt	2-1-05
441-720-0230	8-25-05	Am. & Ren.	10-1-05	443-002-0160	1-1-05	Adopt	2-1-05
441-730-0030	9-6-05	Amend	10-1-05	443-002-0170	1-1-05	Adopt	2-1-05
441-740-0010	9-6-05	Amend	10-1-05	443-002-0180	1-1-05	Adopt	2-1-05
441-745-0310	9-6-05	Amend	10-1-05	443-002-0190	1-1-05	Adopt	2-1-05
441-810-0150	9-6-05	Amend	10-1-05	443-005-0000	1-1-05	Repeal	2-1-05
441-830-0040	9-6-05	Amend	10-1-05	443-005-0010	1-1-05	Repeal	2-1-05
441-860-0020	1-1-05	Amend	1-1-05	443-005-0020	1-1-05	Repeal	2-1-05
441-860-0020	9-6-05	Amend	10-1-05	443-005-0040	1-1-05	Repeal	2-1-05
441-860-0050	1-1-05	Amend	1-1-05	443-005-0050	1-1-05	Repeal	2-1-05
441-930-0030	1-1-05	Amend	1-1-05	443-005-0060	1-1-05	Repeal	2-1-05
441-930-0210	1-1-05	Amend	1-1-05	443-005-0070	1-1-05	Repeal	2-1-05
441-930-0270	1-1-05	Amend	1-1-05	443-010-0010	1-1-05	Repeal	2-1-05
441-930-0270	9-6-05	Amend	10-1-05	443-015-0010	1-1-05	Repeal	2-1-05
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442-002-0010	3-1-05	Repeal	4-1-05	459-001-0015	11-1-05	Amend	12-1-05
442-002-0015	3-1-05	Repeal	4-1-05	459-001-0025	11-1-05	Amend	12-1-05
442-002-0020	3-1-05	Repeal	4-1-05	459-001-0035	11-1-05	Amend	12-1-05
442-002-0025	3-1-05	Repeal	4-1-05	459-005-0001	1-1-06	Amend	12-1-05
442-002-0030	3-1-05	Repeal	4-1-05	459-005-0010	11-1-05	Amend	12-1-05
442-002-0035	3-1-05	Repeal	4-1-05	459-005-0150	11-1-05	Amend	12-1-05
442-002-0040	3-1-05	Repeal	4-1-05	459-005-0210	11-1-05	Amend	12-1-05
442-002-0045	3-1-05	Repeal	4-1-05	459-005-0215	11-1-05	Amend	12-1-05
442-002-0050	3-1-05	Repeal	4-1-05	459-005-0220	11-1-05	Amend	12-1-05
442-002-0055	3-1-05	Repeal	4-1-05	459-005-0225	7-5-05	Adopt	8-1-05
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442-004-0120	7-7-05	Amend(T)	8-1-05	459-005-0525	12-15-04	Amend(T)	1-1-05
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442-006-0020	3-1-05	Adopt	4-1-05	459-005-0535	12-15-04	Amend(T)	1-1-05
442-006-0030	3-1-05	Adopt	4-1-05	459-005-0535	2-22-05	Amend	4-1-05
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443-002-0020	1-1-05	Adopt	2-1-05	459-005-0560	12-15-04	Amend(T)	1-1-05
443-002-0030	1-1-05	Adopt	2-1-05	459-005-0560	2-22-05	Amend	4-1-05
443-002-0040	1-1-05	Adopt	2-1-05	459-005-0560	11-1-05	Amend	12-1-05
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443-002-0080	1-1-05	Adopt	2-1-05	459-005-0591	12-15-04	Amend(T)	1-1-05
443-002-0080	8-26-05	Amend(T)	10-1-05	459-005-0591	1-31-05	Amend	3-1-05
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459-005-0595	2-22-05	Amend	4-1-05	459-015-0050	10-3-05	Amend	11-1-05
459-005-0595(T)	2-22-05	Repeal	4-1-05	459-015-0055	10-3-05	Amend	11-1-05
459-005-0599	11-1-05	Amend	12-1-05	459-015-0060	10-3-05	Amend	11-1-05
459-007-0001	10-26-05	Amend(T)	12-1-05	459-020-0015	11-1-05	Amend	12-1-05
459-007-0003	10-26-05	Amend(T)	12-1-05	459-020-0050	11-1-05	Amend	12-1-05
459-007-0005	10-26-05	Amend(T)	12-1-05	459-020-0055	11-1-05	Amend	12-1-05
459-007-0050	11-1-05	Amend	12-1-05	459-030-0000	2-22-05	Repeal	4-1-05
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459-007-0090	10-26-05	Amend(T)	12-1-05	459-030-0011	2-22-05	Amend	4-1-05
459-007-0095	10-26-05	Suspend	12-1-05	459-030-0025	2-22-05	Amend	4-1-05
459-007-0220	3-15-05	Amend	1-1-05	459-030-0030	2-22-05	Amend	4-1-05
459-007-0230	3-15-05	Amend	1-1-05	459-035-0001	10-3-05	Amend	11-1-05
459-007-0240	3-15-05	Amend	1-1-05	459-035-0150	11-1-05	Amend	12-1-05
459-007-0250	3-15-05	Amend	1-1-05	459-045-0000	11-1-05	Amend	12-1-05
459-007-0260	3-15-05	Amend	1-1-05	459-045-0001	1-1-06	Amend	12-1-05
459-007-0270	3-15-05	Amend	1-1-05	459-045-0010	11-1-05	Amend	12-1-05
459-007-0280	3-15-05	Repeal	1-1-05	459-045-0030	8-18-05	Amend	10-1-05
459-007-0290	3-15-05	Amend	1-1-05	459-050-0040	11-23-04	Amend	1-1-05
459-007-0530	11-23-04	Amend	1-1-05	459-050-0070	11-23-04	Amend	1-1-05
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459-010-0175	11-4-05	Amend	12-1-05	459-076-0020	10-3-05	Adopt	11-1-05
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461-115-0071	10-1-05	Amend	11-1-05	461-140-0110	1-1-05	Amend	2-1-05
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461-115-0190	1-1-05	Amend	2-1-05	461-140-0120	4-1-05	Amend	5-1-05
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461-135-0475	10-1-05	Amend	11-1-05	461-145-0390	4-1-05	Amend	5-1-05
461-135-0505	4-1-05	Amend	5-1-05	461-145-0410	4-1-05	Amend	5-1-05
461-135-0506	4-1-05	Amend	5-1-05	461-145-0520	4-1-05	Amend	5-1-05
461-135-0510	1-1-05	Amend	2-1-05	461-145-0570	4-1-05	Amend	5-1-05
461-135-0570	4-1-05	Amend	5-1-05	461-145-0580	4-1-05	Amend	5-1-05
461-135-0570	7-1-05	Amend	8-1-05	461-145-0910	2-1-05	Amend(T)	3-1-05
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461-135-0710	4-1-05	Amend	5-1-05	461-145-0920	2-1-05	Amend(T)	3-1-05
461-135-0725	10-1-05	Amend	11-1-05	461-145-0920	7-1-05	Amend	8-1-05
461-135-0780	1-1-05	Amend	2-1-05	461-145-0930	10-1-05	Amend	11-1-05
461-135-0780	4-1-05	Amend	5-1-05	461-150-0050	1-1-05	Amend	2-1-05
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461-135-1100	4-1-05	Amend	5-1-05	461-150-0055	7-1-05	Amend	8-1-05
461-135-1100	10-1-05	Amend	11-1-05	461-150-0090	4-1-05	Amend	5-1-05
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461-135-1185	10-1-05	Adopt	11-1-05	461-155-0210	8-29-05	Amend(T)	10-1-05
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461-155-0530	4-1-05	Amend	5-1-05	461-180-0125	1-1-05	Adopt	2-1-05
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461-160-0040	10-1-05	Amend	11-1-05	461-185-0050	10-1-05	Amend	11-1-05
461-160-0055	1-1-05	Amend	2-1-05	461-185-0050(T)	10-1-05	Repeal	11-1-05
461-160-0055	7-1-05	Amend	8-1-05	461-190-0161	10-1-05	Amend	11-1-05
461-160-0070	10-1-05	Amend	11-1-05	461-190-0161	10-1-05	Amend(T)	11-1-05
461-160-0420	10-1-05	Amend	11-1-05	461-190-0195	10-1-05	Adopt(T)	11-1-05
461-160-0430	10-1-05	Amend	11-1-05	461-190-0197	7-1-05	Amend	8-1-05
461-160-0540	4-1-05	Amend	5-1-05	461-190-0211	9-1-05	Amend(T)	10-1-05
461-160-0550	1-1-05	Amend	2-1-05	461-190-0241	9-1-05	Amend(T)	10-1-05
461-160-0560	4-1-05	Amend	5-1-05	461-190-0360	10-1-05	Amend	11-1-05
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461-160-0610	7-6-05	Amend(T)	8-1-05	461-195-0501	10-1-05	Amend	11-1-05
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461-160-0620	1-1-05	Amend	2-1-05	461-195-0541	10-1-05	Amend	11-1-05
461-160-0620	7-1-05	Amend	8-1-05	461-195-0611	10-1-05	Amend	11-1-05
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571-023-0110	9-21-05	Adopt	11-1-05	577-001-0105	7-7-05	Amend(T)	8-1-05
571-023-0115	9-21-05	Adopt	11-1-05	577-001-0110	7-7-05	Amend(T)	8-1-05
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573-040-0005	4-11-05	Amend	5-1-05	577-060-0020	7-15-05	Amend(T)	8-1-05
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584-017-0130	8-24-05	Amend	10-1-05	584-070-0132	8-24-05	Adopt	10-1-05
584-017-0140	5-6-05	Amend(T)	6-1-05	584-080-0171	1-21-05	Adopt	3-1-05
584-017-0140	8-24-05	Amend	10-1-05	584-100-0046	7-1-05	Amend(T)	8-1-05
584-017-0170	8-24-05	Amend	10-1-05	584-100-0046	8-16-05	Amend(T)	10-1-05
584-017-0175	4-15-05	Amend	5-1-05	584-100-0046	11-15-05	Amend	12-1-05
584-017-0185	10-21-05	Amend	12-1-05	584-100-0071	1-21-05	Amend	3-1-05
584-017-0250	1-21-05	Amend	3-1-05	585-001-0000	2-11-05	Amend	3-1-05
584-017-0251	1-21-05	Adopt	3-1-05	585-010-0115	2-11-05	Amend	3-1-05
584-017-0260	1-21-05	Amend	3-1-05	585-010-0120	2-11-05	Amend	3-1-05
584-017-0261	1-21-05	Adopt	3-1-05	585-010-0125	2-11-05	Amend	3-1-05
584-019-0003	11-15-05	Adopt	12-1-05	585-010-0130	2-11-05	Amend	3-1-05
584-019-0010	11-15-05	Amend	12-1-05	585-010-0150	2-11-05	Amend	3-1-05
584-019-0045	8-24-05	Repeal	10-1-05	585-010-0210	2-11-05	Amend	3-1-05
584-020-0040	11-15-05	Amend	12-1-05	585-010-0215	2-11-05	Amend	3-1-05
584-020-0045	4-15-05	Amend	5-1-05	585-010-0220	2-11-05	Amend	3-1-05
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584-036-0055	8-16-05	Amend(T)	10-1-05	585-020-0020	2-11-05	Amend	3-1-05
584-036-0055	11-15-05	Amend	12-1-05	585-020-0035	2-11-05	Amend	3-1-05
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589-002-0100	7-13-05	Amend	8-1-05	603-052-1230	1-24-05	Amend	3-1-05
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603-001-0130	6-30-05	Amend	8-1-05	603-054-0045	2-15-05	Amend	3-1-05
603-001-0135	6-30-05	Amend	8-1-05	603-054-0050	2-15-05	Amend	3-1-05
603-001-0140	6-30-05	Amend	8-1-05	603-054-0055	2-15-05	Amend	3-1-05
603-001-0145	6-30-05	Amend	8-1-05	603-054-0060	2-15-05	Amend	3-1-05
603-001-0150	6-30-05	Amend	8-1-05	603-054-0065	2-15-05	Amend	3-1-05
603-001-0155	6-30-05	Amend	8-1-05	603-054-0070	2-15-05	Amend	3-1-05
603-001-0160	6-30-05	Adopt	8-1-05	603-054-0075	2-15-05	Amend	3-1-05
603-001-0170	6-30-05	Adopt	8-1-05	603-057-0006	1-1-06	Amend(T)	11-1-05
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629-660-0050	8-2-05	Amend(T)	9-1-05	635-004-0019(T)	5-13-05	Suspend	6-1-05
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635-018-0090	1-1-05	Amend	1-1-05	635-023-0130(T)	9-30-05	Suspend	11-1-05
635-018-0090	4-15-05	Amend(T)	5-1-05	635-023-0130(T)	10-20-05	Suspend	12-1-05
635-018-0090	5-15-05	Amend(T)	6-1-05	635-023-0134	1-1-05	Adopt	1-1-05
635-018-0090	8-1-05	Amend(T)	9-1-05	635-023-0134	5-21-05	Amend(T)	7-1-05
635-018-0090	8-1-05	Amend(T)	9-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-018-0090(T)	5-15-05	Suspend	6-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-018-0090(T)	8-1-05	Suspend	9-1-05	635-039-0080	5-1-05	Amend(T)	6-1-05
635-018-0090(T)	8-1-05	Suspend	9-1-05	635-039-0080	6-12-05	Amend(T)	7-1-05
635-019-0080	1-1-05	Amend	1-1-05	635-039-0080	7-1-05	Amend	8-1-05
635-019-0090	1-1-05	Amend	1-1-05	635-039-0080	7-7-05	Amend(T)	8-1-05
635-019-0090	5-13-05	Amend(T)	6-1-05	635-039-0080	8-12-05	Amend(T)	9-1-05
635-019-0090	6-25-05	Amend(T)	8-1-05	635-039-0080(T)	6-12-05	Suspend	7-1-05
635-019-0090	8-26-05	Amend(T)	10-1-05	635-039-0080(T)	7-7-05	Suspend	8-1-05
635-019-0090(T)	6-25-05	Suspend	8-1-05	635-039-0080(T)	8-12-05	Suspend	9-1-05
635-021-0080	1-1-05	Amend	1-1-05	635-039-0085	7-1-05	Adopt	8-1-05
635-021-0090	1-1-05	Amend	1-1-05	635-039-0085	8-12-05	Amend(T)	9-1-05
635-021-0090	9-2-05	Amend(T)	10-1-05	635-039-0085	9-15-05	Amend(T)	10-1-05
635-023-0080	1-1-05	Amend	1-1-05	635-039-0085	10-18-05	Amend(T)	11-1-05
635-023-0090	1-1-05	Amend	1-1-05	635-039-0085(T)	9-15-05	Suspend	10-1-05
635-023-0090	1-1-05	Amend(T)	1-1-05	635-039-0085(T)	10-18-05	Suspend	11-1-05
635-023-0090	1-1-05	Amend(T)	2-1-05	635-039-0090	1-1-05	Amend	1-1-05
635-023-0090(T)	1-1-05	Suspend	2-1-05	635-039-0090	1-1-05	Amend	1-1-05
635-023-0095	1-1-05	Adopt(T)	2-1-05	635-039-0090	5-1-05	Amend(T)	6-1-05
635-023-0095	2-14-05	Adopt	3-1-05	635-039-0090	7-16-05	Amend(T)	8-1-05
635-023-0095	4-30-05	Amend(T)	5-1-05	635-039-0090	8-11-05	Amend(T)	9-1-05

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635-039-0090(T)	8-11-05	Suspend	9-1-05	635-042-0031(T)	8-17-05	Suspend	10-1-05
635-039-0090(T)	10-18-05	Suspend	11-1-05	635-042-0031(T)	8-22-05	Suspend	10-1-05
635-041-0030	1-20-05	Amend(T)	3-1-05	635-042-0031(T)	8-25-05	Suspend	10-1-05
635-041-0030	2-14-05	Amend	3-1-05	635-042-0060	9-19-05	Amend(T)	11-1-05
635-041-0030(T)	2-14-05	Repeal	3-1-05	635-042-0060	9-26-05	Amend(T)	11-1-05
635-041-0061	1-1-05	Amend(T)	2-1-05	635-042-0060	9-28-05	Amend(T)	11-1-05
635-041-0061	2-14-05	Amend	3-1-05	635-042-0060	10-5-05	Amend(T)	11-1-05
635-041-0061(T)	2-14-05	Repeal	3-1-05	635-042-0060	10-11-05	Amend(T)	11-1-05
635-041-0063	10-11-05	Amend(T)	11-1-05	635-042-0060	10-18-05	Amend(T)	12-1-05
635-041-0065	1-1-05	Amend(T)	2-1-05	635-042-0060	10-23-05	Amend(T)	12-1-05
635-041-0065	1-31-05	Amend(T)	3-1-05	635-042-0060(T)	9-26-05	Suspend	11-1-05
635-041-0065	3-15-05	Amend(T)	4-1-05	635-042-0060(T)	9-28-05	Suspend	11-1-05
635-041-0065(T)	1-31-05	Suspend	3-1-05	635-042-0060(T)	10-5-05	Suspend	11-1-05
635-041-0065(T)	3-15-05	Suspend	4-1-05	635-042-0060(T)	10-11-05	Suspend	11-1-05
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635-041-0074	7-8-05	Amend(T)	8-1-05	635-042-0110	2-14-05	Amend	3-1-05
635-041-0074	7-25-05	Amend(T)	9-1-05	635-042-0110	5-10-05	Amend(T)	6-1-05
635-041-0074(T)	7-8-05	Suspend	8-1-05	635-042-0110	5-23-05	Amend(T)	7-1-05
635-041-0074(T)	7-25-05	Suspend	9-1-05	635-042-0110	6-29-05	Amend(T)	8-1-05
635-041-0075	8-22-05	Amend(T)	10-1-05	635-042-0110(T)	5-23-05	Suspend	7-1-05
635-041-0075	9-12-05	Amend(T)	10-1-05	635-042-0110(T)	6-29-05	Suspend	8-1-05
635-041-0075	9-19-05	Amend(T)	11-1-05	635-042-0115	2-14-05	Amend	3-1-05
635-041-0075	9-28-05	Amend(T)	11-1-05	635-042-0130	1-1-05	Amend(T)	2-1-05
635-041-0075	10-11-05	Amend(T)	11-1-05	635-042-0130	2-24-05	Amend(T)	4-1-05
635-041-0075(T)	9-12-05	Suspend	10-1-05	635-042-0130(T)	2-24-05	Suspend	4-1-05
635-041-0075(T)	9-19-05	Suspend	11-1-05	635-042-0135	1-1-05	Amend(T)	2-1-05
635-041-0075(T)	9-28-05	Suspend	11-1-05	635-042-0135	2-22-05	Amend(T)	4-1-05
635-041-0075(T)	10-11-05	Suspend	11-1-05	635-042-0135(T)	2-22-05	Suspend	4-1-05
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635-042-0022	3-1-05	Amend(T)	4-1-05	635-042-0145	3-15-05	Amend(T)	4-1-05
635-042-0022	3-3-05	Amend(T)	4-1-05	635-042-0145	4-20-05	Amend(T)	6-1-05
635-042-0022	3-7-05	Amend(T)	4-1-05	635-042-0145	4-28-05	Amend(T)	6-1-05
635-042-0022	3-10-05	Amend(T)	4-1-05	635-042-0145	5-5-05	Amend(T)	6-1-05
635-042-0022	3-15-05	Amend(T)	4-1-05	635-042-0145	5-10-05	Amend(T)	6-1-05
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635-042-0022(T)	3-29-05	Suspend	5-1-05	635-042-0145	10-5-05	Amend(T)	11-1-05
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635-042-0023	7-18-05	Amend(T)	8-1-05	635-042-0145(T)	4-28-05	Suspend	6-1-05
635-042-0023	7-25-05	Amend(T)	9-1-05	635-042-0145(T)	5-5-05	Suspend	6-1-05
635-042-0023(T)	7-11-05	Suspend	8-1-05	635-042-0145(T)	5-10-05	Suspend	6-1-05
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635-042-0031	8-14-05	Amend(T)	9-1-05	635-042-0145(T)	8-3-05	Suspend	9-1-05
635-042-0031	8-17-05	Amend(T)	10-1-05	635-042-0145(T)	9-19-05	Suspend	11-1-05
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635-042-0145(T)	10-11-05	Suspend	11-1-05	635-042-0180(T)	10-18-05	Suspend	12-1-05
635-042-0145(T)	10-18-05	Suspend	12-1-05	635-042-0190	2-14-05	Amend	3-1-05
635-042-0160	2-14-05	Amend	3-1-05	635-042-0190	8-3-05	Amend(T)	9-1-05
635-042-0160	3-10-05	Amend(T)	4-1-05	635-042-0190	9-19-05	Amend(T)	11-1-05
635-042-0160	3-15-05	Amend(T)	4-1-05	635-042-0190	9-26-05	Amend(T)	11-1-05
635-042-0160	4-20-05	Amend(T)	6-1-05	635-042-0190	10-5-05	Amend(T)	11-1-05
635-042-0160	4-28-05	Amend(T)	6-1-05	635-042-0190	10-11-05	Amend(T)	11-1-05
635-042-0160	5-5-05	Amend(T)	6-1-05	635-042-0190	10-18-05	Amend(T)	12-1-05
635-042-0160	5-10-05	Amend(T)	6-1-05	635-042-0190(T)	9-19-05	Suspend	11-1-05
635-042-0160	8-3-05	Amend(T)	9-1-05	635-042-0190(T)	9-26-05	Suspend	11-1-05
635-042-0160	9-19-05	Amend(T)	11-1-05	635-042-0190(T)	10-5-05	Suspend	11-1-05
635-042-0160	9-26-05	Amend(T)	11-1-05	635-042-0190(T)	10-11-05	Suspend	11-1-05
635-042-0160	10-5-05	Amend(T)	11-1-05	635-042-0190(T)	10-18-05	Suspend	12-1-05
635-042-0160	10-11-05	Amend(T)	11-1-05	635-043-0085	1-1-05	Amend	2-1-05
635-042-0160	10-18-05	Amend(T)	12-1-05	635-043-0096	3-9-05	Amend	4-1-05
635-042-0160(T)	3-15-05	Suspend	4-1-05	635-044-0130	1-1-05	Amend	2-1-05
635-042-0160(T)	4-28-05	Suspend	6-1-05	635-045-0000	8-19-05	Amend	10-1-05
635-042-0160(T)	5-5-05	Suspend	6-1-05	635-051-0000	8-19-05	Amend	10-1-05
635-042-0160(T)	5-10-05	Suspend	6-1-05	635-052-0000	8-19-05	Amend	10-1-05
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635-042-0160(T)	9-19-05	Suspend	11-1-05	635-054-0000	8-19-05	Amend	10-1-05
635-042-0160(T)	9-26-05	Suspend	11-1-05	635-060-0000	1-1-05	Amend	2-1-05
635-042-0160(T)	10-5-05	Suspend	11-1-05	635-060-0000	8-19-05	Amend	10-1-05
635-042-0160(T)	10-11-05	Suspend	11-1-05	635-060-0005	1-1-05	Amend	2-1-05
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635-042-0170(T)	9-19-05	Suspend	11-1-05	635-065-0090	6-14-05	Amend	7-1-05
635-042-0170(T)	9-26-05	Suspend	11-1-05	635-065-0401	1-1-05	Amend	2-1-05
635-042-0170(T)	10-5-05	Suspend	11-1-05	635-065-0625	1-1-05	Amend	2-1-05
635-042-0170(T)	10-11-05	Suspend	11-1-05	635-065-0635	1-1-05	Amend	2-1-05
635-042-0170(T)	10-18-05	Suspend	12-1-05	635-065-0720	1-1-05	Amend	2-1-05
635-042-0180	2-14-05	Amend	3-1-05	635-065-0735	1-1-05	Amend	2-1-05
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635-069-0000	6-14-05	Amend	7-1-05	635-430-0320	11-26-04	Amend	1-1-05
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635-070-0000	6-14-05	Amend	7-1-05	635-430-0375	11-26-04	Adopt	1-1-05
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635-078-0011	6-14-05	Amend	7-1-05	660-026-0030	10-3-05	Amend	11-1-05
635-080-0065	1-1-05	Amend	2-1-05	660-026-0040	10-3-05	Amend	11-1-05
635-090-0170	8-19-05	Repeal	10-1-05	668-010-0020	1-13-05	Amend	2-1-05
635-090-0180	8-19-05	Repeal	10-1-05	669-010-0020	3-4-05	Amend	4-1-05
635-090-0195	8-30-05	Adopt(T)	10-1-05	669-010-0025	8-26-05	Amend	10-1-05
635-100-0125	7-1-05	Amend(T)	8-1-05	669-010-0030	8-26-05	Amend	10-1-05
635-100-0125	8-19-05	Amend	10-1-05	690-021-0000	11-16-04	Am. & Ren.	1-1-05
635-110-0000	3-9-05	Adopt	4-1-05	690-021-0010	11-16-04	Am. & Ren.	1-1-05
635-110-0010	3-9-05	Adopt	4-1-05	690-021-0020	11-16-04	Am. & Ren.	1-1-05
635-110-0020	3-9-05	Adopt	4-1-05	690-021-0030	11-16-04	Am. & Ren.	1-1-05
635-110-0030	3-9-05	Adopt	4-1-05	690-021-0040	11-16-04	Am. & Ren.	1-1-05
635-110-0040	3-9-05	Adopt	4-1-05	690-021-0050	11-16-04	Am. & Ren.	1-1-05
635-140-0000	8-19-05	Adopt	10-1-05	690-021-0060	11-16-04	Am. & Ren.	1-1-05
635-140-0005	8-19-05	Adopt	10-1-05	690-021-0070	11-16-04	Repeal	1-1-05
635-140-0010	8-19-05	Adopt	10-1-05	690-021-0080	11-16-04	Repeal	1-1-05
635-140-0025	8-19-05	Adopt	10-1-05	690-021-0090	11-16-04	Am. & Ren.	1-1-05
635-160-0000	8-19-05	Amend	10-1-05	690-021-0100	11-16-04	Repeal	1-1-05
635-190-0000	8-19-05	Amend	10-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
635-412-0030	11-17-04	Amend	1-1-05	690-021-0120	11-16-04	Repeal	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-021-0130	11-16-04	Repeal	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-021-0140	11-16-04	Am. & Ren.	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-021-0160	11-16-04	Am. & Ren.	1-1-05
635-430-0025	11-26-04	Adopt	1-1-05	690-021-0170	11-16-04	Am. & Ren.	1-1-05
635-430-0030	11-26-04	Amend	1-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-430-0040	11-26-04	Amend	1-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-430-0050	11-26-04	Amend	1-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-430-0060	11-26-04	Amend	1-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
635-430-0070	11-26-04	Amend	1-1-05	690-021-0400	11-16-04	Repeal	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-021-0500	11-16-04	Repeal	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-021-0600	11-16-04	Am. & Ren.	1-1-05

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690-021-0700	11-16-04	Am. & Ren.	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
690-050-0005	11-7-05	Repeal	12-1-05	690-385-4100	11-16-04	Adopt	1-1-05
690-050-0010	11-7-05	Repeal	12-1-05	690-385-4200	11-16-04	Adopt	1-1-05
690-050-0015	11-7-05	Repeal	12-1-05	690-385-4300	11-16-04	Adopt	1-1-05
690-050-0020	11-7-05	Repeal	12-1-05	690-385-4400	11-16-04	Adopt	1-1-05
690-050-0025	11-7-05	Repeal	12-1-05	690-385-4500	11-16-04	Adopt	1-1-05
690-050-0030	11-7-05	Repeal	12-1-05	690-385-4580	11-16-04	Adopt	1-1-05
690-050-0035	11-7-05	Repeal	12-1-05	690-385-4600	11-16-04	Adopt	1-1-05
690-050-0040	11-7-05	Repeal	12-1-05	690-385-4700	11-16-04	Adopt	1-1-05
690-050-0045	11-7-05	Repeal	12-1-05	690-385-5600	11-16-04	Adopt	1-1-05
690-050-0050	11-7-05	Repeal	12-1-05	690-385-5680	11-16-04	Adopt	1-1-05
690-050-0055	11-7-05	Repeal	12-1-05	690-385-5700	11-16-04	Adopt	1-1-05
690-050-0060	11-7-05	Repeal	12-1-05	690-385-5800	11-16-04	Adopt	1-1-05
690-050-0070	11-7-05	Repeal	12-1-05	690-385-6000	11-16-04	Adopt	1-1-05
690-050-0075	11-7-05	Repeal	12-1-05	690-385-7000	11-16-04	Adopt	1-1-05
690-050-0080	11-7-05	Repeal	12-1-05	690-385-7100	11-16-04	Adopt	1-1-05
690-050-0085	11-7-05	Repeal	12-1-05	695-035-0010	6-8-05	Amend	7-1-05
690-050-0090	11-7-05	Repeal	12-1-05	695-035-0015	6-8-05	Adopt	7-1-05
690-050-0095	11-7-05	Repeal	12-1-05	695-035-0020	6-8-05	Amend	7-1-05
690-050-0100	11-7-05	Repeal	12-1-05	695-035-0030	6-8-05	Amend	7-1-05
690-050-0105	11-7-05	Repeal	12-1-05	695-035-0040	6-8-05	Amend	7-1-05
690-050-0110	11-7-05	Repeal	12-1-05	695-035-0050	6-8-05	Amend	7-1-05
690-050-0115	11-7-05	Repeal	12-1-05	695-035-0060	6-8-05	Amend	7-1-05
690-050-0120	11-7-05	Repeal	12-1-05	695-035-0070	6-8-05	Amend	7-1-05
690-050-0125	11-7-05	Repeal	12-1-05	695-045-0010	2-1-05	Adopt	3-1-05
690-050-0130	11-7-05	Repeal	12-1-05	695-045-0020	2-1-05	Adopt	3-1-05
690-050-0135	11-7-05	Repeal	12-1-05	695-045-0025	2-1-05	Adopt	3-1-05
690-074-0005	11-7-05	Repeal	12-1-05	695-045-0030	2-1-05	Adopt	3-1-05
690-074-0010	11-7-05	Repeal	12-1-05	695-045-0035	2-1-05	Adopt	3-1-05
690-074-0015	11-7-05	Repeal	12-1-05	695-045-0040	2-1-05	Adopt	3-1-05
690-074-0020	11-7-05	Repeal	12-1-05	695-045-0045	2-1-05	Adopt	3-1-05
690-074-0025	11-7-05	Repeal	12-1-05	695-045-0050	2-1-05	Adopt	3-1-05
690-074-0030	11-7-05	Repeal	12-1-05	695-045-0055	2-1-05	Adopt	3-1-05
690-074-0035	11-7-05	Repeal	12-1-05	695-045-0060	2-1-05	Adopt	3-1-05
690-074-0040	11-7-05	Repeal	12-1-05	695-045-0065	2-1-05	Adopt	3-1-05
690-074-0045	11-7-05	Repeal	12-1-05	695-045-0070	2-1-05	Adopt	3-1-05
690-074-0050	11-7-05	Repeal	12-1-05	695-045-0080	2-1-05	Adopt	3-1-05
690-074-0055	11-7-05	Repeal	12-1-05	695-045-0090	2-1-05	Adopt	3-1-05
690-074-0060	11-7-05	Repeal	12-1-05	695-045-0100	2-1-05	Adopt	3-1-05
690-074-0065	11-7-05	Repeal	12-1-05	695-045-0110	2-1-05	Adopt	3-1-05
690-074-0070	11-7-05	Repeal	12-1-05	695-045-0120	2-1-05	Adopt	3-1-05
690-074-0075	11-7-05	Repeal	12-1-05	695-045-0130	2-1-05	Adopt	3-1-05
690-074-0080	11-7-05	Repeal	12-1-05	695-045-0140	2-1-05	Adopt	3-1-05
690-074-0085	11-7-05	Repeal	12-1-05	695-045-0150	2-1-05	Adopt	3-1-05
690-074-0090	11-7-05	Repeal	12-1-05	695-046-0010	2-1-05	Adopt	3-1-05
690-074-0095	11-7-05	Repeal	12-1-05	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
690-385-3150	11-16-04	Adopt	1-1-05	695-046-0080	2-1-05	Adopt	3-1-05
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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695-046-0130	2-1-05	Adopt	3-1-05	731-005-0530	3-1-05	Adopt	4-1-05
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
731-005-0001	3-1-05	Repeal	4-1-05	731-005-0580	3-1-05	Adopt	4-1-05
731-005-0005	3-1-05	Repeal	4-1-05	731-005-0590	3-1-05	Adopt	4-1-05
731-005-0015	3-1-05	Repeal	4-1-05	731-005-0600	3-1-05	Adopt	4-1-05
731-005-0025	3-1-05	Repeal	4-1-05	731-005-0610	3-1-05	Adopt	4-1-05
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
731-005-0135	3-1-05	Repeal	4-1-05	731-005-0720	3-1-05	Adopt	4-1-05
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
731-005-0235	3-1-05	Repeal	4-1-05	731-007-0030	3-1-05	Repeal	4-1-05
731-005-0245	3-1-05	Repeal	4-1-05	731-007-0040	3-1-05	Repeal	4-1-05
731-005-0255	3-1-05	Repeal	4-1-05	731-007-0050	3-1-05	Repeal	4-1-05
731-005-0265	3-1-05	Repeal	4-1-05	731-007-0060	3-1-05	Repeal	4-1-05
731-005-0275	3-1-05	Repeal	4-1-05	731-007-0070	3-1-05	Repeal	4-1-05
731-005-0285	3-1-05	Repeal	4-1-05	731-007-0080	3-1-05	Repeal	4-1-05
731-005-0295	3-1-05	Repeal	4-1-05	731-007-0090	3-1-05	Repeal	4-1-05
731-005-0305	3-1-05	Repeal	4-1-05	731-007-0100	3-1-05	Repeal	4-1-05
731-005-0315	3-1-05	Repeal	4-1-05	731-007-0110	3-1-05	Repeal	4-1-05
731-005-0325	3-1-05	Repeal	4-1-05	731-007-0120	3-1-05	Repeal	4-1-05
731-005-0335	3-1-05	Repeal	4-1-05	731-007-0130	3-1-05	Repeal	4-1-05
731-005-0345	3-1-05	Repeal	4-1-05	731-007-0140	3-1-05	Repeal	4-1-05
731-005-0355	3-1-05	Repeal	4-1-05	731-007-0150	3-1-05	Repeal	4-1-05
731-005-0365	3-1-05	Repeal	4-1-05	731-007-0160	3-1-05	Repeal	4-1-05
731-005-0400	3-1-05	Adopt	4-1-05	731-007-0170	3-1-05	Repeal	4-1-05
731-005-0410	3-1-05	Adopt	4-1-05	731-007-0180	3-1-05	Repeal	4-1-05
731-005-0420	3-1-05	Adopt	4-1-05	731-007-0190	3-1-05	Repeal	4-1-05
731-005-0430	3-1-05	Adopt	4-1-05	731-007-0200	3-1-05	Adopt	4-1-05
731-005-0440	3-1-05	Adopt	4-1-05	731-007-0210	3-1-05	Adopt	4-1-05
731-005-0450	3-1-05	Adopt	4-1-05	731-007-0220	3-1-05	Adopt	4-1-05
731-005-0460	3-1-05	Adopt	4-1-05	731-007-0230	3-1-05	Adopt	4-1-05
731-005-0470	3-1-05	Adopt	4-1-05	731-007-0240	3-1-05	Adopt	4-1-05
731-005-0480	3-1-05	Adopt	4-1-05	731-007-0250	3-1-05	Adopt	4-1-05
731-005-0490	3-1-05	Adopt	4-1-05	731-007-0260	3-1-05	Adopt	4-1-05
731-005-0500	3-1-05	Adopt	4-1-05	731-007-0270	3-1-05	Adopt	4-1-05
731-005-0510	3-1-05	Adopt	4-1-05	731-007-0280	3-1-05	Adopt	4-1-05

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731-007-0300	3-1-05	Adopt	4-1-05	731-146-0030	8-23-05	Adopt	10-1-05
731-007-0310	3-1-05	Adopt	4-1-05	731-146-0030(T)	8-23-05	Repeal	10-1-05
731-007-0320	3-1-05	Adopt	4-1-05	731-146-0040	3-1-05	Adopt(T)	4-1-05
731-007-0330	3-1-05	Adopt	4-1-05	731-146-0040	8-23-05	Adopt	10-1-05
731-007-0340	3-1-05	Adopt	4-1-05	731-146-0040(T)	8-23-05	Repeal	10-1-05
731-007-0350	3-1-05	Adopt	4-1-05	731-146-0050	3-1-05	Adopt(T)	4-1-05
731-007-0360	3-1-05	Adopt	4-1-05	731-146-0050	8-23-05	Adopt	10-1-05
731-007-0370	3-1-05	Adopt	4-1-05	731-146-0050(T)	8-23-05	Repeal	10-1-05
731-007-0380	3-1-05	Adopt	4-1-05	731-146-0060	3-1-05	Adopt(T)	4-1-05
731-007-0390	3-1-05	Adopt	4-1-05	731-146-0060	8-23-05	Adopt	10-1-05
731-007-0400	3-1-05	Adopt	4-1-05	731-146-0060(T)	8-23-05	Repeal	10-1-05
731-010-0030	3-1-05	Suspend	4-1-05	731-146-0070	3-1-05	Adopt(T)	4-1-05
731-010-0030	8-23-05	Repeal	10-1-05	731-146-0070	8-23-05	Adopt	10-1-05
731-030-0010	11-17-04	Amend	1-1-05	731-146-0070(T)	8-23-05	Repeal	10-1-05
731-030-0020	11-17-04	Amend	1-1-05	731-146-0080	3-1-05	Adopt(T)	4-1-05
731-030-0030	11-17-04	Amend	1-1-05	731-146-0080	8-23-05	Adopt	10-1-05
731-030-0040	11-17-04	Amend	1-1-05	731-146-0080(T)	8-23-05	Repeal	10-1-05
731-030-0050	11-17-04	Amend	1-1-05	731-146-0090	3-1-05	Adopt(T)	4-1-05
731-030-0060	11-17-04	Repeal	1-1-05	731-146-0090	8-23-05	Adopt	10-1-05
731-030-0070	11-17-04	Repeal	1-1-05	731-146-0090(T)	8-23-05	Repeal	10-1-05
731-030-0080	11-17-04	Amend	1-1-05	731-146-0100	3-1-05	Adopt(T)	4-1-05
731-030-0090	11-17-04	Amend	1-1-05	731-146-0100	8-23-05	Adopt	10-1-05
731-030-0100	11-17-04	Amend	1-1-05	731-146-0100(T)	8-23-05	Repeal	10-1-05
731-030-0110	11-17-04	Amend	1-1-05	731-146-0110	3-1-05	Adopt(T)	4-1-05
731-030-0120	11-17-04	Amend	1-1-05	731-146-0110	8-23-05	Adopt	10-1-05
731-030-0130	11-17-04	Amend	1-1-05	731-146-0110(T)	8-23-05	Repeal	10-1-05
731-030-0140	11-17-04	Repeal	1-1-05	731-146-0120	3-1-05	Adopt(T)	4-1-05
731-030-0150	11-17-04	Amend	1-1-05	731-146-0120	8-23-05	Adopt	10-1-05
731-030-0160	11-17-04	Amend	1-1-05	731-146-0120(T)	8-23-05	Repeal	10-1-05
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735-160-0110	5-19-05	Amend	7-1-05	736-015-0100	5-5-05	Am. & Ren.	6-1-05
735-160-0115	5-19-05	Adopt	7-1-05	736-015-0102	5-5-05	Repeal	6-1-05
735-160-0120	5-19-05	Repeal	7-1-05	736-015-0105	5-5-05	Repeal	6-1-05
735-160-0125	5-19-05	Adopt	7-1-05	736-015-0110	5-5-05	Am. & Ren.	6-1-05
735-160-0130	5-19-05	Amend	7-1-05	736-015-0115	5-5-05	Repeal	6-1-05
735-168-0070	2-16-05	Repeal	4-1-05	736-015-0120	5-5-05	Repeal	6-1-05
736-010-0005	5-5-05	Amend	6-1-05	736-015-0125	5-5-05	Repeal	6-1-05
736-010-0010	5-5-05	Amend	6-1-05	736-015-0130	5-5-05	Am. & Ren.	6-1-05
736-010-0015	5-5-05	Amend	6-1-05	736-015-0135	5-5-05	Am. & Ren.	6-1-05
736-010-0020	5-5-05	Amend	6-1-05	736-015-0140	5-5-05	Repeal	6-1-05
736-010-0022	5-5-05	Amend	6-1-05	736-015-0144	5-5-05	Am. & Ren.	6-1-05
736-010-0025	5-5-05	Amend	6-1-05	736-015-0146	5-5-05	Am. & Ren.	6-1-05
736-010-0026	5-5-05	Amend	6-1-05	736-015-0148	5-5-05	Am. & Ren.	6-1-05
736-010-0027	5-5-05	Amend	6-1-05	736-015-0150	5-5-05	Am. & Ren.	6-1-05
736-010-0030	5-5-05	Amend	6-1-05	736-015-0155	5-5-05	Repeal	6-1-05
736-010-0035	5-5-05	Amend	6-1-05	736-015-0160	5-5-05	Am. & Ren.	6-1-05
736-010-0040	5-5-05	Amend	6-1-05	736-018-0045	2-4-05	Amend	3-1-05
736-010-0045	5-5-05	Am. & Ren.	6-1-05	736-018-0045	5-4-05	Amend	6-1-05
736-010-0050	5-5-05	Amend	6-1-05	736-054-0000	3-23-05	Adopt	5-1-05
736-010-0055	5-5-05	Amend	6-1-05	736-054-0005	3-23-05	Adopt	5-1-05
736-010-0060	5-5-05	Amend	6-1-05	736-054-0010	3-23-05	Adopt	5-1-05
736-010-0065	5-5-05	Amend	6-1-05	736-054-0015	3-23-05	Adopt	5-1-05

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736-054-0025	3-23-05	Adopt	5-1-05	801-030-0020	8-12-05	Amend	9-1-05
736-054-0030	3-23-05	Adopt	5-1-05	801-040-0010	1-1-05	Amend	2-1-05
738-001-0035	9-23-05	Amend	11-1-05	801-040-0020	1-1-05	Amend	2-1-05
738-020-0025	5-23-05	Amend	7-1-05	801-040-0030	1-1-05	Amend	2-1-05
740-010-0020	8-18-05	Adopt(T)	10-1-05	801-040-0040	1-1-05	Amend	2-1-05
740-035-0200	7-22-05	Amend	9-1-05	801-040-0050	1-1-05	Amend	2-1-05
740-045-0010	4-1-05	Amend	5-1-05	801-040-0060	1-1-05	Repeal	2-1-05
740-055-0030	10-20-05	Amend	12-1-05	801-040-0070	1-1-05	Amend	2-1-05
740-100-0010	4-1-05	Amend	5-1-05	801-040-0090	1-1-05	Amend	2-1-05
740-100-0010	10-1-05	Amend(T)	11-1-05	801-040-0100	1-1-05	Amend	2-1-05
740-100-0015	4-1-05	Amend	5-1-05	801-040-0150	1-1-05	Amend	2-1-05
740-100-0020	4-1-05	Amend	5-1-05	801-040-0160	1-1-05	Amend	2-1-05
740-100-0070	4-1-05	Amend	5-1-05	804-001-0002	2-14-05	Amend	3-1-05
740-100-0080	4-1-05	Amend	5-1-05	804-001-0002	5-18-05	Amend	7-1-05
740-100-0090	4-1-05	Amend	5-1-05	804-001-0014	2-14-05	Amend	3-1-05
740-100-0100	4-1-05	Amend	5-1-05	804-001-0015	2-14-05	Amend	3-1-05
740-110-0010	4-1-05	Amend	5-1-05	804-003-0000	2-14-05	Amend	3-1-05
740-200-0010	1-1-05	Amend	2-1-05	804-010-0000	2-14-05	Amend	3-1-05
740-200-0020	1-1-05	Amend	2-1-05	804-010-0010	2-14-05	Amend	3-1-05
740-200-0040	1-1-05	Amend	2-1-05	804-020-0055	2-14-05	Amend	3-1-05
800-001-0005	9-1-05	Amend	10-1-05	804-025-0000	2-14-05	Adopt	3-1-05
800-010-0015	9-1-05	Amend	10-1-05	804-025-0010	2-14-05	Adopt	3-1-05
800-010-0025	9-1-05	Amend	10-1-05	804-025-0020	2-14-05	Adopt	3-1-05
800-015-0005	9-1-05	Amend	10-1-05	804-030-0011	2-14-05	Amend	3-1-05
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800-020-0015	1-5-05	Amend	2-1-05	804-030-0020	2-14-05	Amend	3-1-05
800-020-0015	9-1-05	Amend	10-1-05	804-030-0060	2-14-05	Repeal	3-1-05
800-020-0020	8-1-05	Amend	9-1-05	804-040-0000	2-14-05	Amend	3-1-05
800-020-0020	9-1-05	Amend	10-1-05	804-040-0000	5-18-05	Amend	7-1-05
800-020-0022	9-1-05	Adopt	10-1-05	806-001-0003	7-1-05	Amend	4-1-05
800-020-0025	9-1-05	Amend	10-1-05	806-010-0020	5-12-05	Amend	6-1-05
800-020-0030	9-1-05	Amend	10-1-05	806-010-0050	5-12-05	Amend	6-1-05
800-025-0010	9-1-05	Amend	10-1-05	806-010-0075	8-30-05	Amend	10-1-05
800-025-0020	9-1-05	Amend	10-1-05	806-010-0078	8-30-05	Amend	10-1-05
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800-025-0030	9-1-05	Amend	10-1-05	808-001-0005	2-15-05	Amend	3-1-05
800-025-0040	9-1-05	Amend	10-1-05	808-001-0008	6-1-05	Amend	7-1-05
800-025-0060	9-1-05	Amend	10-1-05	808-001-0030	2-15-05	Amend	3-1-05
800-030-0025	9-1-05	Amend	10-1-05	808-002-0260	2-15-05	Amend	3-1-05
800-030-0035	9-1-05	Amend	10-1-05	808-002-0325	2-15-05	Adopt	3-1-05
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801-010-0010	1-1-05	Amend	2-1-05	808-003-0015	10-5-05	Amend	11-1-05
801-010-0050	1-1-05	Amend	2-1-05	808-003-0025	4-5-05	Amend	5-1-05
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801-010-0085	1-1-05	Amend	2-1-05	808-004-0210	1-1-04	Adopt(T)	3-1-05
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801-020-0690	1-1-05	Amend	2-1-05	808-004-0211	2-15-05	Adopt	3-1-05
801-020-0700	1-1-05	Amend	2-1-05	808-004-0211(T)	2-15-05	Repeal	3-1-05
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808-004-0510	2-15-05	Amend	3-1-05	808-008-0521	2-15-05	Adopt	3-1-05
808-004-0520	2-15-05	Amend	3-1-05	808-008-0521(T)	2-15-05	Repeal	3-1-05
808-005-0020	4-5-05	Amend	5-1-05	808-009-0100	2-15-05	Amend	3-1-05
808-008-0020	12-15-04	Amend(T)	1-1-05	809-010-0001	9-28-05	Amend	11-1-05
808-008-0020	2-15-05	Amend	3-1-05	809-010-0025	8-15-05	Amend	9-1-05
808-008-0020(T)	2-15-05	Repeal	3-1-05	809-040-0002	9-28-05	Amend	11-1-05
808-008-0030	12-15-04	Amend(T)	1-1-05	809-040-0006	9-28-05	Amend	11-1-05
808-008-0030	2-15-05	Amend	3-1-05	809-050-0010	9-28-05	Amend	11-1-05
808-008-0030(T)	2-15-05	Repeal	3-1-05	811-015-0010	2-1-05	Amend	3-1-05
808-008-0050	1-1-04	Adopt(T)	3-1-05	811-030-0030	12-10-04	Amend	1-1-05
808-008-0051	12-15-04	Adopt(T)	1-1-05	812-001-0015	12-10-04	Amend	1-1-05
808-008-0051	2-15-05	Adopt	3-1-05	812-001-0015	8-24-05	Amend	10-1-05
808-008-0051(T)	2-15-05	Repeal	3-1-05	812-001-0040	12-10-04	Amend	1-1-05
808-008-0060	12-15-04	Amend(T)	1-1-05	812-002-0001	8-24-05	Adopt	10-1-05
808-008-0060	2-15-05	Amend	3-1-05	812-002-0220	7-1-05	Amend	8-1-05
808-008-0060(T)	2-15-05	Repeal	3-1-05	812-002-0260	12-10-04	Amend	1-1-05
808-008-0085	12-15-04	Amend(T)	1-1-05	812-002-0275	8-24-05	Adopt	10-1-05
808-008-0085	2-15-05	Amend	3-1-05	812-002-0450	8-24-05	Amend	10-1-05
808-008-0085(T)	2-15-05	Repeal	3-1-05	812-002-0555	12-10-04	Amend	1-1-05
808-008-0140	12-15-04	Amend(T)	1-1-05	812-002-0580	8-24-05	Amend	10-1-05
808-008-0140	2-15-05	Amend	3-1-05	812-002-0620	8-24-05	Amend	10-1-05
808-008-0140(T)	2-15-05	Repeal	3-1-05	812-002-0760	7-1-05	Amend	8-1-05
808-008-0180	2-15-05	Amend	3-1-05	812-002-0800	12-10-04	Amend	1-1-05
808-008-0240	12-15-04	Suspend	1-1-05	812-003-0000	12-10-04	Repeal	1-1-05
808-008-0240	2-15-05	Repeal	3-1-05	812-003-0002	12-10-04	Am. & Ren.	1-1-05
808-008-0280	12-15-04	Amend(T)	1-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
808-008-0280	2-15-05	Amend	3-1-05	812-003-0012	12-10-04	Repeal	1-1-05
808-008-0280(T)	2-15-05	Repeal	3-1-05	812-003-0015	12-10-04	Repeal	1-1-05
808-008-0291	12-15-04	Adopt(T)	1-1-05	812-003-0020	12-10-04	Repeal	1-1-05
808-008-0291	2-15-05	Adopt	3-1-05	812-003-0025	12-10-04	Repeal	1-1-05
808-008-0291(T)	2-15-05	Repeal	3-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
808-008-0400	12-15-04	Amend(T)	1-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
808-008-0400	2-15-05	Amend	3-1-05	812-003-0050	12-10-04	Repeal	1-1-05
808-008-0400(T)	2-15-05	Repeal	3-1-05	812-003-0100	12-10-04	Adopt	1-1-05
808-008-0420	12-15-04	Amend(T)	1-1-05	812-003-0100	8-24-05	Amend	10-1-05
808-008-0420	2-15-05	Amend	3-1-05	812-003-0110	12-10-04	Adopt	1-1-05
808-008-0420(T)	2-15-05	Repeal	3-1-05	812-003-0120	12-10-04	Adopt	1-1-05
808-008-0425	12-15-04	Amend(T)	1-1-05	812-003-0130	12-10-04	Adopt	1-1-05
808-008-0425	2-15-05	Amend	3-1-05	812-003-0140	12-10-04	Adopt	1-1-05
808-008-0425(T)	2-15-05	Repeal	3-1-05	812-003-0140	10-1-05	Amend	10-1-05
808-008-0430	12-15-04	Amend(T)	1-1-05	812-003-0150	12-10-04	Adopt	1-1-05
808-008-0430	2-15-05	Amend	3-1-05	812-003-0160	12-10-04	Adopt	1-1-05
808-008-0430(T)	2-15-05	Repeal	3-1-05	812-003-0170	12-10-04	Adopt	1-1-05
808-008-0440	12-15-04	Amend(T)	1-1-05	812-003-0170	7-1-05	Amend	8-1-05
808-008-0440	2-15-05	Amend	3-1-05	812-003-0180	12-10-04	Adopt	1-1-05
808-008-0440(T)	2-15-05	Repeal	3-1-05	812-003-0190	12-10-04	Adopt	1-1-05
808-008-0460	12-15-04	Amend(T)	1-1-05	812-003-0200	12-10-04	Adopt	1-1-05
808-008-0460	2-15-05	Amend	3-1-05	812-003-0210	12-10-04	Adopt	1-1-05
808-008-0460(T)	2-15-05	Repeal	3-1-05	812-003-0220	12-10-04	Adopt	1-1-05
808-008-0500	12-15-04	Amend(T)	1-1-05	812-003-0230	12-10-04	Adopt	1-1-05
808-008-0500	2-15-05	Amend	3-1-05	812-003-0240	12-10-04	Adopt	1-1-05
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812-003-0290	12-10-04	Adopt	1-1-05	812-009-0400	12-10-04	Amend	1-1-05
812-003-0300	12-10-04	Adopt	1-1-05	812-010-0040	12-10-04	Amend	1-1-05
812-003-0310	12-10-04	Adopt	1-1-05	812-010-0050	12-10-04	Amend	1-1-05
812-003-0330	12-10-04	Adopt	1-1-05	812-010-0080	7-1-05	Amend	8-1-05
812-003-0340	12-10-04	Adopt	1-1-05	812-010-0200	12-10-04	Amend	1-1-05
812-003-0350	12-10-04	Adopt	1-1-05	812-010-0220	12-10-04	Amend	1-1-05
812-003-0350	7-1-05	Amend	8-1-05	812-010-0260	12-10-04	Amend	1-1-05
812-003-0360	12-10-04	Adopt	1-1-05	812-010-0300	12-10-04	Amend	1-1-05
812-003-0370	12-10-04	Adopt	1-1-05	812-010-0320	12-10-04	Amend	1-1-05
812-003-0380	12-10-04	Adopt	1-1-05	812-010-0340	12-10-04	Amend	1-1-05
812-003-0380	7-1-05	Amend	8-1-05	812-010-0360	12-10-04	Amend	1-1-05
812-003-0410	12-10-04	Adopt	1-1-05	812-010-0380	12-10-04	Amend	1-1-05
812-003-0420	12-10-04	Adopt	1-1-05	812-010-0420	12-10-04	Amend	1-1-05
812-003-0430	12-10-04	Adopt	1-1-05	812-010-0420	7-1-05	Amend	8-1-05
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812-004-0120	8-24-05	Amend	10-1-05	812-010-0460	7-1-05	Amend	8-1-05
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812-004-0250	8-24-05	Amend	10-1-05	812-010-0480	12-10-04	Amend	1-1-05
812-004-0260	12-10-04	Amend	1-1-05	813-001-0000	8-4-05	Suspend	9-1-05
812-004-0320	12-10-04	Amend	1-1-05	813-001-0002	8-4-05	Adopt(T)	9-1-05
812-004-0470	12-10-04	Amend	1-1-05	813-001-0003	8-4-05	Am. & Ren.(T)	9-1-05
812-004-0520	8-24-05	Amend	10-1-05	813-001-0005	8-4-05	Suspend	9-1-05
812-004-0530	12-10-04	Amend	1-1-05	813-001-0007	8-4-05	Adopt(T)	9-1-05
812-004-0535	8-24-05	Amend	10-1-05	813-001-0008	8-4-05	Suspend	9-1-05
812-004-0540	12-10-04	Amend	1-1-05	813-001-0011	8-4-05	Adopt(T)	9-1-05
812-004-0540	8-24-05	Amend	10-1-05	813-001-0066	8-4-05	Suspend	9-1-05
812-004-0560	12-10-04	Amend	1-1-05	813-001-0068	8-4-05	Suspend	9-1-05
812-004-0590	12-10-04	Amend	1-1-05	813-001-0069	8-4-05	Suspend	9-1-05
812-004-0590	8-24-05	Amend	10-1-05	813-001-0080	8-4-05	Suspend	9-1-05
812-004-0600	12-10-04	Amend	1-1-05	813-001-0090	8-4-05	Suspend	9-1-05
812-004-0600	7-1-05	Amend	8-1-05	813-003-0001	11-23-04	Adopt	1-1-05
812-005-0005	12-10-04	Amend	1-1-05	813-003-0006	11-23-04	Adopt	1-1-05
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812-008-0110	12-10-04	Amend	1-1-05	813-005-0010	8-4-05	Suspend	9-1-05
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812-008-0202	1-1-06	Am. & Ren.	10-1-05	813-005-0020	8-4-05	Suspend	9-1-05
812-008-0203	1-1-06	Am. & Ren.	10-1-05	813-005-0025	8-4-05	Suspend	9-1-05
812-008-0204	1-1-06	Am. & Ren.	10-1-05	813-005-0030	8-4-05	Suspend	9-1-05
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812-008-0207	1-1-06	Am. & Ren.	10-1-05	813-230-0001	12-17-04	Adopt(T)	2-1-05
812-008-0208	1-1-06	Am. & Ren.	10-1-05	813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05
812-008-0209	1-1-06	Am. & Ren.	10-1-05	813-230-0010	12-17-04	Amend(T)	2-1-05
812-008-0210	1-1-06	Am. & Ren.	10-1-05	813-230-0015	12-17-04	Amend(T)	2-1-05
812-008-0211	1-1-06	Am. & Ren.	10-1-05	813-230-0020	12-17-04	Amend(T)	2-1-05
812-008-0212	1-1-06	Am. & Ren.	10-1-05	817-005-0005	7-1-05	Amend	8-1-05
812-008-0213	1-1-06	Am. & Ren.	10-1-05	817-030-0018	7-1-05	Amend	8-1-05

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817-040-0003	7-1-05	Amend	8-1-05	834-010-0015	7-22-05	Amend	7-1-05
818-001-0002	2-1-05	Amend	3-1-05	834-010-0019	7-22-05	Adopt	7-1-05
818-001-0005	2-1-05	Amend	3-1-05	834-010-0025	7-22-05	Amend	7-1-05
818-001-0087	2-1-05	Amend	3-1-05	834-010-0030	7-22-05	Amend	7-1-05
818-015-0040	11-1-05	Amend	12-1-05	836-009-0007	8-1-05	Amend	7-1-05
818-021-0010	11-1-05	Amend	12-1-05	836-014-0400	3-21-05	Adopt	4-1-05
818-021-0011	12-1-04	Amend	1-1-05	836-020-0210	8-1-05	Amend	7-1-05
818-021-0017	11-1-05	Amend	12-1-05	836-020-0305	8-1-05	Amend	7-1-05
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818-021-0088	2-1-05	Adopt	3-1-05	836-042-0045	4-7-05	Amend	5-1-05
818-026-0000	2-1-05	Amend	3-1-05	836-042-0085	4-7-05	Amend	5-1-05
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818-026-0050	2-1-05	Amend	3-1-05	836-050-0230	8-1-05	Amend	7-1-05
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818-026-0060	2-1-05	Amend	3-1-05	836-051-0540	8-1-05	Amend	7-1-05
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818-026-0110	2-1-05	Amend	3-1-05	836-052-0114	7-26-05	Amend	9-1-05
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818-035-0030	2-1-05	Amend	3-1-05	836-052-0133	7-26-05	Amend	9-1-05
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818-042-0060	11-1-05	Amend	12-1-05	836-052-0139	7-26-05	Amend	9-1-05
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836-052-0545	3-1-05	Am. & Ren.	4-1-05	836-071-0272	8-1-05	Am. & Ren.	7-1-05
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836-052-0583	3-1-05	Am. & Ren.	4-1-05	836-071-0297	8-1-05	Amend	7-1-05
836-052-0588	3-1-05	Am. & Ren.	4-1-05	836-071-0310	8-1-05	Amend	7-1-05
836-052-0600	3-1-05	Am. & Ren.	4-1-05	836-071-0321	8-1-05	Adopt	7-1-05
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836-052-0610	3-1-05	Am. & Ren.	4-1-05	836-071-0328	8-1-05	Adopt	7-1-05
836-052-0615	3-1-05	Am. & Ren.	4-1-05	836-071-0331	8-1-05	Amend	7-1-05
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836-052-0620	3-1-05	Am. & Ren.	4-1-05	836-071-0346	8-1-05	Amend	7-1-05
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836-080-0665	4-1-05	Adopt	5-1-05	837-012-1230	2-17-05	Amend	4-1-05
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837-012-0610	6-7-05	Amend	7-1-05	837-085-0110	4-1-05	Amend	5-1-05
837-012-0615	2-15-05	Amend	3-1-05	837-085-0180	4-1-05	Amend	5-1-05
837-012-0620	2-15-05	Amend	3-1-05	837-085-0210	4-1-05	Amend	5-1-05
837-012-0620	6-7-05	Amend	7-1-05	837-085-0250	4-1-05	Amend	5-1-05
837-012-0625	2-15-05	Amend	3-1-05	837-085-0260	4-1-05	Amend	5-1-05
837-012-0625	8-16-05	Amend(T)	10-1-05	837-085-0270	4-1-05	Amend	5-1-05
837-012-0635	6-7-05	Amend	7-1-05	837-085-0280	4-1-05	Amend	5-1-05
837-012-0640	6-7-05	Amend	7-1-05	837-085-0290	4-1-05	Amend	5-1-05
837-012-0645	2-15-05	Amend	3-1-05	837-085-0300	4-1-05	Amend	5-1-05
837-012-0650	2-15-05	Amend	3-1-05	837-085-0305	4-1-05	Adopt	5-1-05
837-012-0650	6-7-05	Amend	7-1-05	837-085-0310	4-1-05	Amend	5-1-05
837-012-0655	6-7-05	Amend	7-1-05	837-085-0320	4-1-05	Amend	5-1-05
837-012-0670	2-15-05	Amend	3-1-05	837-085-0350	4-1-05	Amend	5-1-05
837-012-0670	6-7-05	Amend	7-1-05	837-090-1145	8-15-05	Amend	9-1-05
837-012-0750	2-15-05	Amend	3-1-05	839-003-0040	1-7-05	Amend	2-1-05
837-012-0750	8-16-05	Amend(T)	10-1-05	839-003-0090	10-21-05	Amend	12-1-05

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839-006-0136	10-27-05	Amend(T)	12-1-05	839-016-0540	3-1-05	Am. & Ren.	4-1-05
839-006-0270	10-21-05	Adopt	12-1-05	839-016-0700	12-13-04	Amend	1-1-05
839-006-0275	10-21-05	Adopt	12-1-05	839-016-0700	1-1-05	Amend	2-1-05
839-006-0280	10-21-05	Adopt	12-1-05	839-016-0700	3-1-05	Am. & Ren.	4-1-05
839-006-0290	10-21-05	Adopt	12-1-05	839-016-0750	3-1-05	Am. & Ren.	4-1-05
839-006-0295	10-21-05	Adopt	12-1-05	839-021-0106	1-3-05	Adopt	2-1-05
839-009-0240	1-7-05	Amend	2-1-05	839-021-0355	1-3-05	Amend	2-1-05
839-009-0260	1-7-05	Amend	2-1-05	839-025-0700	4-1-05	Amend	5-1-05
839-009-0260	11-16-05	Amend	12-1-05	839-025-0700	9-20-05	Amend	11-1-05
839-010-0200	1-7-05	Adopt	2-1-05	839-025-0700	10-1-05	Amend	11-1-05
839-010-0205	1-7-05	Adopt	2-1-05	839-025-0750	4-18-05	Amend	5-1-05
839-010-0210	1-7-05	Adopt	2-1-05	839-025-0750	5-2-05	Amend	6-1-05
839-011-0084	8-23-05	Amend(T)	10-1-05	839-025-0750	6-1-05	Amend	7-1-05
839-016-0000	3-1-05	Am. & Ren.	4-1-05	839-025-0750	6-21-05	Amend	8-1-05
839-016-0002	3-1-05	Am. & Ren.	4-1-05	839-025-0750	7-1-05	Amend	8-1-05
839-016-0003	3-1-05	Am. & Ren.	4-1-05	839-025-0750	7-22-05	Amend	9-1-05
839-016-0004	3-1-05	Am. & Ren.	4-1-05	839-025-0750	8-10-05	Amend	9-1-05
839-016-0006	3-1-05	Am. & Ren.	4-1-05	839-025-0750	8-29-05	Amend	10-1-05
839-016-0007	3-1-05	Am. & Ren.	4-1-05	839-025-0750	10-28-05	Amend	12-1-05
839-016-0008	3-1-05	Am. & Ren.	4-1-05	839-050-0050	2-11-05	Amend	3-1-05
839-016-0010	3-1-05	Am. & Ren.	4-1-05	839-050-0220	2-11-05	Amend	3-1-05
839-016-0013	3-1-05	Am. & Ren.	4-1-05	839-050-0360	2-11-05	Amend	3-1-05
839-016-0020	3-1-05	Am. & Ren.	4-1-05	845-001-0008	5-1-05	Amend	6-1-05
839-016-0025	3-1-05	Am. & Ren.	4-1-05	845-003-0670	5-1-05	Amend	6-1-05
839-016-0030	3-1-05	Am. & Ren.	4-1-05	845-004-0020	5-1-05	Amend	6-1-05
839-016-0033	3-1-05	Am. & Ren.	4-1-05	845-004-0101	1-1-05	Amend	1-1-05
839-016-0034	3-1-05	Am. & Ren.	4-1-05	845-004-0120	11-1-05	Amend	12-1-05
839-016-0035	3-1-05	Am. & Ren.	4-1-05	845-005-0303	5-1-05	Amend	6-1-05
839-016-0040	3-1-05	Am. & Ren.	4-1-05	845-005-0312	1-1-05	Amend	2-1-05
839-016-0043	3-1-05	Am. & Ren.	4-1-05	845-005-0314	5-1-05	Amend	6-1-05
839-016-0045	3-1-05	Am. & Ren.	4-1-05	845-005-0428	11-1-05	Amend	12-1-05
839-016-0050	3-1-05	Am. & Ren.	4-1-05	845-006-0434	5-1-05	Amend	6-1-05
839-016-0054	3-1-05	Am. & Ren.	4-1-05	845-006-0475	5-1-05	Amend	6-1-05
839-016-0060	3-1-05	Am. & Ren.	4-1-05	845-009-0010	7-1-05	Amend	7-1-05
839-016-0065	3-1-05	Am. & Ren.	4-1-05	845-009-0015	7-1-05	Amend	7-1-05
839-016-0080	3-1-05	Am. & Ren.	4-1-05	845-009-0135	5-1-05	Amend	6-1-05
839-016-0085	3-1-05	Am. & Ren.	4-1-05	845-009-0200	1-1-05	Amend	2-1-05
839-016-0090	3-1-05	Am. & Ren.	4-1-05	845-010-0905	12-1-04	Amend	1-1-05
839-016-0095	3-1-05	Am. & Ren.	4-1-05	845-010-0915	12-1-04	Amend	1-1-05
839-016-0100	3-1-05	Am. & Ren.	4-1-05	845-015-0143	6-1-05	Amend	7-1-05
839-016-0150	3-1-05	Am. & Ren.	4-1-05	845-015-0170	9-1-05	Amend	10-1-05
839-016-0155	3-1-05	Am. & Ren.	4-1-05	845-015-0175	1-1-05	Amend	2-1-05
839-016-0200	3-1-05	Am. & Ren.	4-1-05	847-005-0005	7-20-05	Amend	9-1-05
839-016-0210	3-1-05	Am. & Ren.	4-1-05	847-010-0100	7-20-05	Adopt	9-1-05
839-016-0220	3-1-05	Am. & Ren.	4-1-05	847-015-0025	1-27-05	Amend	3-1-05
839-016-0230	3-1-05	Am. & Ren.	4-1-05	847-020-0130	7-20-05	Amend	9-1-05
839-016-0240	3-1-05	Am. & Ren.	4-1-05	847-020-0160	7-20-05	Amend	9-1-05
839-016-0300	3-1-05	Am. & Ren.	4-1-05	847-020-0170	7-20-05	Amend	9-1-05
839-016-0310	3-1-05	Am. & Ren.	4-1-05	847-035-0030	1-27-05	Amend	3-1-05
839-016-0320	3-1-05	Am. & Ren.	4-1-05	847-035-0030	4-21-05	Amend	6-1-05
839-016-0330	3-1-05	Am. & Ren.	4-1-05	847-035-0030	7-20-05	Amend	9-1-05
839-016-0340	3-1-05	Am. & Ren.	4-1-05	847-050-0029	10-12-05	Amend	11-1-05
839-016-0500	3-1-05	Am. & Ren.	4-1-05	847-050-0037	4-21-05	Amend	6-1-05
839-016-0510	3-1-05	Am. & Ren.	4-1-05	847-050-0041	1-27-05	Amend	3-1-05
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847-080-0010	10-12-05	Amend	11-1-05	848-040-0170	12-29-04	Adopt	2-1-05
847-080-0018	7-20-05	Amend	9-1-05	848-045-0010	12-29-04	Adopt	2-1-05
848-001-0000	12-29-04	Amend	2-1-05	848-045-0020	12-29-04	Adopt	2-1-05
848-001-0005	12-29-04	Amend	2-1-05	848-050-0000	12-29-04	Repeal	2-1-05
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848-010-0010	12-29-04	Amend	2-1-05	848-050-0030	12-29-04	Repeal	2-1-05
848-010-0015	12-29-04	Amend	2-1-05	848-050-0100	12-29-04	Adopt	2-1-05
848-010-0020	12-29-04	Amend	2-1-05	848-050-0110	12-29-04	Adopt	2-1-05
848-010-0026	12-29-04	Amend	2-1-05	848-050-0120	12-29-04	Adopt	2-1-05
848-010-0033	12-29-04	Adopt	2-1-05	850-010-0010	10-27-05	Renumber	12-1-05
848-010-0035	12-29-04	Amend	2-1-05	850-010-0030	10-27-05	Renumber	12-1-05
848-010-0044	12-29-04	Adopt	2-1-05	850-010-0035	10-27-05	Renumber	12-1-05
848-010-0045	12-29-04	Repeal	2-1-05	850-010-0040	10-27-05	Renumber	12-1-05
848-010-0050	12-29-04	Repeal	2-1-05	850-010-0055	10-27-05	Renumber	12-1-05
848-010-0060	12-29-04	Repeal	2-1-05	850-010-0060	10-27-05	Renumber	12-1-05
848-010-0070	12-29-04	Repeal	2-1-05	850-010-0070	10-27-05	Renumber	12-1-05
848-010-0080	12-29-04	Repeal	2-1-05	850-010-0080	10-27-05	Renumber	12-1-05
848-010-0090	12-29-04	Repeal	2-1-05	850-010-0090	10-27-05	Renumber	12-1-05
848-010-0105	12-29-04	Renumber	2-1-05	850-010-0110	10-27-05	Renumber	12-1-05
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848-010-0120	12-29-04	Am. & Ren.	2-1-05	850-010-0140	10-27-05	Renumber	12-1-05
848-010-0125	12-29-04	Repeal	2-1-05	850-010-0150	10-27-05	Renumber	12-1-05
848-015-0010	12-29-04	Adopt	2-1-05	850-010-0175	10-27-05	Renumber	12-1-05
848-015-0020	12-29-04	Adopt	2-1-05	850-010-0185	10-27-05	Renumber	12-1-05
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848-020-0000	12-29-04	Amend	2-1-05	850-010-0190	10-27-05	Renumber	12-1-05
848-020-0010	12-29-04	Amend	2-1-05	850-010-0195	10-27-05	Renumber	12-1-05
848-020-0020	12-29-04	Repeal	2-1-05	850-010-0210	10-27-05	Renumber	12-1-05
848-020-0030	12-29-04	Amend	2-1-05	850-010-0212	8-15-05	Amend	9-1-05
848-020-0040	12-29-04	Amend	2-1-05	850-010-0212	10-27-05	Renumber	12-1-05
848-020-0050	12-29-04	Amend	2-1-05	850-010-0215	10-27-05	Renumber	12-1-05
848-020-0060	12-29-04	Amend	2-1-05	850-010-0220	2-4-05	Amend	3-1-05
848-030-0000	12-29-04	Amend	2-1-05	850-010-0220	10-27-05	Renumber	12-1-05
848-030-0010	12-29-04	Amend	2-1-05	850-010-0225	2-4-05	Amend	3-1-05
848-040-0000	12-29-04	Repeal	2-1-05	850-010-0225	6-10-05	Amend	7-1-05
848-040-0010	12-29-04	Repeal	2-1-05	850-010-0225	10-27-05	Renumber	12-1-05
848-040-0020	12-29-04	Repeal	2-1-05	850-010-0226	10-27-05	Renumber	12-1-05
848-040-0030	12-29-04	Repeal	2-1-05	850-010-0230	10-27-05	Renumber	12-1-05
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848-040-0050	12-29-04	Repeal	2-1-05	850-020-0005	2-4-05	Amend	3-1-05
848-040-0100	12-29-04	Adopt	2-1-05	850-020-0010	2-4-05	Repeal	3-1-05
848-040-0105	12-29-04	Adopt	2-1-05	850-020-0015	2-4-05	Repeal	3-1-05
848-040-0110	12-29-04	Adopt	2-1-05	850-020-0020	2-4-05	Amend	3-1-05
848-040-0115	12-29-04	Adopt	2-1-05	850-020-0025	2-4-05	Amend	3-1-05
848-040-0120	12-29-04	Adopt	2-1-05	850-020-0030	2-4-05	Amend	3-1-05
848-040-0125	12-29-04	Adopt	2-1-05	850-050-0010	10-27-05	Adopt	12-1-05
848-040-0130	12-29-04	Adopt	2-1-05	851-010-0010	10-13-05	Amend	11-1-05
848-040-0135	12-29-04	Adopt	2-1-05	851-050-0002	2-17-05	Amend	4-1-05
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848-040-0145	12-29-04	Adopt	2-1-05	851-050-0131	2-17-05	Amend	4-1-05
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855-110-0007	3-1-05	Amend	3-1-05	860-022-0038	12-30-04	Amend	2-1-05
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860-034-0095	12-1-04	Amend	1-1-05	863-015-0062	5-6-05	Adopt	6-1-05
860-034-0095	12-30-04	Amend	2-1-05	863-015-0065	5-6-05	Amend	6-1-05
860-034-0097	12-1-04	Amend	1-1-05	863-015-0075	5-6-05	Amend	6-1-05
860-034-0097	12-30-04	Amend	2-1-05	863-015-0076	5-6-05	Adopt	6-1-05
860-034-0110	12-1-04	Amend	1-1-05	863-015-0080	5-6-05	Amend	6-1-05
860-034-0140	12-1-04	Amend	1-1-05	863-015-0125	5-6-05	Amend	6-1-05
860-034-0160	12-1-04	Amend	1-1-05	863-015-0175	5-6-05	Amend	6-1-05
860-034-0275	9-1-05	Adopt(T)	10-1-05	863-015-0195	5-6-05	Amend	6-1-05
860-034-0300	12-30-04	Amend	2-1-05	863-015-0215	5-6-05	Amend	6-1-05
860-034-0320	12-30-04	Amend	2-1-05	863-015-0260	5-6-05	Amend	6-1-05
860-034-0440	12-30-04	Amend	2-1-05	863-025-0015	5-6-05	Amend	6-1-05
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918-225-0430	10-1-05	Amend	10-1-05	918-440-0510	1-1-06	Adopt	11-1-05
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918-251-0030	7-7-05	Suspend	8-1-05	918-460-0015	10-1-05	Amend	11-1-05
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