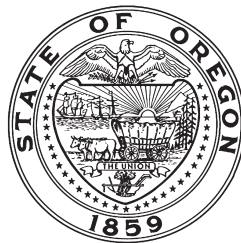


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

Volume 44, No. 2
February 1, 2005

For December 16, 2004–January 14, 2005



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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 "directives, standards, regulations or statements of general applicability that implement, interpret or prescribe law or policy or describe the agency's procedure or practice requirements." ORS 183.310(8) 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 910-1997, 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 915-1997. 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 910-1997 and ARC 915-1997 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the complete text of permanent and temporary rules may be obtained from the adopting agency or from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701.

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OTHER NOTICES

A CHANCE TO COMMENT ON... PROPOSED ENVIRONMENTAL CLEANUP METHOD ZIDELL WATERFRONT PROPERTY

COMMENTS DUE: March 4, 2005

PROJECT LOCATION: 3121 SW Moody Avenue, Portland Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) requests public comment on its proposed cleanup decision regarding soil and sediment contamination at the Zidell Waterfront Property Site (ECSI No 689). Metals, petroleum hydrocarbons (e.g. diesel, motor oil, lube oil), polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) have been identified as the principal contaminants of concern in site soil and in Willamette River sediments adjacent to the property. DEQ will issue a final cleanup decision for the site after public comment and consideration of those comments by the Director.

HIGHLIGHTS: DEQ's proposed remedial action for soil includes: 1) removal of soil hot spots and asbestos containing material for off-site treatment and/or disposal; 2) installation and maintenance of a soil or alternative impervious material cap (e.g. buildings or paved parking) over remaining areas of soil contamination; and 3) institutional controls to prevent future contact with contaminated soil by site workers or planned future residential occupants. DEQ's proposed cleanup of sediment contamination involves placing a cap over an approximate eight acre area of contaminated sediments. The preliminary cap design would consist of 2 feet thick layer of sand covered with 1 foot thick layer of rock to prevent erosion of the sand cap. The estimated total present worth of the soil and sediment cleanup is \$6.5 million to \$7 million.

HOW TO COMMENT: Detailed information on the Zidell Site including the DEQ staff report, and investigation plans and reports are available for public review at DEQ's Northwest Region Office at 2020 SW Fourth Avenue, Suite 400, Portland. Appointments to review DEQ files should be made by calling (503)229-6729. Written comments should be sent by Friday, March 4, 2005 to:

Bruce Gilles, Project Manager
Department of Environmental Quality
2020 SW Fourth Avenue, Suite 400
Portland, Oregon 97201

Telephone: (503) 229-6662 or 1-800-452-4011.

A public meeting 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. Please notify DEQ as far in advance of the meeting as possible of any special physical or language accommodations you may need due to a disability, or if you need copies of written material in an alternative format (e.g. Braille, large print, etc.). To make these arrangements, contact DEQ Public Affairs, (503) 229-5317. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

THE NEXT STEP: DEQ will consider all public comments. The Director will make a decision and publish the final decision after consideration of public comments.

PROPOSED REMEDIAL ACTION AT THE UNION FOREST PRODUCTS (FORMER) UNION, OREGON

COMMENTS DUE: March 3, 2005

PROJECT LOCATION: 876 West Arch Street, Union

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a "No Further Action" determination based on results of site assessment and an interim removal action measure (IRAM) at the former Union Forest Products mill. The site is located 876 West Arch Street in Union, Oregon.

HIGHLIGHTS: The Site Assessment Program has reviewed site assessment and IRAM activities performed at the site including the

drilling and sampling of 20 soil borings and the removal of about 79 tons of petroleum contaminated soil. Analytical results from soil and groundwater samples collected during this IRAM and previous investigations were compared to site specific risk based concentrations (RBCs). If RBCs were not available for a specific compound, then EPA Region 9 Preliminary Remediation Goals (PRGs) dated October 2004 were used. The only complete pathway at the site was the ingestion, dermal contact, and inhalation from soil for future residential. Three soil samples exceeded the acceptable risk for this pathway. However, all three soil samples were collected at depths greater than 3 feet bgs, limiting the potential for this pathway to be complete.

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 March 3, 2005 to Katie Robertson, Project Manager, at the address listed above.

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

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

SELECTED REMEDIAL ACTIONS FOR COFFIN BUTTE LANDFILL BENTON COUNTY, OREGON

PROJECT LOCATION: 28972 Coffin Butte Road, approximately 10 miles north of Corvallis, OR.

CLEANUP DECISION: As required by ORS 465.320 and OAR 340-122-100, the Oregon Department of Environmental Quality (DEQ) is issuing notice of a selected cleanup decision for the Coffin Butte Landfill. A copy of the final Record of Decision can be found on DEQ's web site at: <http://www.deq.state.or.us/wmc/cu/sites/coffinbutte.htm>

BACKGROUND: Landfilling at Coffin Butte first began in the 1940s by the Army as a part of waste disposal for the former Camp Adair. In 1975, Valley Landfills, Inc. (VLI) purchased the site and currently operates it as a municipal solid waste facility. As a part of DEQ's solid waste permit requirements, VLI conducted investigations that identified a number of volatile organic chemicals, dissolved metals, chloride, and total dissolved solids in groundwater. In response to these results, DEQ directed VLI to institute engineering controls to protect human health and the environment. Currently, groundwater contamination is confined to VLI property, and concentrations have been decreasing over time in response to the controls.

Based on current conditions and the findings to date, DEQ selected a remedy consisting of: 1) existing engineering controls including landfill capping, surface-water controls, leachate collection, and landfill gas collection; 2) land use restrictions to prohibit residential uses and groundwater uses on the landfill property; and 3) decommissioning two site water supply wells. In addition, DEQ set concentration limits that were added to the site's Solid Waste Disposal Permit. The limits will be used to gauge the progress the controls are having on groundwater contamination, and to decide whether additional engineering and/or institutional controls might be needed to protect human health and the environment.

ADDITIONAL INFORMATION: For additional information regarding the site cleanup, contact DEQ Project Manager Bill Mason at (541) 686-7838 x257 (or toll free in Oregon at 1-800-844-8467 x257), or by email at mason.bill@deq.state.or.us.

OTHER NOTICES

PUBLIC NOTICE ON THE RECORD OF DECISION FOR THE CASCADE WOOD PRODUCTS, INC. (ECSI #20)

The Department of Environmental Quality has issued a Record of Decision for the site located at 14th and H Streets in White City, Oregon. The Cascade Facility has operated since 1952. From 1953 to 1985, Cascade applied pentachlorophenol (penta) to finished wood products in a mineral spirit-based carrier.

Based on data from the Phase I remedial investigation, there is no complete groundwater exposure pathway for human or ecological receptors. Because there is no groundwater beneficial use in the facility's locality, there is no complete groundwater exposure pathway. Future land use and beneficial water uses are not likely to change within the locality of the facility.

The remedial action decided upon for Cascade Wood Products, Inc. site consists of the following elements:

- Implement institutional controls to protect future excavation-workers from exposure to residual contamination.
- Discontinue operation of the groundwater extraction and treatment system.
- Continued monitoring of sentinel wells;
- Institutional controls to restrict groundwater usage and assure that the remedy remains protective for future land use;
- Contingency measures.

Corrective actions completed for soil at the site are protective of human health and the environment. There are no complete exposure pathways to soil at the facility. Procedures outlined in the Environmental Evaluation and Soil Management Plan will serve to protect future excavation workers from potential exposures to residual soil contamination, if any, in excess of levels protective of human health.

A more detailed description of the decision is presented in DEQ's Record of Decision prepared for the site. The Record of Decision is available for review at DEQ's Eugene office.

Questions may be directed to Norman Read at DEQ, 1102 Lincoln St., Suite 210, Eugene, OR 97401, or by calling him at 541-686-7838 x 240 or 800-844-8467.

PROPOSED NO FURTHER ACTION DECISION PORTLAND INTERNATIONAL AIRPORT GROUND RUN-UP ENCLOSURE SITE PORTLAND, OREGON

COMMENT PERIOD: February 1, 2005 to March 3, 2005

COMMENTS DUE: March 3, 2005

PROPOSAL: DEQ proposes issuing a no further action decision for the Portland International Airport Ground Run-Up Enclosure (GRE) site. The GRE site is part of the Airtrans Center (primarily air cargo and air maintenance) located in the south portion of the airport near the Oregon Air National Guard base.

HIGHLIGHTS: The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the GRE site. The Port of Portland conducted several phases of investigation and cleanup between 1999 and 2004. Nine electrical transformers, some with PCB-containing oil, were removed from the site and transported to Chemical Waste Management in Arlington, Oregon for disposal. In 1999 and 2000, the Port investigated former underground fuel storage tanks (USTs). They removed a 700-gallon waste oil UST, and excavated 37 tons of petroleum-hydrocarbon impacted soil from the tank excavation.

Environmental investigations completed between December 1999 and May 2000 included soil and groundwater sampling and testing, followed by a year of quarterly groundwater monitoring. In 2003 and 2004, the Port evaluated site stormwater. The environmental testing at the site identified petroleum hydrocarbon constituents in site soil, groundwater, and stormwater.

A risk screening was completed to evaluate potential human health and ecological risks posed by residual petroleum hydrocarbon constituents in site soil, groundwater, and stormwater. The findings of

the risk screening indicate that the residual impacts do not pose an unacceptable risk to human health or the environment.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment call (503) 229-6729. The DEQ project manager is Anna Coates, (503) 229-5213. Written comments should be sent to Anna Coates, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 3, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

DEQ ISSUES NO FURTHER ACTION DETERMINATION FOR THE ACID RELEASE REMEDIATION AT THE SUMCO OREGON SOUTH CAMPUS SITE IN SALEM, OREGON

PROJECT LOCATION: 3990 Fairview Drive SE in Salem, Oregon

FINAL DECISION: The Department of Environmental Quality (DEQ) has approved the cleanup actions for the acid release at the SUMCO Oregon South Campus Site in Salem, Oregon.

HIGHLIGHTS: In March 2000, SUMCO reported a sulfuric acid release from an above-ground tank located in an unpaved area next to a manufacturing building. The acid solution infiltrated surrounding soil and migrated to shallow groundwater. SUMCO joined DEQ's Voluntary Cleanup Program in May 2000 to address residual impacts to soil and groundwater. Descriptions of the release and the abatement, control, and remedial actions are provided in various reports submitted to DEQ by SUMCO and are outlined in a site summary report available at <http://www.deq.state.or.us/wmc/cu/sites/sumco.htm>

SUMCO's overall remedial action objective was to restore soil and groundwater to acceptable pH levels such that engineering and institutional controls were no longer necessary. The results post-cleanup monitoring indicated that (1) the volume of low-pH soil was effectively minimized, (2) surface water infiltration through affected soil no longer has measurable effects on surrounding groundwater pH, and (3) groundwater pH was restored consistent with "background" levels.

DEQ has determined that based on current data and past remedial actions, there is no current or future likely adverse impact to human health or the environment posed by the site.

ADDITIONAL INFORMATION: For additional information regarding the site cleanup, contact DEQ Project Manager, Bill Mason at (541) 686-7838 x257 or by email at mason.bill@deq.state.or.us

PROPOSED CLOSEOUT AT LOT 4, UNION STATION PARCEL B SOUTH

COMMENTS DUE: March 3, 2005

PROJECT LOCATION: 707-941 NW Naito Parkway, Portland, Oregon

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action completed on a portion (Lot 4) of the Union Station-Parcel B South site, and DEQ's proposal to issue a no further action (NFA) determination for the parcel.

HIGHLIGHTS: The site is located in downtown Portland immediately east of the historic rail passenger station (Union Station), and was used as a rail yard from the late 1800s through the 1970s. It was subsequently purchased by the Portland Development Commission for redevelopment. Investigation in the 1990s found shallow soil to contain elevated polynuclear aromatic hydrocarbons, lead, and arsenic. In 1996, a DEQ-approved site remedy was selected consisting of limited soil removal in an area (B-11 Area) with heavy petroleum impacts, and site-wide capping. At the time of site inves-

OTHER NOTICES

tigation and remedy selection the site consisted of three individual lots (3, 4, and 5). An NFA was issued for Lot 3 in 2000 following capping and development; work has not yet been completed on Lot 5. Remediation of heavy petroleum contamination present on Lots 4 and 5 was completed in 1997 during which 3,200 tons of soil were removed and transported to Hillsboro Landfill for disposal. Lot 4 capping was completed between 1998 and 2003 during two phases of site development (construction of multi-family residential housing). Soil removal and capping work was completed consistent with the site Record of Decision (11/6/96) and Remedial Action Work Plan (11/13/96). A Remedial Action Closeout Report for Lot 4 was approved by DEQ in 2003, and deed restrictions recorded with the property in 2004 identifying the nature of remaining site contami-

nation and the requirements for cap maintenance. Based on this information, DEQ proposes to issue a conditional NFA for Lot 4.

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 March 3, 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*. If sufficient hearing requests are received by an agency, notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

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Board of Accountancy
Chapter 801

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.335
Proposed Amendments: 801-001-0020, 801-001-0035
Last Date for Comment: 2-22-05
Summary: This rule is being modified to change the name of the Hearings Officer Panel as revised, and to change the effective date of professional standards to December 31, 2004.
Rules Coordinator: Kimberly Bennett
Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302
Telephone: (503) 378-4181, ext. 24

.....
Stat. Auth.: ORS 670.310
Stats. Implemented: ORS 670.310
Proposed Amendments: 801-005-0010
Last Date for Comment: 2-22-05
Summary: Revised to correct citations to professional standards for federal audits.
Rules Coordinator: Kimberly Bennett
Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302
Telephone: (503) 378-4181, ext. 24

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Board of Examiners for Engineering and Land Surveying
Chapter 820

Date:	Time:	Location:
3-8-05	10-10:30 a.m.	728 Hawthorne Ave. NE Engineering and Land Surveying Board Salem, OR

Hearing Officer: Stuart Albright
Stat. Auth.: ORS 670.310, 672.020, 672.025, 672.045, 672.097, 672.099, 672.180 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Proposed Adoptions: 820-010-0622, 820-020-0040, 820-020-0045
Proposed Amendments: 820-010-0010, 820-010-0200, 820-010-0600, 820-040-0040

Last Date for Comment: 3-8-05, 10:30 a.m.
Summary: OAR 820-010-0010(17) - Creates a definition of Inactive Status as referred in ORS 672.255.

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

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

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

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

OAR 820-020-0045 - Defines Unprofessional Behavior.

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

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

Rules Coordinator: Mari Lopez
Address: Board of Examiners for Engineering and Land Surveying, 728 Hawthorne Ave. NE, Salem, OR 97301
Telephone: (503) 362-2666

.....
Board of Optometry
Chapter 852

Date:	Time:	Location:
4-1-05	1 p.m.	3218 Pringle Rd. SE Morrow Crane Bldg. Salem, OR 97302

Hearing Officer: John Reslock, O.D., Pres.
Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010, 683.240, 683.270, 182.466, 683.070, 683.100 & 683.120
Proposed Adoptions: 852-020-0035, 852-050-0021
Proposed Amendments: 852-080-0040
Last Date for Comment: 4-1-05
Summary: 852-020-0035 - Establishes standards for prescribing controlled substances for optometric physicians specifically when prescribing for oneself or family members. Establishes definition of unprofessional conduct for violation of this rule.

852-050-0021 - Waives fees for voluntary optometric services provided by licensees to charitable non-profit facilities. Establishes definitions of qualified charitable non-profit corporation and rules for maintenance of records and reporting practice locations to the Board.

852-080-0040 - Establishes rules for CPR certification and re-certification.

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

Rules Coordinator: David W. Plunkett
Address: Board of Optometry, 3218 Pringle Rd. SE, Suite 270, Salem, OR 97302
Telephone: (503) 373-7721, ext. 23

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Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 182.460(4), 683.140, 683.270, 182.466, 683.070, 683.100, 683.120 & 683.210
Proposed Amendments: 852-005-0010, 852-010-0015, 852-010-0020, 852-010-0023, 852-010-0027, 852-050-0018, 852-070-0030
Last Date for Comment: 2-22-05
Summary: 852-005-0010 - Establishes purchasing policies and procedures.

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

852-010-0027 - Further defines unprofessional conduct.

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

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

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: David W. Plunkett
Address: Board of Optometry, 3218 Pringle Rd. SE, Suite 270, Salem, OR 97302
Telephone: (503) 373-7721, ext. 23

Columbia River Gorge Commission
Chapter 350

Date:	Time:	Location:
3-8-05	9 a.m.	223 Buxton Troutdale Conf. Center Troutdale, OR

Hearing Officer: Staff
Stat. Auth.: ORS 196.150; Other Auth.: 16 U.S.C. §§ 544e(c) and 544f(1) & RCW 43.97.015
Stats. Implemented: ORS 196.150
Proposed Adoptions: 350-081-0010 – 350-081-0630
Last Date for Comment: 3-1-05

Summary: This rule implements the Management Plan for the Columbia River Gorge National Scenic Area that the Gorge Commission adopted revisions to on April 27, 2004. The land use ordinance will be effective in any Gorge county that does not have an effective land use ordinance implementing the Management Plan. The substantive standards are identical to the substantive standards in the Management Plan as revised. The procedural requirements for issuing land use decisions are similar to those contained in the current land use ordinance (Commission Rule 350-80). This rule will replace Commission Rule 350-80 in its entirety.

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

Rules Coordinator: Nancy A. Andring
Address: Columbia River Gorge Commission, #1 Town and Country Square, PO Box 730, White Salmon, WA 98672
Telephone: (509) 493-3323

Construction Contractors Board
Chapter 812

Date:	Time:	Location:
2-22-05	11 a.m.	West Salem Roth's IGA Santiam Rm.

Hearing Officer: Jim Fairchild
Stat. Auth.: ORS 173.319 to 173.500, 670.310, 701.075, 701.085, 701.235, 701.280, 701.350, 701.355 & 701.992
Stats. Implemented: ORS 279.323, 701.075, 701.085, 701.135, 701.175, 701.227, 701.280, 701.350, 701.355 & 701.992
Proposed Amendments: 812-003-0170, 812-005-0005, 812-006-0030

Proposed Ren. & Amends: 812-008-0080 to 812-008-0200, 812-008-0201, 812-008-0202, 812-008-0203, 812-008-0204, 812-008-0205, 812-008-0206, 812-008-0207, 812-008-0208, 812-008-0209, 812-008-0210, 812-008-0211, 812-008-0212, 812-008-0213, 812-008-0214, 812-008-0215

Last Date for Comment: 2-22-05, 11 a.m.

Summary: 812-003-0170 is amended to clarify when the Board will require a larger bond. 812-005-0005 is amended to correct cite references. OAR 812-006-0030(5) is amended to change the word "will" to "may" to allow the agency discretion in publishing passing rates of education providers. Currently the statistical information gathered by the agency contains discrepancies; therefore, the agency has not published passing rates. The TEACH subcommittee of the Board determined that the agency would not publish education provider passing rates until the data is accurate. Amended and Renumbered: 812-008-0080 first paragraph to 812-008-0200; 812-008-0080(1) to 812-008-0201; 812-008-0080(2) to 812-008-0202; 812-008-0080(3) to 812-008-0203; 812-008-0080(4) to 812-008-0204; 812-008-0080(5) to 812-008-0205; 812-008-0080(6) to 812-008-0206; 812-008-0080(7) to 812-008-0207; 812-008-0080(8) to 812-008-0208; 812-008-0080(9) to 812-008-0209; 812-008-0080(10) to 812-008-0210; 812-008-0080(11) to 812-008-0211; 812-

008-0080(12) to 812-008-0212; 812-008-0080(13) to 812-008-0213; 812-008-0080(14) to 812-008-0214; and 812-008-0080(15) to 812-008-0215 are renumbered and amended to simplify and clarify the language of the rule and to correct cite references where necessary. **Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Catherine Dixon
Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310
Telephone: (503) 378-4621, ext. 4077

Department of Administrative Services
Chapter 125

Date:	Time:	Location:
2-22-05	10 a.m.–12 p.m.	1225 Ferry St. SE Halfway Rm. General Services Bldg. Salem, OR

Hearing Officer: Catherine Webber
Stat. Auth.: ORS 84.064, 184.305 & 192.038; Other Auth.: HB 2112 (2001)

Stats. Implemented: ORS 84, 84.049, 84.052, 84.055 & 84.064

Proposed Adoptions: 125-060-0010

Last Date for Comment: 2-22-05, 5 p.m.

Summary: Rule directs state agencies to follow certain Department of Administrative Services, Information Resource Management Division (IRMD) policies when using electronic signatures. The Department of Administrative Service is directed by statute to provide guidelines for agencies to implement UETA. This rule addresses the electronic signature requirements of the act. Adopts federal E-authentication program and requires agencies to conduct a risk assessment, select certified software programs and use National Institute of Standards and Technology (NIST) certified tools for authentication. Allows exceptions. Applies prospectively.

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

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

Stat. Auth.: ORS 279A.065, 279A.070 & OL 2003 Ch. 794, Sec. 335 (HB 2341)

Stats. Implemented: ORS 279A.015, 279A.020, 279A.025, 279A.030, 279A.050, 279A.055, 279A.065, 279A.070, 279A.075, 279A.140, 279A.180, 279A.200, 279B.005, 279B.010, 279B.060, 279B.070, 279B.085, 279C.110, 279C.365, 279C.400 & temporary provisions compiled as legislative counsel notes on ORS 279C.410
Proposed Amendments: 125-246-0100, 125-246-0110, 125-246-0120, 125-246-0130, 125-246-0170, 125-246-0560, 125-246-0575, 125-247-0010, 125-247-0261, 125-247-0270, 125-247-0287, 125-249-0160, 125-249-0310, 125-249-0910

Last Date for Comment: 2-15-05

Summary: On November 23, 2004, the Department of Administrative Services filed new Public Contracting Rules to implement the Public Contracting Code, ORS 279ABC, for State agencies subject to DAS purchasing authority. Several minor corrections are now needed for clarity and accuracy in the Rules. These amendments will correct the Rules before they are effective on March 1, 2005. These amendments correct errors, duplication, references, and unnecessary verbiage, without significantly altering the meaning of the Rules.

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

NOTICES OF PROPOSED RULEMAKING

Department of Agriculture Chapter 603

Date: 2-15-05
Time: 1 p.m.
Location: 765 SE Adams Dr.
Madras, OR

Hearing Officer: Gene Milbrath
Stat. Auth.: ORS 632.900 - 632.990; Other Auth.: ORS 570.305 & 561.990

Stats. Implemented: ORS 632.940
Proposed Adoptions: 603-051-1050 – 603-051-1054
Proposed Repeals: 603-052-0348
Last Date for Comment: 2-25-05

Summary: White rot of Allium is now established in Crook, Deschutes and Jefferson counties. This renders the quarantine aspects of the white rot control area order (603-052-0348) for the counties invalid. However, growers are still producing Allium seed that must be inspected and certified as free-from white rot in order to meet their customers' needs. The Department proposes to repeal the control area order and replace it with an inspection and certification program for Allium seed.

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

Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4619

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**Department of Agriculture,
Oregon Sweet Cherry Commission
Chapter 669**

Date: 2-18-05
Time: 9 a.m.
Location: 2990 Experiment Station Dr.
Hood River Extension Office
Hood River, OR

Hearing Officer: Bryce Molesworth
Stat. Auth.: ORS 576.066(1)(e), 576.304(2), 576.325(2)(a)(b) & (4)(c); Other Auth.: ORS 576 & OAR 669-001-0000

Stats. Implemented: ORS 576.325
Proposed Amendments: 669-010-0020
Last Date for Comment: 2-18-05, close of hearing

Summary: This amendment will correct the process for reviewing and revising assessment rates. In addition, the Commission is considering changing the current assessment rates.

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

Rules Coordinator: Dana Branson
Address: Department of Agriculture, Sweet Cherry Commission, 2667 Reed Rd., Hood River, OR 97031
Telephone: (541) 386-5761

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

Date: 3-1-05
Time: 2 p.m.
Location: 350 Winter St. NE
Rm. F (basement,
Labor & Industries Bldg.)
Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.726(4) & 656.704; Other Auth.: ORS 183.335, OAR 137-001 & 436-001

Stats. Implemented: ORS Ch. 656 Sec. 005, 245, 248, 250, 252, 254, 256, 260, 264, 268, 273, 313, 325, 327, 331, 506, 612, 614, 704, 735, 740, 745, 794 & Ch. 183 Sec. 310 - 690 & Ch. 293, Sec. 445
Proposed Amendments: Rules in 436-009, 436-010, 436-070, 436-085

Proposed Repeals: 436-070-0060, 436-085-0006, 436-085-0020, 436-085-0065, 436-085-0070

Last Date for Comment: 3-4-05

Summary: The agency proposes to amend OAR chapter 436-009.

These proposed rules:

- Adopt by reference updated medical resources:
Centers for Medicare & Medicaid Services 2005 Medicare Resource-Based Relative Value Scale Addendum B "Relative Value Units (RVUs) and Related Information" except the "status indicators," and Addendum C "Codes with Interim RVUs," 69 Federal Register No. 219, November 15, 2004 as the fee schedule for payment of medical service providers except as otherwise provided in the rules;

American Society of Anesthesiologists (ASA), Relative Value Guide 2005 as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in the rules for anesthesia codes not found in the Federal Register; and

The Physicians' Current Procedural Terminology (CPT® 2005), Fourth Edition Revised, 2004 for billing by medical providers;

- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted;

- Remove intradiscal electrothermal therapy from the list of non-compensable services;

- Provide for the determination of an adjusted cost/charge ratio for a newly established hospital based on the ratios of similar hospitals, when there is insufficient data available specific to the new hospital;

- Increase maximum fees paid to physician assistants and nurse practitioners from 80 to 85% of a physician's allowable fee for a comparable service;

- Require insurers to pay medical providers for bills they have received prior to a DCS, but which were not included in the DCS or were not paid according to the terms of the DCS. Payment must be made within 45 days of the insurer's knowledge of the unpaid bill;

- Modify "no show" notice from 24 to 48 hours for medical arbiter examinations;

- Increase by 10% the relative value units for physical capacity examinations and work capacity evaluations; and

- Replace references to Vioxx®, Celebrex®, and Bextra® with "COX-2 inhibitors" as being limited to a five-day initial supply without clinical justification.

The agency proposes to amend OAR chapter 436-010. These proposed rules:

- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted.

- Provide that, for the purpose of determining attorney fees, the threshold of extraordinary circumstances is not met by merely exceeding 8 hours or exceeding a benefit amount of \$6000.

- Clarify that, in order to provide compensable medical services under ORS 656, a nurse practitioner must be licensed in Oregon and must be assigned an authorized nurse practitioner number by the director;

- Provide that signed workers' compensation release statements do not authorize release of mental health records covered by federal regulations;

- Clarify communication and notification requirements regarding elective surgery;

- Require insurers to give written notice, with specified time frames, of when a worker is no longer subject to a managed care organization (MCO), to the worker, the worker's representative, all medical service providers, and the MCO, and that such notice advise the worker how the worker may receive medical services for compensable injuries after the worker is no longer enrolled; and

- Clarify that authorized nurse practitioners must refer workers for closing examinations to medical providers who are eligible to be attending physicians only if there is a reasonable expectation of permanent impairment, and if the referral is made, that the referral must

NOTICES OF PROPOSED RULEMAKING

occur within five days of the examination in which the worker is declared medically stationary.

The agency proposes to amend (and repeal in part) OAR chapter 436-070. These proposed rules:

- Clarify that employers that elect to provide workers' compensation coverage for otherwise non-subject workers are then subject to Workers' Benefit Fund assessments;
- Establish a process for the department to notify employers that filings are late or inaccurate, and to estimate assessments due under specific conditions;
- Provide that employers or the director may initiate resolution of reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years, however, no time limitation applies to cases involving fraud;
- Require employers to maintain payroll and employment records that reflect the total hours worked by all employees for the current calendar year plus three prior calendar years;
- Provide that for an overpayment of less than \$20, the director will refund the overpayment only upon written request; and
- Repeal 436-070-0060, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure.

The agency proposes to amend (and repeal in part) OAR chapter 436-085. These proposed rules:

- Provide that the director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000;
- Provide that the director may waive an insurer's reporting liability after confirming that the insurer has no earned premium for at least four consecutive quarters;
- Provide that the director may waive a self-insured employer's reporting liability after confirming that the employer has had no Oregon payroll for four consecutive quarters;
- Provide that the self-insurer's premium reporting method remains in effect until the employer timely elects to change the method;
- Provide for the assessment of civil penalties up to the statutory maximum of \$2,000 rather than the \$1,000 maximum stated in the current rule;
- Repeal 436-085-0020, "Premium Assessment Rates; Method and Manner of Determining," because rates are now established under OAR 440-045;
- Repeal 436-085-0065, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure; and
- Repeal 436-085-0070, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates provisions in OAR 436-050-0015;

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's web site: <http://wcd.oregon.gov/policy/rules/rules.html> or from WCD Publications at 503-947-7627 or fax 503-947-7630.

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

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

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Department of Corrections Chapter 291

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-082-0031, 291-082-0032, 291-082-0033

Proposed Amendments: 291-082-0010, 291-082-0020, 291-082-0030

Last Date for Comment: 3-9-05

Summary: These rule amendments are necessary to establish eligibility criteria for inmates assigned to work on a community custody work assignment, on-site work assignment, or unfenced minimum housing.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
4-15-05	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303
5-13-05	8 a.m.	Crook County Library Broughton Rm. 175 NW Meadow Lakes Dr. Prineville, OR 97754

Hearing Officer: Oregon Fish & Wildlife Commission

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

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

Proposed Adoptions: Rules in 635-140

Last Date for Comment: 5-13-05

Summary: The Oregon Fish and Wildlife Commission proposes to adopt an Oregon Sage Grouse Conservation Plan and associated administrative rules. Public testimony will be accepted at the April 15th and May 13th meeting, with rule adoption on May 13th.

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

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

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

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0157

Last Date for Comment: 2-18-05

Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Having temporarily amended 410-121-0157 in January 2005, OMAP will be permanently amending the rule to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #134, dated November 18, 2004.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
2-23-05	10 a.m.	500 Summer St. NE Rm. 257 Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.122, 411.660, 411.700, 411.710, 411.816, 414.042, 418.040 & 418.100; Other Auth.: Oregon's Health Insurance Flexibility and Accountability (HIFA)/Section 1115 demonstration; 7 CFR 226.25(c), 273.5(b)(9), 273.9(b)(2)(ii), 273.10(c)(3) & 273.12(f)(4); 42 CFR 435.726; FNS Administrative Notice 02-26 & FNS FS Policy Memo 3-94-02

Stats. Implemented: ORS 411.060, 411.070, 411.095, 411.117, 411.122, 411.630, 411.635, 411.700, 411.710, 411.816, 414.042, 418.100, 2003 OL Ch. 710 & 735

Proposed Adoptions: 461-115-0071

Proposed Amendments: 461-115-0050, 461-120-0125, 461-135-0095, 461-135-0400, 461-135-0505, 461-135-0506, 461-135-0570, 461-135-0710, 461-135-0780, 461-135-1100, 461-135-1102, 461-135-1110, 461-135-1120, 461-140-0040, 461-140-0120, 461-140-0123, 461-140-0220, 461-140-0242, 461-140-0296, 461-145-0020, 461-145-0330, 461-145-0380, 461-145-0390, 461-145-0410, 461-145-0520, 461-145-0540, 461-145-0570, 461-145-0580, 461-145-0910, 461-150-0055, 461-150-0090, 461-155-0010, 461-155-0530, 461-155-0660, 461-160-0040, 461-160-0540, 461-160-0560, 461-165-0410, 461-165-0420, 461-165-0430, 461-175-0200, 461-175-0310, 461-180-0040, 461-180-0100, 461-195-0521, 461-195-0541

Proposed Repeals: 461-140-0125, 461-140-0130, 461-140-0140, 461-140-0150, 461-180-0095

Last Date for Comment: 2-23-05

Summary: Rule 461-115-0050 is being amended to clarify existing policy regarding the filing of applications. For all Medicaid programs, the rule is being amended to reflect that a new application is not required when a single application can be used both to determine a client is ineligible in the month of application, and to determine the client is eligible within 45 days from the date of request, when anticipated changes make the filing group eligible within 45 days from the date of request. For OHP and TANF-related medical programs, the rule is being amended to reflect that a new application is not required when adding a person (including a newborn) to a benefit group.

Rule 461-115-0071 is being adopted to establish who must sign the application and complete the application process for all Children, Adults, and Families (CAF) and Seniors and People with Disabilities (SPD) programs.

Rule 461-120-0125 is being amended to add a reference to section (8) into section (4).

Rule 461-135-0095 is being amended to remove TANF fraud as a disqualifier for the Extended Medical (EXT) program.

Rule 461-135-0400 is being amended to clarify policy on specific qualifications for students for the ERDC-SBG program.

Rule 461-135-0505 is being amended to clarify that a person categorically eligible for the Food Stamp program is presumed to meet the requirements for social security number, sponsored alien information and residency, if verified in a public assistance program.

Rule 461-135-0506 is being amended because, for the Transitional Benefit Alternative (TBA) in the Food Stamp program, the TBA case stays with the head of household if the filing group divides into two groups during the TBA period. In addition, the household may not participate in TBA if the head of household becomes ineligible for the Food Stamp program due to being institutionalized or residing in a facility that provides at least 50% of the meals. Nor may the household participate in TBA if the TANF benefits end because of a change which results in ineligibility and the household did not report the change timely as required.

Rule 461-135-0570 is being amended to clarify FS-eligible student status for 2-parent households.

Rule 461-135-0710 is being amended to state that to be eligible for OSIP a person must be receiving SSI or be eligible for an ongoing special need.

Rule 461-135-0780 is being amended to correctly reflect the calculation in determining Medicaid eligibility under Public Law 94-

566. Individuals who may have been determined ineligible for assistance can retain eligibility if this provision is applied correctly.

Rule 461-135-1100 is being amended to clarify existing policy regarding OHP-OPU (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults) applicants. The rule is being amended to reflect that OHP-OPU applicants who can obtain health insurance through their employer are required to cooperate with the Family Health Insurance Assistance Program (FHIAP) as per the requirements of 461-120-0345 (Clients Required to Obtain Medical Coverage).

Rule 461-135-1102 is being amended to clarify existing policy regarding new applicants (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). This rule is being amended to reflect that Medicaid applicants (excluding Qualified Medicare Beneficiary (QMB)), and Children's Health Insurance Plan (CHIP) applicants are not new applicants if their current benefits are ending and they are found eligible for OHP-OPU within 45 days of a date of request established during the last month of current eligibility or within 45 days of the date the Department initiates a redetermination of eligibility during the last month of current eligibility.

Rule 461-135-1110 is being amended to clarify existing policy regarding student eligibility (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). The rule is amended to reflect that students who provide verification of Pell grant eligibility through the school's financial aid office are considered to meet the requirements for a Pell grant.

Rule 461-135-1120 is being amended to clarify existing policy regarding premium requirements (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). The rule is being amended to reflect that premium amounts do not change during a certification period for clients whose protected eligibility is ending following pregnancy. A new certification is required to determine eligibility after protected eligibility ends.

Rule 461-140-0040 is being amended to clarify existing policy regarding the availability of income for victims of domestic violence in the Extended Medical (EXT), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), the Oregon Health Plan (OHP), and Temporary Assistance to Needy Families (TANF) programs. This rule is being amended to reflect that income may be considered not available to the filing group only when the abuser is not a member of the filing group.

Rules 461-140-0120 and 461-140-0123 are being amended and rules 461-140-0125, 461-140-0130, 461-140-0140, 461-140-0150, and 461-180-0095 are being repealed to align the treatment of Lump-Sum Income in the GA and GAM programs with the OSIP, OSIPM, and QMB programs.

Rule 461-140-0220 is being amended to specify that for annuities purchased on or after April 1, 2005, the annuity is not a disqualifying transfer of resources only if the client is the annuitant and the State will receive all funds remaining in the annuity upon the client's death, up to the amount of medical benefits provided on behalf of the client, or the community spouse is the annuitant and it was purchased at least 36 months prior to the date of request for medical benefits.

Rule 461-140-0242 is being amended to clarify that in order for a client's transfer of resources to a blind or disabled child to not cause a disqualification, the child's condition must meet the severity and durational requirements of SSI criteria.

Rule 461-140-0296 is being amended regarding how to count the value of an annuity that is considered a disqualifying transfer of resources.

Rule 461-145-0020 is being amended to clarify that when an annuity is not a disqualifying transfer of resources, the monthly annuity payments are counted as unearned income.

NOTICES OF PROPOSED RULEMAKING

Rule 461-145-0330 is being amended to align the treatment of loans and interest on loans in the GA and GAM programs with the OSIP, OSIPM, and QMB programs.

Rule 461-145-0380 is being amended to incorporate policy clarification received by the Food and Nutrition Service on when a retirement or pension plan is an excluded resource and when it must be counted for the Food Stamp program. In addition, the rule is being amended to indicate how funds from retirement plans are counted if withdrawn before retirement.

Rule 461-145-0390 is being amended to make the treatment of personal belongings the same for all programs administered by the Department.

Rule 461-145-0410 is being amended to clarify how to treat benefits from OSIP-IC for all programs.

Rule 461-145-0520 is being amended to clarify that during their minimum retention period, savings bonds are not counted if the client has requested a hardship waiver from the U.S. Department of the Treasury and been denied.

Rule 461-145-0540 is being amended to no longer allow the client to distribute funds from an income cap trust for unpaid medical care costs if the client had money available to pay the bills but instead chose to pay the cost of establishing the trust. It is also being amended to disallow other optional distributions.

Rule 461-145-0570 is being amended to exclude the portion of the USDA meal reimbursement given to a day care provider for meals served to children in the provider's filing group.

Rule 461-145-0580 is being amended to clarify that Veterans' aid-and-attendance payments must be reimbursed to the Department up to the amount of institutional and home- or community-based care provided to the client.

Rule 461-145-0910 is being amended to correct FS policy on identifying self-employment and treatment of such income.

Rule 461-150-0055 is being amended to clarify existing policy regarding budget month (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). This rule is being amended to reflect that when evaluating Oregon Supplemental Income Program Medical (OSIPM) clients for OHP when their OSIPM benefits are ending, the budget month is the last month of their current eligibility period.

Rule 461-150-0090 is being amended to align this rule with the policy change made in 2004 to rule 461-140-0110 regarding the treatment of periodic income for the Food Stamp program. Rule 461-140-0110 gives the household a choice on when and how periodic income is counted.

Rule 461-155-0010 is being amended to justify Medicaid eligibility for those not covered under a Home and Community Based Waiver.

Rule 461-155-0530 is being amended to clarify who is eligible for food for guide dogs and special assistance animals for OSIP and OSIPM.

Rule 461-155-0660 is being amended because the language used in the rule is ambiguous when deciding the correct standard to use when determining eligibility for the allowance. Additional clarification was added to limit the amount of time an allowance can be authorized, and to change the way the allowance is calculated. The title of the rule has been changed to "accommodation allowance" as staff have misinterpreted this rule as an option to help clients pay for rent, when there were no accommodation issues.

Rule 461-160-0040 is being amended to clarify that the dependent must be a member of the filing group in order to allow the cost of dependent care as a deduction for ERDC and FS.

Rule 461-160-0540 is being amended to clarify how to count income for the QMB-SMB program. Additionally, the rule is being amended to provide OSIPM to those who do not qualify under the special income standard (rule 461-135-0750).

Rule 461-160-0560 is being amended to remove the terms "companionship" and "home care" from the text of the rule. Both terms

are obsolete in relation to in-home services which is being defined in this portion of the rule.

Rule 461-165-0410 is being amended to remove the list of crimes and refer to rules 410-007-0200 through 410-007-0380.

Rule 461-165-0420 is being amended to remove the requirement to notify parents of a provider's past criminal history or child protective services history when the Department has determined children safety is not likely jeopardized.

Rule 461-165-0430 is being amended to include procedures for child care providers who contest the Department's fitness determination decision.

Rule 461-175-0200 is being amended because when it was amended effective October 1, 2004, to reflect changes in the JOBS program, the Department inadvertently deleted the long-standing requirement to send a basic decision notice whenever an application for assistance, including retroactive medical assistance, is approved. This proposed change corrects that error.

Rule 461-175-0310 is being amended to delete the word "receive."

Rule 461-180-0040 is being amended to conform to the language created by the passage of Ballot Measure 99 which created the Home Care Commission. The Commission provides for collective bargaining for those employed as home care workers as well as other benefits. Statutory authority is found in ORS 410.604, 410.612 and 410.614. The current version of this rule refers to client-employed providers which are now considered home care worker for the purposes of describing their rights and responsibilities. This amendment also updated references to other rules which are part of the creation of the Commission.

Rule 461-180-0100 is being amended to clarify existing policy regarding eligibility following closure for the Oregon Health Plan (OHP). This rule is being amended to reflect that an applicant's medical start date is the date the applicant meets all eligibility requirements if that date falls within 45 days of the date of request, if the date of request was established prior to ending current benefits.

Rule 461-195-0521 is being amended because only an eligible one- or two-person benefit group receives a minimum monthly allotment of \$10.

Rule 461-195-0541 is being amended to clarify existing policy regarding liability for overpayments for Medicaid programs. This rule is being amended to reflect that Medicaid programs do not collect overpayments from children or from caretaker relatives (if the caretaker relative is not in the benefit group).

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Date:	Time:	Location:
2-22-05	8 a.m.	500 Summer St. Rm. 137d Salem, OR

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348

Proposed Amendments: 411-340-0020, 411-340-0130

Last Date for Comment: 2-22-05

Summary: Chapter 411, Division 340, Rule 0130 will add an exception to the basic benefit financial limits for Medicaid recipients eligible for and choosing services under the Department's Home and Community-Based waiver for Support Services (#0375) who have additional assistance needs in Activities of Daily Living (ADL). This

NOTICES OF PROPOSED RULEMAKING

change is generated by a policy decision to merge personal care service currently available to individuals under the State Medicaid Plan with the Home and Community-Based waiver services also received by eligible individuals.

Additionally, temporary rule 411-340-0130, effective 01/01/05 will be made permanent with the adoption of this amendment. That temporary rule allowed for an exception to Basic Benefit Financial Limits, and ensured that individuals with developmental disabilities in Support Service Brokerages receive adequate services to meet their support needs based on assessment, as provided within current budgetary planning, limits, and authority. Changes were also made to the definitions in OAR 411-340-0020 and will also be permanently adopted in order to maintain conformity with the rule changes in 411-340-0130.

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

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

.....
Department of Justice
Chapter 137

Stat. Auth.: ORS 25.020, 25.080, 25.625, 180.345 & 416.455

Stats. Implemented: ORS 18.400, 25.020, 25.080, 25.287, 25.625, 107.108, 107.135 & 416.425

Proposed Adoptions: 137-055-1090

Proposed Amendments: 137-055-1100, 137-055-1120, 137-055-3420, 137-055-3430, 137-055-4340, 137-055-5120

Last Date for Comment: 3-25-05

Summary: The adoption of OAR 137-055-1090 is due to DCS needing to put into rule the policy of how the program has previously decided how cases which are coded good cause should be handled when a subsequent referral or application is received. Issue Research Paper 01-28 memorialized those decisions. However, the IRP needs to be put in the rule because of its effect on the public. The amendments to: OAR 137-055-1100 are cite changes only based on changes to OAR 137-055-1120; OAR 137-055-1120 added additional circumstances to when the administrator may close a case with or without notice, based on Federal Regulations; OAR's 137-055-3420 and 137-055-3430 clarify that when making a determination of whether an order is in substantial compliance the formula will be applied to the currently ordered support amount; OAR 137-055-4340 amends the delinquency of arrears criteria from three months to 45 days before a case will be sent for federal tax offset; OAR 137-055-5120 adds to the finding of good cause to not distribute directly to a child attending school when another state notifies us that they are unable to distribute support directly to the child.

Copies of the proposed rules can be found on our web page at http://www.dcs.state.or.us/oregon_admin_rules/default.htm.

Rules Coordinator: Shawn Irish

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

Telephone: (503) 986-6240

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

Date:	Time:	Location:
2-23-05	10 a.m.-12 p.m.	4760 Portland Rd. NE Office of State Fire Marshal Salem, OR 97305

Hearing Officer: Bob Albers

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 - 453.414

Proposed Adoptions: 837-085-0305

Proposed Amendments: 837-085-0030, 837-085-0040, 837-085-0070, 837-085-0080, 837-085-0090, 837-085-0180, 837-085-0210, 837-085-0260, 837-085-0270, 837-085-0280, 837-085-0290, 837-085-0300, 837-085-0310

Last Date for Comment: 3-2-05

Summary: The rules are being modified mainly to outline the process and monetary values associated with the Notice of Non-Compliance system. In the past, the Administrative Rules allowed for a daily accrual of \$1,000 a day, however, did not place a limit or date at which the Office of State Fire Marshal would stop assessing a penalty. The proposed process will repeal the daily accrual language and place a cap at which the Office of State Fire Marshal will stop assessing a penalty.

Other changes include general housekeeping and changing from the Standard Industrial Classification System to the North American Industry Classification System. This change is being proposed due to the federal government updating the classification system.

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

Rules Coordinator: Pat Carroll

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

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

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Department of Transportation
Chapter 731

Date:	Time:	Location:
2-18-05	1:30 p.m.	355 Capitol St. NE Dept. of Transportation Bldg. Rm. 122 Salem, OR

Hearing Officer: Betsy Imholt

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: ORS Ch. 862, OL 2001 & Ch. 618, OL 2003

Proposed Adoptions: 731-080-0010 – 731-080-0070

Last Date for Comment: 2-18-05

Summary: Chapter 862, Oregon Laws 2001 authorizes the Department of Transportation to develop one or more alternatives to the current system of taxing highway use through motor vehicle fuel taxes. Section 43, Chapter 618, Oregon Laws 2003 allows the Department to vary any fee established under a pilot program to facilitate the maximum use of road capacity. These proposed rules establish the Road User Fee Pilot Program. As proposed, the pilot program volunteer participants will pay a new mileage fee and not pay the current fuels tax. The fees collected are based on the miles driven and where the person drives within the state of Oregon. The rules establish the fees that will be charged and general guidelines for the program. All participation by individuals and service stations is voluntary. Volunteers will be required to enter into a Pilot Program agreement with ODOT.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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

Stat. Auth.: ORS 184.616, 814.619, 802.010, 803.012, 803.015, 803.140, 819.016 & 821.060

Stats. Implemented: ORS 803.015 & 803.420

Proposed Amendments: 735-024-0025

Last Date for Comment: 2-22-05

NOTICES OF PROPOSED RULEMAKING

Summary: OAR 735-024-0025(1) describes when DMV will issue a branded Oregon title or a title with an "assembled" make. Currently, OAR 735-024-0025(1)(a) erroneously refers to OAR 735-024-0015, section(2), as the section that describes the title brand(s) that may be added to an Oregon title. The correct reference should be OAR 735-024-0015, section(3). DMV proposes to amend OAR 735-024-0025(1)(a) to correctly reference OAR 735-024-0015(3).

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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

Stat. Auth.: ORS 184.616, 184.619, 810.030, 810.050, 810.060, 818.200 & 818.220

Stats. Implemented: ORS 818.030, 818.200, 818.220 & 818.225

Proposed Amendments: 734-073-0051, 734-073-0056, 734-073-0060, 734-073-0065, 734-073-0100, 734-073-0110, 734-073-0120, 734-073-0130, 734-073-0140, 734-074-0008, 734-074-0010, 734-074-0020, 734-074-0045, 734-074-0051, 734-082-0005, 734-082-0040

Last Date for Comment: 2-22-05

Summary: Division 73, 74 and 82 rules govern vehicles and loads that exceed statutory maximum size and weight limits. Proposed amendments include: updating references to maps and forms; revising definitions to be consistent with other rules governing over-dimensional vehicles and loads; reducing the minimum visibility distance required for triple trailer operations to be consistent with other inclement weather visibility requirements; and making minor corrections. Further, proposed amendments clarify Department policy regarding implementation of section 3, chapter 185, Oregon Laws 2003 (SB 425), which states that a road authority may not issue a permit if the sole purpose of the permit is to specify highways where a vehicle or combination of vehicles may not travel.

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 Transportation,
Motor Carrier Transportation Division
Chapter 740**

Stat. Auth.: ORS 823.011, 825.232, 825.450 & 826.031

Stats. Implemented: ORS 825.450, 825.454, 825.470 & 826.023

Proposed Amendments: 740-045-0010

Last Date for Comment: 2-22-05

Summary: The Oregon Weight Receipt and Tax Identifier (OWRATI) is the permanent operating credential issued to commercial motor vehicles that are subject to Oregon's weight mile tax. Each OWRATI is unique to the commercial motor vehicle to which it is issued and it is linked to the state registration plate issued to the vehicle. While OWRATI's are reissued annually on January 1, some states may renew vehicle registration by issuing a replacement registration plate after January 1. Under those circumstances, a replacement OWRATI is required. It has been Department policy to not charge the fee described in ORS 825.450 for a replacement OWRATI when the replacement is caused by another state's annual registration date. Motor carriers from those states should not be required to pay OWRATI fees twice annually under the circumstances described. The proposed amendments clarify existing Department policy.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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**Oregon Department of Education
Chapter 581**

Date:
2-23-05

Time:
3 p.m.

Location:
255 Capitol St. NE
Rm. 251-A
Public Service Bldg.
Salem, OR

Hearing Officer: Mike Reed

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Proposed Amendments: 581-021-0037

Last Date for Comment: 2-23-05

Summary: OAR 581-021-0037 does not specify how often training for non-medical persons who administer medications to students in schools should happen. This proposed amendment would require yearly training for non-medical school personnel who administer medications to students. This amendment is critical for maintaining safe and healthy schools.

If you have questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail suzy.harris@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

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

Rules Coordinator: Debby Ryan

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

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

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**Oregon Economic and Community Development Department
Chapter 123**

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5), 285C.060(1), 285C.065(3), 285C.095(1), 285C.115(6), 285C.120(2)(b), 285C.140(1)(c), 285C.140(12)(a), 285C.200(6), 285C.215(3), 285C.250(4), 285C.353(2) & 285C.370

Stats. Implemented: ORS 284.565, 285A.095, 285B.283, 285B.286, 285C.050 - 285C.250, 285C.260, 285C.300 - 285C.320, 285C.350 - 285C.370, 285C.400 - 285C.420, 315.507, 315.508, 317.124 - 317.131 & 461.740

Proposed Adoptions: Rules in 123-065

Proposed Amendments: Rules in 123-065, 123-070

Proposed Repeals: Rules in 123-065

Proposed Ren. & Amends: Rules in 123-065

Last Date for Comment: 2-22-05

Summary: Fully update Divisions 065 and 070 (First-Source Hiring Agreements), especially for new statutory codification (ORS Ch. "285C") and statutory revisions by Oregon Laws 2003 (Chapters 65, 239, 432, 558 and 662). Correct for errors, and otherwise remove, rewrite, expand or restructure text to be more accessible and accurate, based on practical experience. Improve boundary change instructions. Create common set of guidelines for designations and boundary change requests. Enhance elements for enterprise zone designation applications, including requirement and competitive criteria related to having project-ready industrial sites, elimination of newspaper notice for application round, and independence of director's determination. Clarify that a firm can qualify with closure/curtailment more than 30 miles away that does not transfer jobs into enterprise zone. Address revocation/termination for E-commerce zones, and improved connectedness with tax credit per new laws. Permanently adopt administrative rules for Rural Renewable Energy Development Zones (RREDZ).

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Tawni Bean
Address: Oregon Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301-1280
Telephone: (503) 986-0149

**Oregon Liquor Control Commission
Chapter 845**

Date: 3-3-05 **Time:** 10 a.m.–12 p.m. **Location:** 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Katie Hilton
Stat. Auth.: ORS 471, 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.380
Proposed Amendments: 845-009-0020
Last Date for Comment: 3-17-05

Summary: This rule describes how the Commission applies the statutory provisions of ORS 471.380(1)(a) and (d). The refusal bases addressed in this rule are for felony convictions, violent felonies, drug-related felonies, liquor law violations, and habit of abuse. The current rule is repetitive and cumbersome. We intend to streamline the rule, simplify the circumstances under which we will deny service permits under this rule, and focus on more recent events or incidents.

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

Rules Coordinator: Katie Hilton
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

Stat. Auth.: ORS 471, 36.224, 471.030, 471.040, 471.157 & 471.730(1), (5) & (6)
Stats. Implemented: ORS 471, 36.224, 36.228, 36.230, 36.232, 192.440(3), 471.155, 471.168, 471.180, 471.311, 471.313 & 471.344

Proposed Amendments: 845-001-0008, 845-004-0020, 845-005-0303, 845-005-0314, 845-006-0434, 845-006-0475, 845-009-0135
Last Date for Comment: 3-1-05

Summary: These seven rules contain “and/or” references. We need to amend the rules so that the term “and/or” does not appear in them.

Rules Coordinator: Katie Hilton
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

Stat. Auth.: ORS 183.341(2) & 471.730(5) & (6)
Stats. Implemented: ORS 183.341(2) & 471.730(5) & (6)
Proposed Amendments: 845-003-0670

Last Date for Comment: 3-1-05
Summary: This rule describes the authority the Commissioners retain, and the authority which is designated to the agency Administrator in regard to certain contested case procedures. We intend to amend the rule to describe delegation to the Administrator and ALJ’s to prepare and issue Final Orders by Default.

Rules Coordinator: Katie Hilton
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

**Oregon Public Employees Retirement System
Chapter 459**

Date: 2-22-05 **Time:** 2 p.m. **Location:** 11410 SW 68th Pkwy.
Boardroom
PERS Headquarters
Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015 & 238A.025
Proposed Amendments: 459-010-0035
Last Date for Comment: 2-28-05

Summary: ORS 238A.025 determines eligibility for the Oregon Public Service Retirement Plan (OPSRP) for employees employed on or after August 29, 2003. The statute exempts PERS Chapter 238 Program members from OPSRP membership, including employees who began their six-month waiting period under the PERS Chapter 238 Program prior to August 29, 2003.

For ease of administration, PERS and OPSRP membership waiting periods end as of the first of the calendar month after serving six months. Under these programs, someone starting work January 15 becomes a member August 1. The statutes, particularly ORS 238A.025, contemplate that the six-month waiting period starts January 15, when the employee starts work, and ends the first of the month after the employee completes six months of service.

The current language of OAR 459-010-0035 does not comport with the statutory structure. Instead, the rule provides that the six-month waiting period begins on “the first of the calendar month following the date of employment...” Previously, this rule had no practical effect because membership under either structure always began on the first day of the month following six months of service. Now, however, with ORS 238A.025 making the starting date of membership a critical determining factor, PERS proposes to amend the rule so the waiting period commences as contemplated by the statutes.

OAR 459-010-0035 is modified so the waiting period begins on the day the employee is hired. This modification does not result in the shortening or lengthening of the waiting period or affect the date of membership that follows the six-month waiting period. An employee hired on August 9, 2003, would become a member on March 1, 2004, under both the current language and under the proposed rule modifications. Under the amended version of the rule, however, that employee would become a member of the PERS Chapter 238 Program and not OPSRP.

Additionally, the rule has been amended to provide the commencement of the six full calendar months to include the month in which the employee is hired if employment begins on the first business day of the month.

To improve clarity and consistency, the term “waiting period” replaces the term “qualifying service” in this rule.

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

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

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

Date: 2-18-05 **Time:** 11 a.m. **Location:** 345 N. Monmouth Ave.
Monmouth, OR 97361

Hearing Officer: Brian Clem, Commission Chair
Stat. Auth.: ORS 348.603 & 348.606
Stats. Implemented: ORS 348.603 & 348.606
Proposed Amendments: Rules in 583-030
Last Date for Comment: 2-18-05

Summary: Revises definitions of types of degree-granting institutions.

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

Rules Coordinator: Tracy Richardson
Address: Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401
Telephone: (541) 687-7443

NOTICES OF PROPOSED RULEMAKING

Date: 2-18-05
Time: 11 a.m.
Location: 345 N. Monmouth Ave.
Monmouth, OR 97361

Hearing Officer: Brian Clem, Commission Chair

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.609

Proposed Amendments: Rules in 583-050

Last Date for Comment: 2-18-05

Summary: Revises definitions of types of degree-granting institutions.

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

Rules Coordinator: Tracy Richardson

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

Telephone: (541) 687-7443

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**Oregon University System,
University of Oregon
Chapter 571**

Date: 3-3-05
Time: 3 p.m.
Location: 16 Pacific Hall
UO
Eugene, OR

Hearing Officer: Donna Chittenden

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

Last Date for Comment: 3-4-05, 12 p.m.

Summary: The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

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

Rules Coordinator: Deb Eldredge

Address: Oregon University System, University of Oregon, 1226 President's Office, Eugene, OR 97403-1226

Telephone: (541) 346-3082

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**Oregon University System,
Western Oregon University
Chapter 574**

Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-050-0005
Last Date for Comment: 2-24-05

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

Rules Coordinator: Debra L. Charlton

Address: Oregon State System of Higher Education, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

Telephone: (503) 838-8175

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

Date: 2-18-05
Time: 10 a.m.
Location: State Archives Bldg.
Salem, OR

Hearing Officer: Mary Beth Herkert

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Proposed Amendments: 166-300-0015, 166-300-0025

Last Date for Comment: 2-18-05, 5 p.m.

Summary: Deletes Administrative, General, and Ephemeral correspondence categories currently found in OAR 166-300-0015; deletes

the fiscal correspondence category in OAR 166-300-0025; and replaces them with one Correspondence series that will be found in OAR 166-300-0015. This new hearing and rule is an extension of the rulemaking hearing notice found in the January 1, 2005 Oregon Bulletin with subsequent hearing on January 18, 2005. The extension of the comment period and additional rule hearing were deemed necessary by the Archives Division based on further internal discussions and comments received during the initial comment period resulting in the further refinement of the definition and amendment of OAR 166-300-0015.

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

Rules Coordinator: Julie Yamaka

Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310

Telephone: (503) 373-0701, ext. 240

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**Secretary of State,
Corporation Division
Chapter 160**

Date: 2-24-05
Time: 8:30-11:30 a.m.
Location: 255 Capitol St. NE
Ste. 151
Salem, OR 97310

Hearing Officer: Staff

Stat. Auth.: ORS 56.014 & 56.022

Stats. Implemented:

Proposed Adoptions: 160-010-0500

Last Date for Comment: 2-24-05

Summary: Requires that business registry filings must have disclosable information under ORS 194.445. Outlines Division procedure for Personal Safety Exemption requests of the Public Records Law under ORS 194.445.

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

Rules Coordinator: Kristine T. Hume

Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

Telephone: (503) 986-2356

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**Teacher Standards and Practices Commission
Chapter 584**

Date: 3-10-05
Time: 3 p.m.
Location: 630 Hawthorne Ave. SE
Comfort Suites
Salem, OR 97301

Hearing Officer: TSPC Chair

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Proposed Adoptions: 584-019-0003

Proposed Amendments: 584-017-0175, 584-019-0010, 584-020-0040, 584-020-0045, 584-060-0051, 584-070-0011

Last Date for Comment: 3-10-05, 5 p.m.

Summary: 584-017-0175 - Allow for noncontiguous authorizations on existing Initial or Continuing Teaching Licenses.

584-019-0003 - Delegates authority to amend Notices of Opportunity for Hearing to the Executive Director.

584-019-0010 - Clarify the scope of discovery for disciplinary administrative hearings.

584-020-0040 - Allows TSPC to discipline for conduct on or off school premises and housekeeping changes.

584-020-0045 - Add the factor of issuing discipline to deter others from the same or similar acts.

584-060-0051 - Allow for noncontiguous authorizations on existing Initial or Continuing Teaching Licenses.

NOTICES OF PROPOSED RULEMAKING

584-070-0011 - Allow alternative assessments by universities for Child Development Specialists seeking Initial School Counselor License.

Copies of the above proposed administrative rules are available on the TSPC Web Site at www.tspc.state.or.us.

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

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 1-2005

Filed with Sec. of State: 1-12-2005

Certified to be Effective: 1-12-05

Notice Publication Date: 11-1-04

Rules Amended: 161-002-0000, 161-025-0060

Subject: Permanent changes to Oregon Administrative Rules 161, Division 2 regarding definitions; and Division 25 regarding appraisal standards and Uniform Standards of Professional Appraisal Practice (USPAP).

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

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" 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 licensure as a state licensed appraiser or certification as a state certified residential or state certified general appraiser.

(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 report-

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

(19) "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.

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

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

(22) "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.

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

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

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

(26) "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.

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

(28) "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, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

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

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

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

(32) "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 (36), 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.

(33) "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.

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

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

Stat. Auth.: ORS 674.305 & 674.310

ADMINISTRATIVE RULES

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 161-10-000; 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; ALCB 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

161-025-0060

Appraisal Standards and USPAP

(1) All appraisal reports shall be prepared in accordance with these administrative rules and USPAP.

(2) In addition to the Ethics Provision of the USPAP, it is unethical to knowingly violate USPAP.

(3) An individual appraiser employed by a group or organization which conducts itself in a manner that does not conform to these standards shall nonetheless comply with the standards.

(4) An appraiser who signs the appraisal report must inspect the subject property both inside and out, and must inspect the exterior of all comparables relied upon in the appraisal, or disclose that the appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal.

(5) All testimony before an administrative or judicial proceeding will be based upon written reports prepared in conformance with USPAP.

(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) The appraiser shall list his/her certificate or license number in the appraisal report.

(8) State licensed, State Certified Residential and State Certified General appraisers shall comply with USPAP in all valuation work as provided in ORS 674.100(2), (3).

(9) Notwithstanding any other provision of these rules, the following licensed or certified appraisers are not subject to the requirements of Standard 3 of USPAP when examining an appraisal as part of an official investigation conducted by the Appraiser Certification and Licensure Board:

(a) State Licensed, State Certified Residential or State Certified General Appraisers who are serving on the Board;

(b) State Licensed, State Certified Residential or State Certified General Appraisers who are employed by the Board;

(c) State Licensed, State Certified Residential or State Certified General Appraisers acting as volunteers at the request of the Board.

[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; ALCB 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

Board of Accountancy Chapter 801

Adm. Order No.: BOA 3-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Amended: 801-001-0000

Subject: This rule is being modified to comply with administrative rule filing requirements.

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

801-001-0000

Notice of Proposed Rule

Prior to permanent adoption, amendment or repeal of any rule, the Oregon Board of Accountancy shall give notice of the intended action:

(1) By publishing Notice at least 21 days prior to the effective date of the rule in the bulletin compiled by the Secretary of State and referred to in ORS 183.360;

(2) By mailing a copy of the Notice to persons on the Board of Accountancy's mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule;

(3) By mailing or furnishing a copy of the Notice to the following persons and organizations:

(a) Capitol Press Room;

(b) Associated Press;

(c) Oregon Society of Certified Public Accountants;

(d) Oregon Association of Independent Accountants; and

(4) By mailing a copy of the Notice to legislators as provided by ORS 183.335(15).

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.335 & 183.360

Hist.: AB 37, f. & ef. 12-3-75; AB 2-1982, f. & ef. 4-20-82; AB 4-1992, f. & cert. ef. 8-10-92; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2004, f. 12-30-04, cert. ef. 1-1-05

Adm. Order No.: BOA 4-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Amended: 801-010-0010, 801-010-0050, 801-010-0060, 801-010-0065, 801-010-0085

Subject: These rule revisions remove obsolete provisions requiring a proctor fee for the CPA examination; clarify testing window definition, remove deadline for submitting transcripts; provide correct numbering per administrative rule guidelines; describe CPA exam sections required for certain public accountant candidates; clarify experience requirements for licensing; add Chartered Accountants for supervisor licensee responsibilities; and clarify supervisor licensee requirements.

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

801-010-0010

Fees

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) **Application fees.** All application fees are non-refundable.

(a) CPA Examination:

(A) Initial Examination — \$100;

(B) Re-Examination — \$ 50;

(C) Proctor Fee — \$100;

(b) CPA Certificate or PA License — \$150;

(c) Substantial equivalency by notification — \$100.

(2) **Initial permit and registration fees:**

(a) Initial CPA or PA Permit — \$150;

(b) Municipal Auditor — \$100;

(c) Firm Registration — \$100.

(3) **Biennial renewal fees:**

(a) Active Permit — \$150;

(b) Inactive Permit — \$ 50;

(c) Municipal Auditor — \$100;

(d) Firm Registration — \$100.

(4) **Annual renewal fees:** Substantial equivalency by notification — \$100.

(5) **Late renewal penalty fees:**

(a) Active Permit — \$ 50;

(b) Inactive Permit — \$ 35;

(c) Firm Registration — \$ 35.

(6) **Miscellaneous fees:**

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

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(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per page thereafter.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Secretarial/clerical, \$17 per hour, in quarter hour increments at \$4.25 per quarter hour.

(B) Professional/technical, \$25 per hour, in quarter hour increments at \$6.25 per quarter hour.

(7) Form of Payment:

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160; 197.720 & 673.153
Stats. Implemented: ORS 673, 297 & 192.440

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05

801-010-0050

Application for Uniform CPA Examination

(1) Definitions

(a) Authorization to Test (ATT): Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit a Re-examination Application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) Notice to Schedule (NTS): Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS shall remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) Testing Center: Computer testing facilities, approved by the Board and listed on the Board website, at which candidates may take the CPA examination. Testing centers are located throughout the United States, Guam, Puerto Rico and the Virgin Islands.

(d) Testing Opportunity: Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

(e) Testing Windows: The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that exam sections can be graded and maintenance may be performed.

(2) Applications.

(a) Applications for the CPA exam shall be submitted on a form provided by the Board and shall be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and evidence that the candidate has met eligibility requirements.

(c) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(d) Candidates shall file an initial application when applying to take the CPA exam for the first time in Oregon. Thereafter candidates shall file a re-examination application. Each application filed shall specify the exam sections to be taken under that application.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are non-refundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day.

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate shall not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate shall certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination shall be cause for disciplinary action under ORS 673.170.

(h) When an application is approved, the Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

(3) Eligibility under education requirements. Candidates for admission to the CPA exam after January 1, 2000 who are applying under the educational requirements of ORS 673.050(1)(a) shall demonstrate eligibility as follows:

(a) 150 Hour rule: Candidates shall present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from an accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) The required number of hours in accounting or related subjects may be obtained by satisfactory completion of such hours taken from divisions of continuing education extended by an accredited four-year college or university, or from a community college, providing the community college courses are transferable as equivalent courses to an accredited four-year college or university.

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from an accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university. However, completion of 150 hours consisting entirely of courses taken from a community college or divisions of continuing education shall not be considered equivalent to a baccalaureate or higher degree from a four-year accredited college or university under the requirements of ORS 673.050.

(b) Candidates who applied before January 1, 2000: Returning candidates after January 1, 2000 who do not meet the educational requirement under ORS 673.050(1)(a) are required to sit for at least one section of the CPA exam in any two testing windows per year in order to maintain eligibility under the requirements of ORS 673.050 that were in effect prior to January 1, 2000. Returning candidates shall provide satisfactory evidence that:

(A) The candidate met CPA exam eligibility requirements that were in effect in Oregon at the time the candidate sat for the CPA exam for the first time in any jurisdiction; and

(B) The candidate sat for and received grades for at least one of the Uniform CPA Examinations in any jurisdiction in 1998 or 1999.

(c) Evidence of eligibility. Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree shall provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been

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awarded shall provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted.

(D) Only colleges or universities accredited by one of the six regional accrediting associations and listed as accredited in the Directory of Post secondary Institutions published by the National Center for Education Statistics shall be recognized by the Board.

(4) Eligibility under experience standards. Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant shall submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board.

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for at least one exam section in any two testing windows each year in order to maintain eligibility under those requirements.

(5) Authorization to Test and Notice to Schedule

(a) An ATT authorizes the candidate to test one time for those sections of the CPA exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety (90) days after it is issued if the candidate has not requested an NTS and paid the appropriate fees to NASBA.

(b) Expiration of the ATT. Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) Suspension of the ATT. An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) Payment of CPA Exam testing fees. To obtain a Notice to Schedule (NTS), the candidate must remit the CPA exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA exam fee, to receive another ATT.

(e) NTS. When the candidate receives an ATT from the Board, the candidate is required to:

(A) Submit to NASBA payment of all fees related to testing of the CPA exam sections authorized by the ATT;

(B) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the NTS. CPA exam sections do not have to be scheduled on the same date.

(C) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

(D) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) Testing.

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) Re-examination. A completed re-examination application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stat. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05

801-010-0060

Credit for Uniform CPA Examination Sections

(1) Exam section requirements.

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who were eligible under the provisions of ORS 673.050(2) (1999 Edition) and who sat and received grades for two sections of the CPA exam before January 1, 2002 are required to take and pass the following two sections of the CPA exam: Regulation and Audit & Attestation.

(c) After January 1, 2002, candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) Credit for CPA exam sections.

(a) The passing grade for all sections of the exam is 75. Credit for the CPA exam will be allowed as follows: [Table not included. See ED. NOTE.]

(b) Transitional Credit from Paper & Pencil CPA Exam. Candidates who hold conditional credit under the paper and pencil CPA exam will retain conditional credit for the corresponding exam sections under the computer based CPA exam as follows:

(c) A candidate who earned conditional credit under the paper and pencil CPA exam will be allowed a transition period to complete remaining exam sections. The transition period is the maximum number of opportunities to complete all remaining test sections that the candidate has remaining at the launch of the computer-based examination, or three years from the last day of the month in which conditional credit was earned, whichever is exhausted first. During the candidate's transition period, credit for any computer-based exam section passed is subject to subsection (e) of this rule.

(d) If a candidate who earned conditional credit under the paper and pencil CPA exam does not pass all remaining exam sections during the transition period described in subsection (c) of this rule, conditional credit earned under the paper and pencil exam will expire and the candidate will lose credit for those exam sections earned under the paper and pencil exam.

(e) Credit for Computer Based CPA Exam. Upon implementation of the computer based CPA exam, a candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed shall be valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section(s) and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA exam within a rolling eighteen (18) month period, which begins on the date of the first section(s) passed;

(B) Upon passing any CPA exam section, the passing date of that section shall be the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen (18) month period shall lose credit for any section(s) passed outside the eighteen (18) month period and that section(s) must be retaken.

(f) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

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(g) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) Transfer of CPA exam scores from other jurisdictions. The Board may allow the transfer of CPA exam scores and grant credit to a candidate who has successfully completed any section(s) of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section(s) passed; and

(c) The candidate who first sat for the CPA exam in another jurisdiction after January 1, 2000 was qualified under the educational requirement of ORS 673.050(1) at the time the candidate first took the CPA exam in the jurisdiction from which grades are requested to be transferred.

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.050, 673.060 & 673.075

Hist.: 1AB 12, f. 3-30-65; 1AB 14, f. 8-15-68; 1AB 16, f. 1-30-70, ef. 2-25-70; 1AB 19, f. 10-22-71, ef. 11-15-71; 1AB 21, f. 3-2-72, ef. 3-15-72; 1AB 30, f. 9-18-73, ef. 10-1-73; 1AB 35, f. 10-29-74, ef. 11-25-74; 1AB 36, f. 1-28-75, ef. 2-25-75; 1AB 40, f. & ef. 5-5-76; 1AB 41, f. & ef. 12-2-76; 1AB 43, f. & ef. 3-31-77; 1AB 2-1978, f. & ef. 3-21-78; 1AB 11-1978, f. & ef. 12-1-78; 1AB 3-1979, f. & ef. 12-21-79; 1AB 2-1980, f. & ef. 4-8-80; 1AB 3-1980, f. 10-23-80, ef. 12-1-80; 1AB 5-1981, f. & ef. 7-27-81; 1AB 6-1981, f. & ef. 7-27-81; 1AB 3-1982, f. & ef. 4-20-82; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05

801-010-0065

Qualifications for Certification

(1) Requirements. Applicants for the certificate of Certified Public Accountant shall meet the following requirements:

(a) Complete and pass all sections of the CPA exam;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.040 as follows:

(A) Applicants who qualified for the CPA exam by meeting CPA exam requirements under provisions of ORS 673.040 in effect prior to January 1, 2000 are required to have two years of experience and competency in the seven core areas described in this rule, which means at least 24 months of full-time employment, or a total of 4,160 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(B) Applicants who qualified for the CPA exam by meeting the CPA exam requirements under ORS 673.040 (1999 Edition) in effect after January 1, 2000 are required to have one year of experience and competency in the seven core areas described in this rule, which means at least 12 months of full-time employment, or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(C) Applicants who sat and received grades at the CPA exam prior to January 1, 2000, without the completion of 150 semester hours or 225 quarter hours, may choose to complete the 150 hour requirement under ORS 673.050(1)(a) and meet the experience requirement by completing one year of public accounting experience as described in paragraph (1)(c)(B) of this rule.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for a certificate.

(2) Experience Requirements.

(a) Overtime hours worked will not be credited toward the experience requirement.

(b) All experience must be gained under the direct supervision of a supervisor licensee, as defined in OAR 801-005-0010.

(A) "Direct supervision" as used in this rule means that there is a clear connection between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority to discharge the employee being supervised.

(B) In order to qualify as a supervisor licensee for the purpose of this rule the person providing supervision must have held an active CPA or PA permit recognized by the state or a recognized Chartered Accountant

Certificate during the period of supervision and for at least five consecutive years immediately prior to such supervision.

(C) An applicant's employer shall act as supervisor licensee and shall attest as to whether or not the applicant has gained qualifying experience under this rule.

(c) The experience required under ORS 673.040 shall consist solely of experience within activities generally performed by certified public accountants and public accountants licensed in Oregon, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestations, management advisory services, tax advisory services, tax return preparation, personal financial planning or reporting on an entity's internal controls.

(3) Experience portfolio. The applicant shall develop a portfolio of experience that demonstrates to the satisfaction of the Board that the applicant has achieved experience in all of the following competencies:

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operating cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) Qualifying experience. An applicant shall demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) Experience based on attest or assurance. Experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(a)(A) of this rule including internal audit employment; or

(C) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted. Experience under this subsection shall include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting;

(iv) The audit agency, internal audit department, or other organization is independent of the entity, and

(v) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

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(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(b) Experience based on other professional standards. Any other experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants; or

(B) Employed in Board approved equivalent experience programs in industry, government or other settings.

(C) Experience described in paragraph (4)(b)(B) of this rule shall be performed in accordance with the standards of the profession. For example, other experience may be performed in accordance with the established standards for:

- (i) Consulting services,
- (ii) Tax practice,
- (iii) Personal financial planning,
- (iv) Internal audits,
- (v) Government finance manager, or
- (vi) Regulatory agencies.

(D) Experience obtained in accordance with other professional standards shall meet guidelines established by the Board.

(c) Experience based on industry, government, and other. Qualifying experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed in industry, government, or other settings under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry, government or other experience related to subsection (3)(b) of this rule, assessing the achievement of an entity's objectives, will include obtaining an understanding of the industry in which the entity operates, including the employer's competition (or other similar service providers in the case of government) and key competitiveness factors that affect the industry.

(B) Industry, government or other experience related to subsection (3)(d) of this rule, understanding transaction streams and information systems, will include assessing the adequacy of an entity's internal controls.

(C) Experience, other than experience described in subsections (4)(a) and (b) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience is equivalent to subsection (4)(a) or (b) of this rule.

(5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the permit fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & ORS 673.410
Stats. Implemented: ORS 673.040

Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef. 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05

801-010-0085

Holders of Foreign Certificates, Credentials or Degrees

(1) The Board recognizes the International Qualifications Appraisal Board (IQAB), a joint body of NASBA and AICPA. IQAB is charged with:

(a) Evaluating the professional credentialing process of certified public accountants or their equivalents in countries other than the United States; and

(b) Negotiating principles of reciprocity agreements with the appropriate professional and/or governmental bodies of other countries seeking

recognition as having requirements substantially equivalent to requirements in the United States to qualify for and receive the certificate of certified public accountant.

(2) The Board shall honor the principles of reciprocity agreements issued by IQAB.

(3) An applicant for a certified public accountant certificate in Oregon who holds a certificate, credential or degree issued by a foreign country that is claimed to be comparable to a certificate or license issued by the Board, or an applicant who holds a certificate or license issued by the licensing body of any state or US Territory that is based upon the certificate, credential or degree granted by a foreign country that is not recognized under any IQAB Reciprocity Agreement is required to meet the following requirements:

(a) Satisfy the educational requirement under ORS 673.050 for admission to the CPA exam. The applicant's academic credentials shall be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(b) Pass all sections of the CPA exam required by ORS 673.060; and

(c) Complete the experience requirement under ORS 673.040, 673.100 and OAR 801-010-0065.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040 & 673.060

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05

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Subject: Revisions clarify requirements for a municipal license.

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

801-020-0620

Bidding and Contracting for Municipal Audits

(1) Municipal Roster. The Oregon Board of Accountancy is authorized by ORS 297.670 to prepare and maintain the Municipal Roster of licensees who are authorized to conduct municipal audits required by ORS 297.425.

(2) Requirement for firm registration. Municipal audits required by ORS 297.425 may only be conducted through a business organization registered under the provisions of ORS 673.160.

(3) Licensees authorized to bid and contract for municipal audits. The following licensees who are admitted to the Municipal Roster may bid and contract for municipal audits in accordance with ORS 297.465:

(a) A licensed CPA who is a sole proprietor and registered under ORS 673.160;

(b) A licensed PA under ORS 673.100 who passed the audit section of the CPA Exam as a requirement for licensing and who is registered under ORS 673.160;

(c) A licensee who is a member of a business organization that is registered under ORS 673.160 may bid, contract or issue municipal audits in accordance with ORS 297.465 under the name of such business organization if all owners of the business organization are on the municipal roster..

(d) For purposes of this rule, a member of a business organization means a partner, shareholder, member or employee of the firm. Any other licensee, including an independent contractor, office sharer or licensee working for or with a firm on a limited basis is not a member.

(4) A business organization registered under ORS 673.160 that has at least one owner who is on the municipal roster may bid, contract or issue municipal audits in the name of the business organization only if the contract and the related audit report are both signed in the name of the business organization by the member who is on the municipal roster.

(5) Except as provided in this rule, no person may bid, contract or otherwise offer to issue or issue an audit under ORS 297.405 to 297.555.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS.297.680

Hist.: 1AB 8, f. 8-17-54; 1AB 15, f. 4-23-69; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 2-1991, f. & cert. ef. 2-28-91; AB 3-1992, f. & cert. ef. 2-18-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

801-020-0690

Qualifications for Admission to Municipal Roster

(1) Eligibility. The following licensees are eligible to apply for admission to the municipal roster:

(a) Individuals holding an active CPA permit issued under ORS 673.150,

(b) Individuals holding an active PA license issued under ORS 673.100 prior to January 1, 2002, and

(c) Individuals holding an active PA license issued under ORS 673.100 who were licensed after January 1, 2002 and who passed the audit section of the CPA Exam as a requirement of licensing.

(d) Individuals holding an active PA license issued who did not pass the audit section of the CPA Exam as a requirement of licensing are not eligible for admission to the municipal roster.

(2) Application Requirements. Qualified applicants for admission to the municipal roster must meet the following requirements:

(a) The applicant must be a licensee in good standing with the Board of Accountancy;

(b) Every application shall be on a form provided by the Board and shall be accompanied by a fee prescribed by OAR 801-010-0010; and

(c) The application, signed by the applicant, shall constitute an agreement between the applicant and the Board that the applicant will comply with the provisions of the Municipal Audit Law, ORS 297.405 through 297.555, and OAR chapter 801 division 020.

(3) Grounds for Denial. In addition to the specific grounds stated in ORS 673.170(2), the Board may deny admission or reinstatement to the municipal roster if:

(a) The applicant has not complied with the requirements of OAR 801-020-0620;

(b) The applicant has committed any act or engaged in conduct that reflects adversely on the licensee's fitness to practice public accountancy; or

(c) The applicant has committed any act or engaged in conduct that would cause a reasonable person to have substantial doubts about the applicant's honesty, fairness and respect for the rights of others or for any law.

(A) Any act or conduct that resulted in a criminal conviction, other than a crime described in ORS 673.170(2)(h) or (i), will not be used to deny admission to the municipal roster unless such act or conduct is rationally connected to the applicant's fitness to practice public accountancy.

(4) Initial CPE Requirements. The applicant shall demonstrate to the satisfaction of the Board that, within the two year period immediately preceding the date of application to the municipal roster, the applicant completed 40 CPE hours of Level 1 (basic) or Level 2 (intermediate) education in the following subjects, including at least 4 hours in each subject:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards;

(c) Generally Accepted Governmental Auditing Standards;

(d) Single Audit Act and related circulars and supplements published by the United States Government Accountability Office, Office of Management and Budget;

(e) Oregon Local Budget Law; and

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(5) CPE Credit. The 40 hours of education required for admission to the municipal roster may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

(6) Approval. When an application to the municipal roster is approved, the Board shall:

(a) Notify the applicant in writing that the application is approved;

(b) Enter the applicant's name on the municipal roster; and

(c) Notify the Secretary of State that the applicant is authorized to conduct municipal audits.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS.297.680

Hist.: AB 8, f. 8-17-54; IAB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05

801-020-0700

Qualifications for Continuance on Roster

(1) Renewal. The renewal of authorization to conduct municipal audits is accomplished with the licensee's biennial renewal. Licensees who wish to renew authorization to conduct municipal audits must include the following information with the biennial renewal application:

(a) A statement that the licensee wishes to renew authority to conduct municipal audits;

(b) Payment of the municipal auditor renewal fee described in OAR 801-010-0010; and

(c) A report of the correct number of CPE hours required for municipal auditors.

(2) Continuing CPE Requirement. Licensees admitted to the municipal roster are required to complete 24 hours of CPE in subjects directly related to the governmental environment and governmental auditing during each renewal period. The required number of CPE hours for renewal may include CPE programs of any level (basic, intermediate, advanced or updates). At least 16 of the 24 CPE hours required must be in one or more of the following subjects:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards and updates;

(c) Generally Accepted Governmental Auditing Standards and updates;

(d) Single Audit Act and related circulars and supplements published by the Government Accountability Office, Office of Management and Budget;

(e) Oregon Local Budget Law; or

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(3) Limitation. No more than 8 of the 24 required hours may be in courses relating to generally accepted auditing standards and procedures. Courses that make up the 8 hours described herein may include such topics as current developments in audit methodology, assessment of internal controls and statistical sampling.

(4) CPE credit. The 24 hours of CPE required for renewal of municipal audit authority may be included in the 80 hours of CPE required for renewal of the CPA/PA permit. During the first renewal period after appointment to the municipal roster, the 24 hour CPE requirement shall be prorated at one (1) CPE hour per month.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS.297.680

Hist.: AB 4-1988, f. & cert. ef. 10-28-88; AB 4-1990, f. & cert. ef. 7-17-90; AB 3-1992, f. & cert. ef. 2-18-92; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 5-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05

801-020-0710

Biennial Fee for Inclusion on Roster

This section is deleted and its contents are moved to specific sections of OAR 801 division 020.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS.297.680 & 297.720

Hist.: AB 8, f. 8-17-54; IAB 23, f. 3-2-72, ef. 3-15-72; IAB 9-1978, f. & ef. 9-22-78; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; Renumbered from 801-020-0720; AB 3-1992, f. & cert. ef. 2-18-92; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05

801-020-0720

Removal from and Reinstatement to the Municipal Rosterr

(1) Removal. Licensees may be removed from the municipal roster for the following reasons:

(a) Failure to pay the biennial fee required by OAR 801-020-0710

(b) Failure to complete the required CPE described in OAR 801-020-0700; or

(c) Failure to maintain an active CPA/PA permit in good standing as required by OAR 801-020-0690.

(2) Suspension. Licensees may be suspended from the municipal roster for the following reasons:

(a) Failure to comply with the provisions of the Oregon Municipal Audit Law, ORS 297.405 through 297.555; or

(b) Any of the reasons stated in OAR 801-020-0690(3).

(3) Reinstatement:

(a) Licensees who wish to be reinstated to the municipal roster are required to hold an active CPA/PA permit in good standing.

(b) A licensee seeking to be reinstated to the municipal roster within the two year period following the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Complete and report 24 hours of CPE as described in OAR 801-020-0700, and a 16-hour CPE penalty.

ADMINISTRATIVE RULES

(c) A licensee seeking to be reinstated to the municipal roster more than two years after the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690.

(d) A licensee who is suspended from the municipal roster and who applies for reinstatement is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010, and

(B) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690; and

(C) Complete and report a 16-hour CPE penalty.

(D) Reinstatement applications submitted by licensees who are suspended from the municipal roster will be considered by the Board of Accountancy on a case-by-case basis.

(e) All CPE hours required for reinstatement to the municipal roster, including CPE penalty hours, must be in subjects directly related to the governmental environment and governmental auditing and must be completed within two years preceding the date of the reinstatement application.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680 & 297.710

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; Renumbered from 801-020-0710; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05

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Rules Repealed: 801-040-0060

Subject: Revisions clarify rules regarding Continuing Professional Education and license reinstatement requirements.

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

801-040-0010

Basic Requirements

(1) Biennial CPE requirement. Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 CPE hours shall be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) Ethics requirement. Active licensees are required to successfully complete and report at least four hours of CPE in professional conduct and ethics (ethics requirement) every four years commencing with the renewal period that begins July 1, 2000 for even-numbered licensees and July 1, 2001 for odd-numbered licensees.

(a) Hours earned in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(b) If a licensee's principal place of business is located in another jurisdiction and the other jurisdiction has established a professional conduct and ethics CPE requirement, the licensee may meet the ethics requirement by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE hours and the ethics course that meet the CPE requirement of such other jurisdiction will be accepted in Oregon, except that the ethics requirement of the other jurisdiction must provide for an ethics program to be reported at least once every four years. The licensee shall report such classes as provided in these rules.

(c) If a licensee has a principal place of business in another jurisdiction that does not have a professional conduct and ethics CPE requirement, the licensee must complete the ethics requirement from a sponsor registered with the Board.

(3) CPE ethics programs. CPE programs in professional conduct and ethics shall qualify for CPE credit under this section if such programs are offered by a sponsor registered with the Board and include information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require a licensee to understand the statutes, rules and case law relevant to the practice of public accountancy;

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

(4) Substantial equivalency. Licensees who are authorized to practice public accountancy in this state under the provisions of substantial equivalency under ORS 673.153 may satisfy the CPE requirements under this section by demonstrating to the satisfaction of the Board that the licensee is in compliance with CPE requirements of the jurisdiction in which the licensee's principal place of business is located.

(a) If such jurisdiction has no CPE requirement the licensee shall complete and report the CPE requirements under these rules. The requirement to complete four hours of CPE in ethics and professional conduct may also be satisfied by meeting the ethics requirement of the other jurisdiction, and if none, by completing ethics programs offered by a sponsor registered with the Board.

(b) Licensees described in this section are required to comply with the continuing education requirement from the date such permit is issued. The number of CPE hours required for a partial licensing period shall be calculated in the manner described in OAR 801-040-0090 (7).

(c) Licensees described in this section are required to:

(A) Submit a signed statement that the licensee is in compliance with the CPE requirements of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements, the licensee shall complete and report CPE programs as described in OAR 801-040-0010; and

(B) Submit a signed statement that the licensee is in compliance with CPE requirements in professional conduct and ethics of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements in professional conduct and ethics, the licensee shall report Ethics CPE programs as described in OAR 801-040-0010(3).

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0020

Controls and Reporting

(1) Reporting requirement. As a requirement of renewal of an active permit, licensees are required to certify that the licensee has fulfilled the CPE requirement by signing the certification section on the renewal form. Licensees are required to report the following information for each CPE program listed on the renewal form:

(2) CPE programs.

(a) Name of program sponsor;

(b) Program title or description of content;

(c) Type of CPE program, using designations provided on renewal form;

(d) For self-study programs, the program sponsor's QAS number;

(e) Date(s) attended or date of completion; and

(f) Number of hours claimed.

(3) Published articles and books. The CPE report must include the following information for publications to be eligible for CPE credit:

(a) Name and address of the publisher;

(b) Title of publication;

(c) Description of content;

(d) Dates of publication; and

(e) Number of hours claimed.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

ADMINISTRATIVE RULES

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 6-1992, f. & cert. ef. 8-10-92; AB 4-1994, f. & cert. ef. 9-27-94; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0030

Programs that Qualify for CPE Credit

(1) Qualifying programs. In order to qualify for CPE credit under these rules, a CPE program must be a formal program of learning that contributes directly to the professional competence of the licensee. It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in public accountancy. The licensee may take programs in a variety of topics that are relevant to the licensee's practice.

(2) Program requirements. CPE programs must meet the following requirements to qualify for CPE credit:

- (a) An outline of the program is prepared in advance and preserved;
- (b) The program is at least one hour (fifty-minute period) in length;
- (c) A record of attendance is maintained by the sponsor; evidence of completion is provided to participating licensees;

(d) The program is conducted by a qualified instructor whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(3) Eligible programs. The following programs will qualify for CPE credit provided they also meet the requirements of section (2) of this rule:

- (a) Programs presented by national, state or local accounting organizations;
- (b) Programs offered by a firm to licensees;
- (c) Programs sponsored by organizations that provide professional educational programs on a regular basis;

(d) University or college courses are eligible for CPE credit at the rate of 15 CPE hours for each semester hour credit and 10 CPE hours for each quarter hour credit. University or college courses that do not earn college credit are eligible for one CPE hour for each classroom hour of learning;

(e) Other programs may qualify for CPE credit if the program meets the requirements of section 2 of this rule.

(4)(a) Individual study programs.

(b) Correspondence courses or other individual study programs do not qualify for CPE credit unless both the CPE sponsor and the specific CPE program are approved by the NASBA Quality Assurance Service (QAS).

(5) Programs not eligible for CPE credit. The following programs do not qualify for CPE credit:

(a) Courses taken to fulfill the requirements for licensure as a certified public accountant or public accountant;

(b) Ethics courses that were taken to fulfill the Ethics exam requirement for licensure; and

(c) CPA exam review or study courses.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0040

Acceptable Subject Matter

(1) Examples listed not all-inclusive. The subjects listed in this rule serve as examples only, and are not all inclusive of technical and non-technical subjects that may qualify for CPE credit.

(2) Technical subjects. Qualified continuing education programs in the following subjects are eligible for CPE credit as technical subjects:

- (a) Accounting
- (b) Auditing and assurance
- (c) Consulting
- (d) Specialized knowledge and applications
- (e) Management
- (f) Taxation
- (g) Professional ethics

(h) Other subjects may be acceptable if they maintain or improve the licensee's professional competence.

(3) Non-technical subjects. Qualified continuing education programs in subjects other than those listed in section (2) of this rule are non-technical subjects and are eligible for CPE credit if the program directly contributes to the licensee's professional competence.

(a) Credit for programs in non-technical subjects is limited to 16 CPE hours per renewal period.

(b) Non-technical subject hours may not be carried forward to the next reporting period.

(c) The following are examples of non-technical subjects:

- (A) Interpersonal management skills;
- (B) Public relations;
- (C) Practice development; and
- (D) Practice administration.

Stat. Auth.: ORS 670.310, 673.040, 673.050, 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-12-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0050

Credit Allowed and Evidence of Completion

(1) Credit hours. Eligible CPE credit is measured by program length, with one 50 minute period equal to one CPE credit. CPE credit may be issued in half increments (equal to 25 minute program periods) after the first credit has been earned.

(2) Evidence of completion. Licensees are required to document all CPE programs claimed for CPE credit and to provide the appropriate proof of completion for the number of qualifying CPE credits claimed for each program. Licensees shall retain proof of completion for each CPE program reported for a period of 5 years after completion of the program.

(3) Group study programs.

(a) CPE credit shall be allowed for actual class hours attended.

(b) Evidence of completion includes a written course outline and certificate of completion or attendance record provided by each program sponsor. The evidence of completion must include the sponsor name, course title, date of attendance or date of completion, name of participating licensee, statement that the program and sponsor are QAS approved, if appropriate, and the number of CPE hours earned;

(4) Individual study programs.

(a) Individual study programs are eligible for CPE credit only if the program is offered by a NASBA-QAS approved sponsor and the program itself is QAS approved;

(b) CPE credit will be awarded in an amount equal to the average completion time determined by the QAS approved sponsor.

(c) The date for which CPE credit is allowed is the completion date specified on the evidence of completion provided by the sponsor.

(d) Evidence of completion must include the name of the participating licensee, sponsor name, program title, date of completion, instructor name, if applicable and number of QAS CPE hours allowed.

(5) Lecturer, discussion leader or speaker.

(a) CPE credit for a lecture, training session or speaking engagement at which the licensee was an instructor, discussion leader or speaker is allowed provided that the lecture, training or engagement meets CPE requirements for the participants;

(b) One CPE hour is allowed for each 50 minute period completed as an instructor or discussion leader for the first presentation of the subject material if such activity increases the instructor's professional competence. CPE credit may be allowed for additional presentations if the substantive content of the program was substantially changed and the licensee provides evidence that such change required significant additional study or research;

(c) CPE credit for preparation time allowed for an instructor, discussion leader, or a speaker shall be calculated on the basis of two CPE hours of preparation for each hour of teaching;

(d) The maximum CPE credit allowed for preparation and teaching under this section and for published articles described in section (6) of this rule, combined, shall not exceed one-half of the total number of CPE hours required for the renewal period;

(e) Evidence of completion includes a copy of the agenda or outline provided for each presentation, lecture or speaking engagement, stating the date of presentation and name of the sponsoring organization.

(6) Published articles.

(a) CPE credit may be allowed for authoring published articles or books, provided the work directly contributes to the professional competence of the licensee;

(b) CPE credit for authoring published articles or books is allowed as of the date of publication and is only allowed for the first publication of such writing. The number of CPE hours is based on the time spent writing the published article,

(c) Authorship of a published article does not contribute to the professional competence of the licensee unless the published article is suitable for a professional audience. Published articles may be reviewed on a case-

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by-case basis to determine whether such articles contribute to the licensee's professional competence

(d) The maximum credit for published articles and books allowed under this section and for preparation and teaching under section (5) of this rule, combined, is no more than one-half of the total CPE requirement for the renewal period.

(e) A licensee may request additional CPE credit for authoring a published article by submitting an explanation of the circumstances which justify greater credit than is otherwise allowed. The Board shall determine whether additional credit is justified.

(f) Evidence of completion includes a copy of the title page or other pages that show the title, date of publication and a description of the content for each article reported for CPE credit.

(7) Reviewing peer review reports for Board approved Peer Review Programs.

(a) Licensees who serve as volunteer members of the Review Acceptance Body or any other committee that reviews peer review reports on behalf of a board approved peer review program are allowed two hours of CPE credit per meeting attended, for a maximum of 16 hours for the renewal period.

(b) Evidence of completion includes proof of attendance, provided by the sponsor of the approved Peer Review Program, for each meeting attended.

(8) State Legislative Joint Ways and Means Committee members.

(a) Licensees who serve as members of the Oregon Joint Ways and Means Legislative Committee are allowed up to 16 hours of the total CPE requirement for the renewal period during which the licensee served on the legislative committee.

(b) Evidence of completion shall be a copy of the membership roster published during the legislative session indicating the specific section of the Joint Ways and Means sub-committee on which the licensee served.

(9) University and college courses.

(a) CPE credit allowed is described in OAR 801-040-0030.

(b) An official copy of the college transcript is evidence of completion for courses that earn college credit.

(c) An attendance schedule or sign-in sheet demonstrating the licensee's attendance and prepared and maintained by the college will provide evidence of completion for courses that do not earn college credit.

Stat. Auth.: ORS 670.310, 673.040, 673.050; 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 7-1992, f. & cert. ef. 12-15-92; AB 4-1993, f. & cert. ef. 5-14-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; AB 4-1997, f. & cert. ef. 7-25-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2000, f. 3-22-00, cert. ef. 3-24-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0070

Verification

(1) The Board may verify CPE reports submitted by licensees. When selected for verification licensees are required to provide the following information for each CPE program selected by the Board:

(a) Certificate of completion or similar documentation that confirms attendance at the program and the number of eligible CPE hours; and

(b) A written statement describing how each CPE program directly contributes to the licensee's professional competency.

(2) Licensees who do not meet CPE requirements described in OAR 801-040-0010 and section (1) of this rule will be notified of the deficiency and a designated number of days will be allowed for the applicant to correct the deficiencies.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-1-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0090

Reinstatement Requirements: Lapsed, Suspended or Inactive to Active Status

(1) Lapsed permits. Permits that are not properly renewed shall lapse. To reinstate a "lapsed" permit the holder of such permit shall:

(a) Provide a detailed written description of the business and professional activities of the holder of such permit during the period of lapse, stating whether the licensee was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the active renewal fee for each renewal period that the permit was lapsed, and

(d) Complete and report the appropriate CPE hours described in this rule, plus a penalty of an additional 16 CPE hours .

(e) CPE hours submitted for reinstatement must meet the requirements for CPE credit under these rules.

(2) Permits lapsed within the first renewal period. Holders of permits that lapse within the first renewal period shall complete and report the number of CPE hours that were required to renew the permit at its last expiration date, including any professional conduct and ethics requirement.

(3) Permits lapsed more than two, but less than five years. Holders of permits that lapse more than two, but less than five years shall:

(a) Complete and report 80 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application for reinstatement; and

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, such hours to be completed at a rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(c) Complete and report four CPE hours in professional conduct and ethics.

(4) Permits lapsed more than five years. Holders of permits that lapse more than five years shall:

(a) Complete and report 160 CPE hours which shall be completed within the 24 month period immediately preceding the date of application for reinstatement;

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; and

(c) Complete and report four CPE hours in professional conduct and ethics.

(d) In lieu of meeting the CPE requirements described in this section, the holder of a lapsed permit may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the requirements of OAR 801-010-0060.

(5) Inactive permits. To reinstate a permit from inactive to active status, the holder of such permit shall meet the requirements for reinstatement of lapsed permits described in section (1) of this rule, with the following exceptions:

(a) Payment of the active renewal fee described in subsection (1)(c) of this rule for each renewal period that the permit was inactive is not required for reinstatement from inactive to active status; and

(b) The 16 hour CPE penalty described in subsection (1)(d) of this rule, is not required for applicants reinstating from inactive to active status.

(6) Suspended permits. To reinstate a permit that is suspended under ORS 673.170, the holder of such permit shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the Order of Suspension; and

(b) Meet the requirements for reinstatement of an inactive permit as stated in this rule.

(7) Permit holders in other jurisdictions. Licensees who hold an active permit to practice public accountancy issued under the laws of another jurisdiction, and who wish to reinstate an Oregon permit that has been lapsed or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active permit to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement until the end of the renewal period in which reinstatement occurs.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165 & 673.210

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-1-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0100

New Permits

(1) CPE Requirement for new licensees.

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(a) Licensees who receive an initial permit to practice public accountancy shall comply with the CPE requirements from the date of issuance of the permit on a prorated basis calculated at 3-1/3 CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the permit is issued.

(b) The 24 hour annual CPE requirement shall also be prorated at two (2) CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the permit was issued.

(c) CPE hours earned during any month of the two-year renewal cycle during which the initial permit was issued shall be eligible to meet the initial CPE requirement.

(2) Requirement for licensed public accountants who become licensed as certified public accountants. Licensees who hold a permit to practice public accountancy as a licensed public accountant under ORS 673.100, and who receive an initial certificate and permit to practice public accountancy as a certified public accountant shall, in addition to the requirement under section (1) of this rule, complete and report 3-1/3 CPE hours for each month of the renewal period during which the person held a permit as a public accountant. CPE hours earned during any month of the two-year renewal cycle during which the initial permit was issued shall be eligible for credit to meet this requirement.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1989, f. & cert. ef. 3-13-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0150

Waivers

(1) CPE waivers. The Board, in its discretion, may waive CPE requirements for:

(a) Reasons of health, certified by a medical doctor, that prevent the licensee from complying with CPE requirements;

(b) A licensee who is on extended active military duty, who does not practice public accountancy during the renewal period, and who provides a copy of orders to active military duty; and

(c) Other good cause, to be demonstrated as the Board requests.

(2) Requests for waivers. A request for waiver of CPE requirements must be submitted in writing for each renewal period during which the conditions supporting the waiver exist.

(3) Waivers not available for inactive status. The provisions of this rule are not available for licensees on inactive status granted under OAR 801-010-0120.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165 & 673.170

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

801-040-0160

Failure to Comply

(1) 16-hour CPE penalty. Licensees who submit an application for renewal of a permit and who have not complied with the CPE requirements described in OAR 801-040-0010 are required to complete and report an additional 16 hours of qualifying CPE.

(2) Failure to comply with CPE requirements. Licensees who do not meet the CPE requirements are subject to disciplinary action under ORS 673.170 (L), unless CPE requirements have been waived under OAR 801-040-0150.

Stat. Auth.: ORS 670.310 & 673.410

Stat. Implemented: ORS 673.165 & 673.170

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05

Board of Tax Practitioners Chapter 800

Adm. Order No.: BTP 1-2005

Filed with Sec. of State: 1-5-2005

Certified to be Effective: 1-5-05

Notice Publication Date: 10-1-04

Rules Amended: 800-020-0015

Subject: The amendment(s) to OAR 800-020-0015 will better prepare applicants for the consultant examination as well as increase their chances of successful passage of the examination. The consultant's examination tests an individual's ability to provide advanced services to consumers concerning their personal income

taxes. This proposal would require additional study and knowledge in taxation.

In addition, the proposed changes will ensure that Oregon tax professionals are competent in their professional activities as stated in the agency's mission.

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

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board, together with the examination fee. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one month prior to the examination date, except when the Board sets tighter deadlines due to time constraints.

(3) Tax preparer applicants may file an application before completing the basic tax course. Applicants who have completed a course of study which has not received prior approval of the Board shall furnish the Board a brief outline of courses completed, together with a transcript from the educational institution. If, in the judgment of the Board, the courses completed are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) Basic course certification forms as required under OAR 800-015-0005(6) shall be submitted to the Board by the student together with application to take the tax preparer's examination. If the student has not completed the tax course prior to filing the examination application, the basic course certification shall be submitted with application for license.

(5) A tax consultant applicant who is a licensed tax preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity of a tax preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(6) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity of a tax preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(i) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(ii) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA and AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 150 hours credited. To qualify for the one to five hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(7) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 780 hours of work experience earned during at least two of the last five years.

(8) A tax consultant applicant claiming tax consulting experience in another state shall:

(a) Submit, on form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax consultant for no less than two of the last five years; and

(b) Furnish documented proof of self-employment as a tax consultant.

(9) A tax preparer or tax consultant applicant who has worked in the capacity of a tax preparer or tax consultant in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in a tax preparation business within two years prior to the date of application;

(b) The applicant has at least three years experience in a tax preparation business;

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(c) In the opinion of the Board, the applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(10) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 260 hours of work experience at the rate of one classroom hour of education for five hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one year of applying to become a tax consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(11) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 18-2004

Filed with Sec. of State: 12-20-2004

Certified to be Effective: 1-1-05

Notice Publication Date:

Rules Amended: 839-016-0700

Subject: The rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2005.

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

839-016-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts* in Oregon dated January 1, 2005 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2005, and the effective date of the applicable special wage determination.

(2) Marine Rates for Public Works Contracts in Oregon (effective December 13, 2004).

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 2005, and special wage determination is available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.boli.state.or.us or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (503) 731-4709.

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS.279.359

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05

Adm. Order No.: BLI 1-2005

Filed with Sec. of State: 1-3-2005

Certified to be Effective: 1-3-05

Notice Publication Date: 12-1-04

Rules Adopted: 839-021-0106

Rules Amended: 839-021-0355

Subject: Adoption of OAR 839-021-0106 extends the current prohibition under state and federal law restricting the employment of minors in occupations relating to the *manufacture and storage* of explosives to *use* of explosives by minors under the age of 18. Amendment of OAR 839-021-0355 makes permanent a temporary rule adopted by the Wage and Hour Commission in July, 2004 authorizing the commission, for good cause shown, to exempt the employment of minors under 16 years of age in the entertainment industry from occupations prohibited pursuant to OAR 839-021-0102 under certain circumstances and when certain conditions are met.

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

839-021-0106

Occupations Involving Use of Explosives

(1) In addition to the provisions of Title 29 CFR, Part 570.51 (Hazardous Occupations Order 1) pertaining to occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components, no minor under the age of 18 may be employed in any occupation where explosive materials are manufactured, stored, or used, except in those occupations specified in subparagraphs (2) and (3) of this rule.

(2) This rule does not apply to the employment of minors in the following occupations:

(a) Occupations in retail establishments including the storage of ammunition in gunshops, sporting goods stores, building supplies and hardware stores, retail fireworks stands, and other retail establishments;

(b) Occupations in gun clubs, trap and skeet ranges, turkey shoots, certain armories, police stations, and other such areas where only small arms ammunition is being stored; and

(c) Occupations performed in a "nonexplosives area" as defined in subparagraph (3) below.

(3) An area meeting the following criteria shall be deemed a *nonexplosives area*:

(a) None of the work performed in the area involves the handling or use of explosives;

(b) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;

(c) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(d) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area which does not meet criteria (a) through (c).

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305 & 653.525

Hist.: BLI 1-2005, f. & cert. ef. 1-3-05

839-021-0355

Prohibited Performances

(1) No employer may employ a minor in the entertainment industry in any occupation declared particularly hazardous pursuant to OAR 839-021-0102 and 839-021-0104 or in employment prohibited by OAR 839-021-0097 and 839-021-0276 to 839-021-0285. However, a safe simulation of such employment may be allowed.

(2) Minors under fifteen days of age may not be employed in the entertainment industry.

(3) Minors under one year of age may not be employed in the entertainment industry unless the employer can demonstrate a need for such minor. A separate letter of application must be submitted to the Executive Secretary or designee setting forth the details of the needed employment. The letter must include:

(a) A complete description of the action in which the minor is expected to participate; and

(b) Certification that the minor will not be engaged for longer than the hours allowed by OAR 839-021-0335; and

(c) A signed statement from the minor's parent permitting the employment; and

(d) A signed statement from a physician licensed by the Oregon State Board of Health attesting that the minor is physically able to perform the expected duties. The physician's statement must be accompanied by the

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physician's complete address and the physician's agreement to furnish the Bureau of Labor and Industries with any or all of the information necessary to confirm the particulars of such statement.

(4) No employer may employ a minor under one year of age in the entertainment industry unless a registered nurse is present and available to the minor at all times while the minor is present.

(5) No employer may employ a minor in the entertainment industry when the employment would place the minor in a clear and present danger to life and limb. If the minor believes there exists such danger, the employer must, at the same time, discuss the matter with the minor and the minor's parent or guardian together. If the minor persists in the belief that a clear and present danger to life and limb exists, regardless of its validity, the employer must not require the minor to perform the activity the minor believes will present such danger.

(6) No employer may employ a minor to participate in a performance in the entertainment industry unless the minor has been trained to portray it safely.

(7) No employer may employ a minor to participate in, or be present during, an obscene performance or the depiction of an obscene performance in violation of ORS 163.665 to 163.695 or 167.060 to 167.095.

(8) No employer may employ a minor in a place of public amusement or entertainment in violation of ORS 167.830 to 167.840.

(9) No employer may employ a minor to be exhibited in a trance in violation of ORS 167.870.

(10) Notwithstanding the provisions of OAR 839-021-0102 and this rule, upon written request, the commission may, for good cause shown, exempt the employment of a minor under 16 years of age in the entertainment industry from the provisions of OAR 839-021-0102 and this rule after determining that the exemption will not be detrimental to the health or safety of the minor affected. Such exemption will be granted only under circumstances including but not limited to the following:

(a) The employment is not in violation of federal child labor regulations;

(b) The minor employee is adequately trained to perform the duties requested;

(c) The minor employee will be adequately supervised in performing the duties of the position;

(d) The parent or person standing in the place of the minor's parent has given written consent for the employment of the minor to perform duties otherwise prohibited; and

(e) The employer complies with all other applicable provisions of laws and rules.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305 & 653.525

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2004(Temp), 7-29-04 thru 1-24-05; BLI 1-2005, f. & cert. ef. 1-3-05

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Adm. Order No.: BLI 2-2005

Filed with Sec. of State: 1-6-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 11-1-04

Rules Amended: 839-003-0040

Subject: The proposed amendments clarify that respondents may only be added during the course of investigation, and that amended complaints need not be verified or signed by the complainant or the complainant's attorney. These clarifications are "housekeeping" in nature and conform to the statutes implemented.

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

839-003-0040

Amendment of Complaints

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meeting the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant or the complainant's attorney.

(4) The division will send a copy of the amended complaint to the

complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

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 2-2005, f. 1-6-05, cert. ef. 1-7-05

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Adm. Order No.: BLI 3-2005

Filed with Sec. of State: 1-6-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 12-1-04

Rules Amended: 839-009-0240, 839-009-0260

Subject: The proposed amendment to OAR 839-009-0240 clarifies, in conformance with the Oregon Family Leave Act (OFLA), that a female employee who has been granted OFLA pregnancy disability leave need not re-qualify for an additional 12 weeks of leave within the same leave year for any OFLA leave purpose.

The proposed amendment to OAR 839-009-0260 corrects an incorrect reference in the current rule and conforms the rules to ORS 659A.165.

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

839-009-0240

Length of Leave and Other Conditions

(1) An eligible employee is entitled to as much as 12 weeks of OFLA leave in any one-year period except that:

(a) A female employee may take up to 12 weeks of pregnancy disability leave in addition to 12 weeks of OFLA leave for any leave purpose;

(b) An employee taking the entire 12 weeks of OFLA leave for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any other OFLA leave purpose.

(2) A female employee may take up to 36 weeks of OFLA leave in one leave year. The 36 weeks of OFLA leave may be taken, for example, under the following circumstances:

(a) The female employee takes 12 weeks of pregnancy disability leave, followed by;

(b) Twelve weeks of parental leave, followed by;

(c) Twelve weeks of sick child leave.

(3) A male employee may take up to 24 weeks of OFLA leave in one leave year, but only under the following circumstances:

(a) The male employee takes 12 weeks of parental leave, followed by;

(b) Twelve weeks of sick child leave.

(4) When two family members work for the same covered employer, both employees may take OFLA leave at the same time only under the following circumstances:

(a) One employee needs to care for the other employee suffering from a serious health condition; or

(b) One employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition; or

(c) Both family members are suffering from a serious health condition; or

(d) The employer allows concurrent leave.

(5) Parental leave must be taken in one uninterrupted period – unless the employer approves otherwise – and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

(6) The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

(7) Sick child leave need not be provided to an eligible employee by a covered employer if another family member, including a non-custodial biological parent, is willing and able to care for the child.

(8) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA leave.)

(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the begin-

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ning of the leave period must be used for calculating the employee's normal work week. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.)

(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.

(9) An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in 839-009-0210(4) each time the employee begins additional OFLA leave within the same leave year. Exceptions:

(a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee or family member need not requalify under OAR 839-009-0210(4) each time leave for the same purpose (the same individual and the same serious health condition) is taken.

(b) A female employee who has been granted OFLA pregnancy disability leave need not requalify under OAR 839-009-0210(4) for an additional 12 weeks of leave within the same leave year for any OFLA leave purpose.

(c) An employee who has taken 12 weeks of OFLA parental leave, need not requalify under OAR 839-009-0210(4) for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.

(10) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act (see 29 CFR Part 541 through 541.315) or the state minimum wage and overtime laws (ORS chapters 652 and 653).

(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

(b) When OFLA leave is not covered by FMLA (e.g., the employer has 25 to 49 employees, the leave is taken for a sick child, for the serious health condition of a parent-in-law, for the serious health condition of a same-sex domestic partner or for the serious health condition of a same-sex domestic partner's parents), and the employee takes intermittent leave in blocks of less than one day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.

(11) The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
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

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 [need] 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 (under section (1) or (2) of this rule.) 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
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

Adm. Order No.: BLI 4-2005

Filed with Sec. of State: 1-6-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 11-1-04

Rules Adopted: 839-010-0200, 839-010-0205, 839-010-0210

Subject: The proposed rules implement Oregon Statutes providing protection against retaliatory action taken against nursing staff who report activities, policies or practices by hospitals that violate laws or rules or pose a threat to health or safety, or that the nursing staff reasonably believe violate laws or rules. The statutes provide that complaints of retaliation may be filed with the bureau; therefore rules are necessary to carry out enforcement of the statutes.

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

839-010-0200

Statement of Purpose

(1) ORS 441.174 prohibits a hospital from retaliating against a nursing staff because the nursing staff has taken "whistleblower" actions detailed in the statute.

(2) The purpose of these rules is to clarify the provisions of the statutes.

(3) In accordance with ORS 441.178, an individual claiming a violation of ORS 441.174, or these rules, may file a complaint with the Civil Rights Division, as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805 & 441.178
Stats. Implemented: ORS 441.174 & 441.178
Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05

839-010-0205

Definitions

For purposes of ORS 441.174 and these rules:

(1) "Affiliated hospital" means a hospital that has a business relationship with another hospital.

(2) "Hospital" means an acute inpatient care facility as defined in ORS 442.470 or a hospital as described in ORS 442.015:

(a) "Acute inpatient care facility" means a licensed hospital with an organized medical staff, with permanent facilities that include inpatient

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beds, and with comprehensive medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims. ORS 442.470.

(b) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. ORS 442.015.

(3) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2) and OAR 839-0010-0210(1).

(4) "Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.

(5) "Public body" has the meaning given that term in ORS 30.260.

(6) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff by a hospital, because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(7) For purposes of subsection (6) of this rule, "other adverse action" includes, but is not limited to:

(a) Constructive discharge as defined in OAR 839-005-0035;

(b) A significant or material change in a term or condition of employment, such as transferring a nursing staff to another location, shift or work schedule, or reducing work hours or remuneration for services;

(c) Making a decision that causes a significant or material change in an employment benefit;

(d) Removal of significant or material duties or responsibilities;

(e) Restriction or prohibition of access to the hospital or other facility, whether or not the action affects or will affect pay or other compensation;

(f) Withholding career-advancing opportunities such as training or participation in seminars or committees; or

(g) Supervisory reprimands, warnings of possible dismissal or withholding of work.

(8) For purposes of ORS 441.174 and these rules, a nursing staff "reasonably believes" if:

(a) A reasonable nursing staff in the circumstances would believe that an activity, policy or practice of a hospital:

(i) Is in violation of law or a rule or is in violation of professional standards of practice; or

(ii) Poses a risk to the health, safety or welfare of a patient or the public; or

(b) An activity, policy or practice is in violation of law or rule or is in violation of professional standards of practice.

Stat. Auth.: ORS 659A.805 & 441.178

Stats. Implemented: ORS 441.172, 441.174 & 441.178

Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05

839-010-0210

Exceptions to Retaliatory Action

(1) Except as provided in section 2 of this rule, the protection against retaliatory action provided for in ORS 441.174(1) and OAR 839-010-0205(6) and (7) does not apply to a nursing staff unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in ORS 441.174(1)(a) and OAR 839-010-0205(6)(a):

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(2) A nursing staff is not required to comply with the provisions ORS 441.174(2) and OAR 839-010-0205(1) if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime.

(3) For the purposes of subsection (2) of this rule, a nursing staff "reasonably believes is a crime" means:

(a) The activity, policy, practice or violation of law or rule is a crime; or

(b) Whether or not the activity, policy, practice or violation of law or rule is a crime, a reasonable nursing staff in the circumstances would believe that it is a crime.

Stat. Auth.: ORS 659A.805 & 441.178

Stats. Implemented: ORS 441.174

Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05

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Adm. Order No.: BLI 5-2005

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-19-05

Notice Publication Date: 12-1-04

Rules Amended: 839-004-0021

Subject: The proposed amendment duplicates a current rule, that persons reporting unsafe working conditions under the Oregon Safe and Health Act (OSEA) must contact the bureau within 30 days of having reasonable cause to believe that a violation of OSEA has occurred. The proposed amendment simply repeats into OAR 839-004-0021 (which deals with opposition to health and safety hazards in the workplace) language from OAR 839-003-0025(3), which deals with civil rights complaints. The proposed rule is needed because readers of both rules need the subject information. Because the language is already in another bureau rule, it does not change current policy.

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

839-004-0021

Employee Opposition to Health and Safety Hazards

(1) ORS 654.062(5) prohibits discrimination against an employee because the employee "opposed" health and safety hazards in the workplace. OSEA does not specify to whom or in what manner an employee must oppose health and safety hazards and be protected. The concern is not with how the opposition is communicated, but with the employer's reaction to the opposition. What constitutes opposition covers a broad range of activities including, but not limited to the following:

(a) An employee opposing health and safety hazards in a co-worker discussion that is overheard by management;

(b) An employee opposing employee health and safety hazards in a letter to a newspaper read by management; or

(c) An employee opposing employee health and safety hazards by written or verbal protest to the employer.

(2) OSEA does not normally cover an employee opposing health and safety hazards if the employee refuses to work or walks off the job. If an employee, however, refuses to perform work that presents risk of serious injury or death, the employee would have OSEA protection under the following conditions:

(a) The employee has reasonable cause to believe the work or work area poses an imminent risk of serious injury or death due to hazardous conditions not inherent in the job; and

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(b) The employee has reasonable cause to believe there is insufficient time or opportunity to seek employer redress or to resort to regulatory enforcement channels. (For example, the employer refuses to correct the hazard, denies the danger exists, is not available, or no regulatory representative is available.)

(3) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 30 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 30 days of the alleged retaliation.

Stat. Auth.: ORS 654.062(5)

Stats. Implemented: ORS 654.005 & 654.062(5)

Hist.: BLI 14-2000, f. & cert. ef. 8-11-00; BLI 5-2005, f. 1-13-05, cert. ef. 1-19-05

Construction Contractors Board Chapter 812

Adm. Order No.: CCB 1-2005(Temp)

Filed with Sec. of State: 1-5-2005

Certified to be Effective: 1-5-05 thru 7-1-05

Notice Publication Date:

Rules Amended: 812-006-0030

Subject: OAR 812-006-0030(5) is amended to change the word "will" to "may" to allow the agency the discretion in publishing passing rates of education providers. Currently the statistical information gathered by the agency contains discrepancies; therefore, the agency cannot publish accurate passing rates. The Construction Contractors Board (CCB) Education Advisory Committee (TEAC) recommended that the agency not publish education provider passing rates until the data is completely accurate.

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

812-006-0030

Education Provider Approval

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Meet all requirements of the agreement; and

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

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

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

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

(5) The agency may publish passing rates for education providers based on the past year's statistical data, and place the information on the agency's web site and in the agency's license application. The statistics will also include the number of each provider's students who have taken the test.

Stat. Auth.: ORS 701.075 & 701.280

Stats. Implemented: ORS 701.075 & 701.280

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

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 6-2004(Temp)

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 12-28-04 thru 6-24-05

Notice Publication Date:

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

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

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

125-055-0005

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

(1) As used in OAR 125-055-0005 to 125-055-0045:

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

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

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

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

(b) "Agency" means a public agency, as defined in ORS 279.011(8).

(c) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

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

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

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

(g) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified under OAR 125-055-0015.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279.845(1) & 184.340
Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05

125-055-0010

Policy

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

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

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

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

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

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

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

Stat. Auth.: ORS 279.845(1) & 184.340
Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05

125-055-0015

Application for QRF Participation

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

(2) Subsequent Annual Reapplications.

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

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

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

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

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

(c) Information concerning the organization's certification status under the federal Javits-Wagner-O'Day Act program operated under 41 USC §§46 to 48c.

(d) For initial applications, information concerning the organization's employment of Disabled Individuals during the organization's last fiscal year, if the organization has operated as a QRF throughout the last fiscal year, including information sufficient to determine whether the organization qualifies or will qualify as a nonprofit agency for Disabled Individuals under the direct labor requirement of ORS 279.835(5). If the applicant has not operated as a QRF throughout its last fiscal year, then the applicant must submit information concerning its planned employment of Disabled Individuals in the next fiscal year of the applicant, including the measures it will take to ensure that the applicant will comply with the direct labor requirement of ORS 279.835(5) in the next fiscal year of the applicant.

(A) To qualify under this subparagraph, an applicant is required, during the applicant's fiscal year, to employ Disabled Individuals for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of the products or services produced by the applicant. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the applicant, or with respect to each contract the applicant enters into under this program.

(e) If the applicant has contracts with Agencies that yield payments to the applicant that in the aggregate exceed \$20,000 (Twenty Thousand Dollars) in the applicant's fiscal year, information concerning whether the applicant has had an independent audit of the applicant's direct labor and, if so, the date of the most recently conducted audit and a true and correct copy of the audit report. An applicant who must submit an annual reapplication must submit a true and correct copy of the audit report for the preceding fiscal if the applicant's contracts exceeded the \$20,000 threshold in that fiscal year.

(f) A listing of all contracts that exceed \$500 (Five Hundred Dollars) the applicant has with Agencies that includes the identity of each contracting Agency, the type of product or service provided under each contract, the annual contract amount for each contract year and the estimated contract amount for the current contract year.

(g) Certifications by an authorized officer of the applicant that:

(A) The applicant qualifies as a "nonprofit agency for disabled individual" as defined in ORS 279.835;

(B) All individuals claimed to be employed as Disabled Individuals by the applicant have been determined to be Disabled Individuals as documented by information maintained by the applicant in its file on each such individual.

(C) The applicant complies with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon.

(D) The applicant will conduct an annual direct labor audit by an independent certified public accountant to determine the applicant's compliance with ORS 279.835(5)(c), if the payments to the applicant under

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Agency contracts in the aggregate exceed \$20,000 (Twenty Thousand Dollars) annually;

(E) The applicant will comply, if any of its products or services are placed on the Procurement List, with the applicable requirements of ORS 279.835 to 279.850 and OAR 125-055-0005 to 125-055-0040; and

(F) The applicant has submitted no false or misleading information in connection with the application and will submit no false or misleading information in connection with the submission of information concerning the applicant's continuing qualifications to maintain the listing of its products or services on the Procurement List.

(4) The State Procurement Office will evaluate each application submitted by an entity seeking a determination of its QRF status and addition to the Procurement List. The State Procurement Office reserves the right to require applicants to provide information in addition to the information required by this rule that is pertinent to making the determination whether an applicant is qualified.

(5) In conducting the evaluation, the State Procurement Office will consider the particular facts and circumstances in each case to determine whether the applicant is qualified for QRF status and addition to the Procurement List under the following standards:

(a) The applicant must be organized under the laws of the United States or of the State of Oregon and must be operated in the interest of Disabled Individuals;

(b) The net income of the applicant must not inure, in whole or in part, to the benefit of any shareholder or other individual;

(c) The applicant must comply with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon; and

(d) The applicant must satisfy the direct labor requirement of ORS 279.835(5) or, in the case of a start-up applicant, demonstrate that it will satisfy the direct labor requirement of ORS 279.835(5) in the ensuing fiscal year of the applicant.

(6) If the State Procurement Office determines that the entity is qualified, it shall send notice of QRF status to the applicant and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified for QRF status, it shall reject the application and notify the applicant in writing of the criteria the applicant did not satisfy or adequately demonstrate.

(7)(a) Within thirty (30) calendar days from the date of the State Procurement Office's notice of the rejection of an application or reapplication, the applicant may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the applicant's grounds for appealing the decision. If the applicant does not appeal the State Procurement Office's decision within the 30-day period from the date of the State Procurement Office's notice of the rejection of the application or reapplication, the applicant shall not be placed on the Procurement List or, in the case of a reapplication, on the 31st day, the applicant shall be removed from the Procurement List.

(b) On appeal, if the State Procurement Office determines that the applicant is then qualified, it shall send the applicant notice of qualification for QRF status and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified, it shall provide the applicant a written decision that states the reasons for that determination and that denies the applicant placement on the Procurement List or, in the case of a reapplication, removes the applicant from the Procurement List. The State Procurement Office's written decision under this subsection constitutes a final order under ORS 183.484.

(8) The State Procurement Office may re-evaluate the decision to grant approval for QRF status if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. If the State Procurement Office determines that there is sufficient cause to revoke QRF status, it shall issue notice to cure to the QRF. If the QRF does not satisfactorily effect cure within 30 calendar days of the date of the State Procurement Office's notice or such longer time as may be permitted by the State Procurement Office, the State Procurement Office may then initiate proceedings to revoke QRF status by providing written notice of the proposed revocation and removal of the entity from the Procurement List. An entity may appeal the notice to cure or the proposed revocation and removal by submitting a written appeal to the State Procurement Office in the manner provided in subsection (7) of this rule.

(9) If a QRF is removed from the Procurement List under subsections (5) to (8) of this section, no Agency shall award or renew a contract made with that QRF under ORS 279.835 to 279.850, and the removal from the Procurement List shall constitute sufficient grounds for an Agency to ter-

minate any outstanding contract with the QRF that was established under ORS 279.835 to 279.850. The State Procurement Office will post, on a web-site or other accessible on-line posting address administered through the State Procurement Office, notice of the removal of a QRF from the Procurement List.

(10) Nothing in this rule shall be construed as prohibiting the State Procurement Office and an applicant or QRF from resorting to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (7) and (8) of this rule.

(11) The State Procurement Office will publish and maintain a Procurement List that identifies the nonprofit activity centers and rehabilitation facilities the State Procurement Office determines, under this section, to be qualified to participate in the program. The State Procurement Office shall distribute this Procurement List or make it available, electronically or otherwise, to all Agencies.

(12) After a denial or revocation of an applicant's or QRF's qualified status and listing on the Procurement List, the applicant or QRF may re-apply only after one year from the date the denial or revocation determination became final.

(13) Once listed on the Procurement List, a QRF will remain listed, subject to the State Procurement Office's re-examination of the QRF's qualified status each year, based on the information provided with the QRF's annual reapplication. Additionally, the State Procurement Office may terminate the listing under the procedures provided by this rule as the result of the State Procurement Office's discovery of pertinent information that was not available when the initial, or any subsequent reapplication decision was made, or if the QRF ceases to do business as a QRF.

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

Stats. Implemented: ORS 279.015 (1)(b) & 279.835 - 279.855

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

125-055-0020

Determination of Suitability of Product or Service

(1) The State Procurement Office will publish and maintain a Procurement List that identifies the products and services of QRFs the State Procurement Office has determined to be suitable for procurement by Agencies under this section. No Agency shall enter into or renew a contract under the QRF program created by ORS 279.835 to 279.850 for products or services that are not on the Procurement List. No QRF shall offer to contract to provide, or renew any contract to provide, under the program created by ORS 279.835 to 279.850, products and services that are not on the Procurement List.

(2) A QRF proposing to offer one or more products or services under ORS 279.835 to 279.850 shall deliver a written request to the State Procurement Office that specifies the products or services proposed to be offered.

(3) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

(a) Qualified Rehabilitation Facility (QRF). A QRF proposing to furnish a product or service must be a qualified nonprofit agency for disabled individuals approved under OAR 125-055-0015.

(b) Ownership. A QRF must own the product or directly provide the service that the QRF proposes to provide to Agencies through the program created by ORS 279.835 to 279.850. For example, a product or service will not be determined to be suitable for procurement by Agencies where the QRF operates merely as a broker, distributor, licensor or sales agent for another person or entity in providing a product to an Agency.

(c) Tied Products. A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.

(d) No Excessive Prices. The pricing proposed to be charged by the QRF for the product or service must not be excessive. In cases in which proposed pricing appears arguably excessive, as determined in the discretion of the State Procurement Office, the State Procurement Office may require the QRF to demonstrate that the proposed pricing is not excessive. The QRF's demonstration may include reliable evidence of comparative pricing in the market for the same or similar products or services.

(e) Purpose, Value, Capability. The QRF desiring to furnish the product or service must demonstrate to the State Procurement Office that the QRF meets the purpose of the Products of Disabled Individuals Law and State Procurement Office quality standards and delivery schedules. The QRF must demonstrate capability by submitting to the State Procurement Office a written plan that addresses:

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(A) Purpose of the Law. The purpose of the law is to further the policy of this state to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self support and minimizing their dependence on welfare and need for costly institutionalization. To ensure that a QRF achieves this goal, the QRF must demonstrate:

(i) The extent of the labor operations to be performed in connection with the QRF's provision of the product or service; and

(ii) That appreciable value will be added to the product or service by Disabled Individuals; the term "appreciable value" means a measurable addition of value, or an objectively observable improvement, enhancement or change, to the final product or service. No product or service may be determined to be suitable for addition to the Procurement List where the process of the manufacture, assembly or production of the product or of the rendition of the service contains or is affected by any procedure, device or artifice under which the work of Disabled Individuals does not contribute, in a substantial, economically meaningful manner, to the value of the product or to the performance of the service, or under which the work of Disabled Individuals is not a logical element of the chain of production.

(iii) The range of salaries, rates of pay or other applicable measure of compensation that the QRF will pay for work performed in providing the product or services proposed.

(B) Subcontractor Disclosure. The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, if any, the character and portion of the labor to be performed by, and the equipment to be used or supplied by, any subcontractor, partner or joint venturer (collectively, "subcontractor"). If a subcontractor performs direct labor or provides personnel that perform direct labor in the manufacture or assembly of a product or in the provision of a service to be provided to an Agency under the program created by ORS 279.835 to 279.850, the QRF must submit reliable documentation that demonstrates that:

(i) The combined productive activities of that subcontractor and the QRF in the performance of the subcontract between them together meet the standards of OAR 125-055-0015(3)(d) and 125-055-0020(3)(e)(A)(ii); and

(ii) The performance of work by non-QRF participants and persons who are not Disabled Individuals will not cause the QRF that participates in such a combination to violate the direct labor requirement of OAR 125-055-0015(3)(d) or result in a violation of OAR 125-055-0020(3)(e)(A)(ii). For purposes of this subparagraph, a person or entity that merely serves as a supplier of raw materials, parts or components of a product, or of supplies that are used or consumed in the performance of a service, is not a subcontractor. A person or entity that only leases facilities or productive equipment to a QRF, and provides no labor or personnel that participate in the manufacture or assembly of a product or in the provision of a service, is not a subcontractor.

(C) Quality Standards and Delivery Schedules. The QRF must demonstrate that the QRF has the capability to meet the applicable specifications and to make the product or services available within the time required for supplying Agencies.

(D) Additional Information. The State Procurement Office may require other pertinent data in the QRF plan such as the projected employment potential, start up costs and estimated cost recovery, product/service pricing, market research conducted by the QRF for the product or service, if any, identification of business space dedicated to the product or service, and other pertinent information that may be requested by the State Procurement Office. In conducting determinations of suitability, the State Procurement Office may conduct on-site investigations of the QRF's work-sites and production processes.

(4) Based on the request, including the written plan required by subparagraph (3)(e) of this rule, and any additional information submitted in response to the State Procurement Office's request under subparagraph (3)(e)(D), the State Procurement Office will determine whether the proposed product or service satisfies the criteria in subsection (3). If the State Procurement Office determines that the product or service satisfies the criteria in subsection (3), it shall record that determination on a form prescribed by the State Procurement Office. If the State Procurement Office determines that the product or service does not satisfy the criteria in subsection (3), it shall notify the requesting party in writing of the criteria the QRF did not meet or adequately demonstrate that it met.

(5) Within ten (10) calendar days from the date of the State Procurement Office's notice of the criteria that a requested product or service failed to meet or that the QRF failed to satisfactorily demonstrate that it met, the QRF may appeal the decision by submitting a written appeal to the

State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the QRF's grounds for appealing the decision. On appeal, if the State Procurement Office determines that the product or service satisfies the criteria, it shall send notice to the QRF of its decision and add the product or service to the Procurement List. If the State Procurement Office does not find that the product or service satisfies the criteria, it shall provide the QRF a written decision that states the reasons for that determination. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(6) At least fourteen (14) calendar days prior to the effective date of the listing of a product or service on the Procurement List, the State Procurement Office shall give notice of the proposed listing on an accessible on-line posting address administered through the State Procurement Office. A person or entity who will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed may, within the fourteen-day period, submit a written protest of the listing of the product or service to the State Procurement Office. The written protest must state the facts that demonstrate how the listing will adversely affect the person's or entity's ability to compete for public contracts for the product or service proposed to be listed and must demonstrate how the product or service to be listed fails to satisfy the criteria stated in subsection (3) of this rule. If the State Procurement Office receives no protest concerning the proposed listing by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the form, then the listing shall automatically become effective on the next business day after the fourteenth day.

(7) If the State Procurement Office receives a written protest concerning the proposed listing of a product or service from a person or entity who has demonstrated in writing that it will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed, the State Procurement Office will consider the protest and issue a written response to the protest. The State Procurement Office will not consider a protest not made in writing and received by the State Procurement Office by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the proposed listing under subsection (6) of this rule. In considering a timely protest, the State Procurement Office may request further information and comment from the complaining party and from the QRF that submitted the application for the listing of the product or service.

(a) The State Procurement Office's response to the protest will confirm the listing of the product or service, modify the listing of the product or service, or withdraw the proposed listing of the product or service. The State Procurement Office will make its written determination available, by mail or by electronic means, to the complaining party and to the QRF whose product or service is the subject of the protest.

(b) A protester or QRF who is adversely affected or aggrieved by the State Procurement Office's response under this subsection may request that the State Procurement Office institute contested case proceedings under ORS 183.413 to 183.470 by delivering to the State Procurement Office a written request for a contested case within fourteen (14) calendar days of the date of issuance of the response. The written request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and why the Division's response is incorrect. The contested case will be limited to the issues raised before the State Procurement Office in the protest proceedings.

(8) Nothing in this rule shall be construed as prohibiting the State Procurement Office, a QRF and a protester from agreeing to resort to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (5) and (7) of this section.

(9) No determination under this section that a product or service is suitable and no placement of a product or service on the Procurement List shall act to displace a contractor under an existing public contract with an Agency for the same product or service prior to the expiration or other termination of the contractor's contract with the Agency.

(10) Once a product or service has been placed on the Procurement List, it will remain on the list until:

(a) Five years have elapsed from the date of the listing of the suitability determination, or such earlier time as the State Procurement Office may prescribe for expiration of the listing at the time it makes the determination of suitability;

(b) The State Procurement Office has determined, under OAR 125-055-0020 or 125-055-0025, that the product or service is not suitable for procurement by Agencies;

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(c) The product or service no longer is offered by the QRF that requested a determination of its suitability; or

(d) The QRF is removed from the Procurement List.

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

Stats. Implemented: ORS 279.015 (1)(b) & 279.835 - 279.855

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

125-055-0025

Review of Suitability Determinations

(1) The State Procurement Office reserves the right, to be exercised in its sole discretion, to review suitability determinations as changes in pertinent circumstances, which include but are not limited to changes in rules, laws, market conditions and QRF contractor performance, occur. Should the State Procurement Office identify information that was not available during the initial determination that negatively impacts a previous determination of suitability, it may notify the QRF and conduct a review of the determination. The review may result in removal of the product or service from the Procurement List. A QRF may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(5).

(2) The State Procurement Office may review a determination that a product or service is suitable if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. Within 10 calendar days after the receipt of written notice from the State Procurement Office of a determination to remove a product or service from the listing, the affected QRF may appeal the determination by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice, and the QRF's grounds for appealing the determination. If the State Procurement Office determines, on reconsideration, that the product or service is suitable for procurement by public agencies, the State Procurement Office shall send notice of approval to the QRF and maintain the publication of the product or service on the Procurement List. If the State Procurement Office finds the product or service not suitable for procurement by public agencies under the criteria of OAR 125-055-0020(3), the State Procurement Office shall give written notice to the QRF of the criteria that were not satisfied. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(3) In no event may an Agency and a QRF agree to change the specifications in, or amend, a contract established under the program created by ORS 279.835 to 279.850 in a manner that alters the character or scope of the product or service so that the product or service no longer is essentially the same product or service that was the subject of the determination of suitability. In cases where such a change is sought, the Agency and the QRF must first request and receive from the State Procurement Office a new or revised determination that the product or service, as changed, is suitable under this section. In cases where the change in specifications or amendment appears to affect the Price of a product or service as determined under OAR 125-055-0030, the State Procurement Office also may conduct a new Price determination in response to the request.

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

Stats. Implemented: ORS 279.015 (1)(b) & 279.835 - 279.855

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

125-055-0030

Determination of Price

(1) Under ORS 279.845(1)(a), the State Procurement Office shall determine the Price of products and services offered for sale to Agencies that the State Procurement Office has determined to be suitable for procurement by Agencies and placed on the Procurement List.

(2) Determination of Price. The Price determined by the State Procurement Office shall be a reasonable and adequate Price that will recover for the QRF the cost of:

(a) Raw materials;

(b) Labor;

(c) Overhead that is allocable to the particular product or service for which the Price determination is being made, including the actual, reasonable costs of complying with the independent audit requirements of OAR 125-055-0040(1) (For purposes of this subparagraph, overhead cost is allocable to a particular product or service to the extent the overhead costs are chargeable to the production of the product or the performance of the service in accordance with the relative benefits received by the product or service program as compared to the overall activities of the QRF);

(d) Delivery costs; and

(e) An amount held in reserve for inventory and equipment replacement.

(3) Initial Price Determination Procedures:

(a) For products or services the State Procurement Office has determined to be suitable for purchase by Agencies, an Agency or the State Procurement Office shall provide the QRF with a solicitation document and an annotated pricing tabulation that covers the period of the proposed contract for those products or services, the expiring contract, or the most recent solicitation. Additionally, an Agency or the State Procurement Office shall provide the QRF with the scope of work and specifications, if any, that will cover the initial period during which the QRF expects to provide the product or service.

(b) The QRF shall submit its proposed Price to the Agency or the State Procurement Office, based on the volume or scope of the work and specifications acceptable to the Agency, as prescribed in the proposed contract between the QRF and an Agency. The contract may propose to serve a single Agency or multiple Agencies. Where the contract proposes to serve multiple Agencies, the QRF's disclosure of costs under subparagraph (c) of this subsection must address the costs of serving all Agencies the QRF proposes to serve under the contract. The State Procurement Office reserves the right to review and amend a Price determination in light of reductions in or additions to the Agencies served under a multiple Agency contract.

(c) In submitting its proposed Price to the Agency or the State Procurement Office, the QRF must make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a).

(d) As part of the disclosure, an authorized officer of the QRF must certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section.

(e) If the QRF and the Agency agree on the terms and conditions of a proposed contract and the price for the products or services to be provided under the proposed contract, the QRF and the Agency must present the proposed contract (including the agreed price) to the State Procurement Office for review and a determination of the Price.

(4) Based on the volume or proposed scope of work and the costs disclosed by the QRF under subsection (3) of this section, the State Procurement Office will determine a Price for the products or services offered under the proposed contract. If the State Procurement Office regards the determined Price to be reasonable and adequate to permit the QRF to recover the amounts prescribed in subsection (2) of this section, then it will notify the QRF and the Agency of the Price.

(5) In determining a reasonable and adequate Price of a product or service, the State Procurement Office may consider:

(a) Prices of similar products or services purchased in comparable quantities by federal agencies under the authorized federal program (Javits-Wagner-O'Day Act);

(b) Prices of products or services of similar specifications and quantities previously purchased by government agencies from responsible contractors engaged in the business of selling similar products or services;

(c) Prices that private businesses pay for similar products or services in similar quantities of comparable scope and specifications if purchasing from a reputable vendor engaged in the business of selling similar products or services;

(d) Prices of products or services of similar specifications and quantities purchased by Agencies from QRFs under the program created by ORS 279.835 to 279.850.

(6) A QRF and an Agency shall not execute or implement any contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price determined by the State Procurement Office to the Agency and the QRF.

(7) Re-determinations of Price. A Price established by the State Procurement Office shall apply for the initial term or period of the contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or Agency, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the scope of work that was the basis for establishing the existing Price. The Agency shall not pay or agree to pay the QRF any amount other than the Price approved by the State Procurement Office. The State Procurement Office reserves the right, during the process of re-determining a Price, and subject to existing contract rights of the QRF and Agency, to suspend the

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Price and set an interim Price; such action may trigger a review of the suitability determination for the affected product or service under OAR 125-055-0025.

(a) In re-determining Price, the State Procurement Office will consider the factors in subsections (2) and (3) of this rule. The State Procurement Office also may take into consideration changes that have taken place since the last Price determination that are pertinent to re-determining Price.

(b) Each re-determination or adjustment of Price shall be based on changes in the scope of work, changes in the costs of producing the product or performing the service, or both. If the proposed adjustment is based on changes in QRF cost factors, the QRF shall submit to the State Procurement Office and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the State Procurement Office or Agency. As part of the request and documentation, an authorized officer of the QRF must certify that the proposed changes in costs are, to the best of the officer's knowledge, genuine, reasonable, and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a). The Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.

(c) Agencies and QRFs may not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the specifications of a contract entered into under the program created by ORS 279.835 to 279.850 unless the changes are in writing and have been submitted to the State Procurement Office for a re-determination of Price. The following information reporting is required of the Agency in order to assist the State Procurement Office in Price re-determinations based on changes in contract specifications:

(A) In the event that the Agency or State Procurement Office wishes to change specifications from the most recent solicitation for the product or service, the Agency or State Procurement Office shall notify the QRF in writing of the specific changes in the scope of work or other conditions which will be required during the new contract period.

(B) Upon receipt of notice of change, the QRF shall submit a Price recommendation and Price change request under subparagraph (7)(b) of this section to the Agency and State Procurement Office for review and a re-determination of the Price by the State Procurement Office.

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

Stats. Implemented: ORS 279.015 (1)(b) & 279.835 - 279.855

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

125-055-0035

Audits

(1) To maintain qualifications and listing on the Procurement List under OAR 125-055-0015, all QRFs whose total annual Agency contract value exceeds \$20,000 must conduct an annual audit of direct labor to determine compliance with ORS 279.835(5)(c). Each such QRF must submit to the State Procurement Office an audit report and letter of attestation, on forms prescribed by the State Procurement Office, regarding each annual audit. Under the annual reapplication requirement of OAR 125-055-0015(2), a QRF must submit, with each reapplication, an audit report and letter of attestation for the preceding fiscal year of the QRF. Each QRF shall ensure that each of its contracts entered into with an Agency under the program created by ORS 279.835 to 279.850 includes a provision that requires the QRF, if the QRF's total annual value of contracts with Agencies exceeds \$20,000, to conduct an annual audit of direct labor.

(2) The audit shall be conducted by an independent certified public accountant for the same fiscal year as the QRF's annual financial audit.

(3) The audit shall consist of an auditor's examination of the QRF, conducted in accordance with generally accepted auditing principles.

(4) For purposes of subsection (5) of this section:

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRF and all work performed in the rendition of services by a QRF, but does not include supervision, administration or shipping. "Direct labor" also does not include client-type services provided by a QRF to Disabled Individuals served by the QRF, such as job training and therapeutic services.

(b) "Supervision" means the direction, assignment, instruction and oversight of individuals performing direct labor, and inspection of work performed or products for quality assurance.

(c) "Administration" means the management activities of a QRF that include acquisition of equipments, parts, supplies and inventory, handling of the entity's payroll, personnel and accounting activities, executive decision-making and other business activities, generally of a centralized nature,

that do not entail the "hands-on" production of a product or the performance of a service.

(d) "Shipping" means the transportation of a product to the site designated by the acquirer of the product or the transportation of workers to site at which they will perform services for a customer.

(5) The examination and resultant audit report must be based on the following records and information:

(a) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services were procured by Agencies under ORS 279.015 and 279.835 to 279.850 and those which were procured outside the program created by those statutes.

(b) A list of all individuals covered by the audit scope employed by the QRF who are Disabled Individuals who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number, job description and disability status.

(c) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Disabled Individuals and who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description.

(d) A compilation of the total hours of direct labor actually performed by the QRF during the fiscal year.

(e) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, social security number, work hours paid, and vacation hours, sick leave hours, and training hours. Hours worked must be segregated from hours paid but not worked.

(f) Time and billing records showing direct hours worked by each employee in the manufacture or provision of goods and services.

(g) Disability status documentation. The QRF must have documentation on file for each employee who is or who is claimed to be a Disabled Individual. The file must include documentation from an officially accredited source that each such person has been determined to be a Disabled Individual as defined in OAR 125-055-0005. The acceptable forms of disability documentation are:

(A) Department of Human Services/Seniors and People with Disabilities Office of Licensing and Quality Care referrals;

(B) Commission for the Blind referrals;

(C) Department of Human Services/Community Human Services, Office of Vocational Rehabilitation Services referrals;

(D) Competitive Employment statements signed by a physician or other Accredited Vocational Consultant stating that the employee is a Disabled Individual as defined in OAR 125-055-0005;

(E) Certifications that the employee is legally deaf and is a Disabled Individual as defined in OAR 125-055-0005;

(F) Certifications that the employee is eligible for Supplemental Security Income (SSI) or Social Security for the Disabled (SSDI) benefits.

(6) The audit report must address the following elements:

(a) A determination whether the QRF's time, billing and payroll records are sufficiently complete and reliable to demonstrate compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c). The records must permit segregation of direct labor hours from other hours worked and paid, and allow for assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities.

(b) If the certified public accountant finds the records to be sufficiently complete and reliable, the certified public accountant must test the QRF's calculation, for the entire applicable fiscal year, of the portion of total direct labor hours that were worked by employees with disabilities. Only direct hours worked shall be included in the calculation. Vacation, sick leave, holiday, training hours, and any other hours paid but not worked by the employee are to be excluded from the calculation.

(c) The certified public accountant must apply sufficient statistical sampling techniques to obtain an eighty percent level of confidence with a precision of plus or minus ten percent that:

(A) The direct labor by Disabled Individuals during the QRF's fiscal year satisfied the 75 percent direct labor requirement under ORS 279.835(5) and OAR 125-055-0015(2)(d)(A); and

(B) The hours reported as worked by persons with disabilities were worked by persons whose disabilities were documented under subparagraph (5)(g) of this rule.

(d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations.

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(e) The independent certified public accountant that conducted the annual audit shall sign an attestation that the QRF complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the fiscal year period for which the annual financial audit was conducted. If the Certified Public Accountant attests that the QRF did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the character and extent of the noncompliance.

(7) Within 120 calendar days after the close of the QRF's fiscal year, each QRF must submit the direct labor audit attestation report for the preceding fiscal year, signed and dated by the independent Certified Public Accountant and by an officer of the QRF's board of directors, to the State Procurement Office. A QRF that must submit an annual reapplication under OAR 125-055-0015(2) must submit the reapplication with its most recent annual direct labor audit report and letter of attestation.

(8) Failure to comply with the requirements of this section by a QRF shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(9) Failure to comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(10) The cost of the annual audit required by this rule shall be considered an overhead expense that the QRF may recover and which must be taken into account in determining the Price under OAR 125-055-0030.

(11) If the State Procurement Office determines that a QRF is in material noncompliance with any requirement imposed on it by OAR 125-055-0015 to 125-055-0040, including the qualifications requirements of OAR 125-055-0015, subsection (7) of this rule, or the direct labor requirement of ORS 279.835(5)(c), the State Procurement Office will issue, to the non-complying QRF, a written notice to cure the noncompliance. The written notice will identify the requirement or requirements with which the QRF does not comply, state the reasons that the QRF is not in compliance with the requirements, and prescribe a time period of not less than ninety (90) calendar days, or such other time as may be permitted by the State Procurement Office, within which the QRF must achieve compliance.

(a) A QRF receiving notice of noncompliance under this subsection must respond in writing, within thirty (30) calendar days of the date of the State Procurement Office's notice, to the State Procurement Office. The response may:

(A) State the reasons, with supporting documentation, why the QRF is not out of compliance with the requirements, if the QRF believes that it is in compliance;

(B) Present a plan of action to be taken by the QRF to achieve compliance and propose a date within which it will achieve compliance;

(C) Request an extension of the time within which the QRF will achieve compliance;

(D) Report that the QRF has achieved compliance and state the actions the QRF has taken to achieve compliance.

(b) If the QRF does not submit a written response within the 30-day period from the date of the written notice issued under subsection (11) of this rule or such additional time as may be permitted by the State Procurement Office, the State Procurement Office may terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of the proposed termination and removal of the QRF's products and services from the Procurement List.

(c) The State Procurement Office reserves the right to require a QRF, as part of the required cure or as part of a plan of action to attain compliance, to submit to the State Procurement Office quarterly audit reports concerning the QRF's compliance with the direct labor requirement of ORS 279.835(5)(c). If a QRF that is subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the State Procurement Office may waive the quarterly audit requirement for that QRF. However, if the QRF next succeeding annual audit discloses that the QRF failed to satisfy the direct labor requirement, the State Procurement Office will institute disqualification proceedings by issuing to the QRF a notice of termination under subparagraph (d) of this subsection.

(d) If the QRF fails to achieve compliance with the violated requirements within the time prescribed in the State Procurement Office's written notice issued under subsection (11) of this rule, within the time proposed in a QRF's plan of action approved by the State Procurement Office, or within the time permitted under any extension of time granted by the State Procurement Office, the State Procurement Office will terminate the QRF's

listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of that termination and of the removal of the QRF's products and services from the Procurement List.

(e) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(f) If the QRF requests, within ten (10) calendar days of its receipt of notice of termination, an informal hearing concerning the validity of the grounds for termination stated in the notice, the termination will not become effective until the conclusion of the informal, non-contested case hearing process. If the QRF fails to request a hearing within this ten-day period, the termination shall become effective on the eleventh day.

(A) As the result of the hearing process, the State Procurement Office may either reach written agreement with the QRF or, if no agreement is reached, issue an order that resolves the issues raised by the QRF and, if no resolution satisfactory to the State Procurement Office results from the hearing process, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List.

(B) After any hearing, the State Procurement Office may issue an order that resolves the issues raised by the QRF and, if the determination is adverse to the QRF, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(g) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(h) After the passage of one year after the effective date of a termination of a QRF's listing on the Procurement List under this section, a terminated QRF may again make an application to be listed as a QRF under OAR 125-055-0015.

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

Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855

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

125-055-0040

General Provisions

(1) Contracting Authority. The Department of Administrative Services and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279.015(1)(b) for contracts under the program created by ORS 279.835 to 279.850. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the program created by ORS 279.835 to 279.850, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the State Procurement Office (except where the Department of Administrative Services is a party to the contract with the QRF).

(3) Temporary Services. In each contract for the provision of temporary services entered into by a state agency under the program created by ORS 279.835 to 279.850, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for the state in excess of a total of 1,040 hours in a 12-month period. A QRF temporary service provider must obtain a written statement from the contracted employee attesting to the accumulative hours worked for any state agency under the QRF contract or any other QRF provider plus any other hours worked as a state temporary employee with the state during the 12-month period. Contracts for the provision of temporary services by QRFs may be used only to meet temporary, emergency, non-recurring, unexpected, or short-term workload demands of state agencies.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer ("offer") in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial

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term of the contract for which the QRF submitted a bid, proposal or offer, make any claim to the Agency that instituted the procurement for the public contract that the product or service that was the subject of the offer should have been subject to the set-aside program created by ORS 279.835 to 279.850.

(5) A QRF shall not enter into a public contract with an Agency under the program created by ORS 279.835 to 279.850 unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection shall be those exclusively of the QRF and Agency, respectively, that purports to enter into such a contract.

(6) QRF Records.

(a) Each QRF shall maintain accurate and correct records of the direct labor hours performed in the nonprofit agency by each worker in a manner sufficient to determine compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c).

(b) Each QRF shall make its records available, at any reasonable time, for inspection by the State Procurement Office, the Office of the Oregon Secretary State, and their officers and representatives.

(7) Application of These Rules.

(a) OAR 125-055-0015 shall apply to applications and annual reapplications for participation in the program created by ORS 279.835 to 279.850 that are presented to the State Procurement Office, or which are due, after August 31, 2003. OAR 125-055-0020 shall apply to requests for determinations that a product or service is suitable for addition to the Procurement List that are presented to the State Procurement Office after August 31, 2003. OAR 125-055-0030 shall apply to determinations of Price first submitted to the State Procurement Office after August 31, 2003. OAR 125-055-0035 shall apply to direct labor audit reports that are due under OAR 125-055-0035(7) after August 31, 2003.

(b) For determinations of suitability of a product or service that were made prior to the effective date of these rules, the maximum five-year term of determinations of suitability under OAR 125-055-0020(10)(a) shall expire five years from the effective date of these rules.

(c) The adoption of these rules shall not affect the validity of:

(A) Any determination that a QRF was qualified for participation in the program;

(B) Any determination that a product or service was suitable for addition to the Procurement List; or

(C) Any determination of Price; made prior to the effective date of these rules.

(8) The State Procurement Office reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the State Procurement Office and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded as imposing a substantial, practical impediment to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to a person or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Chief Procurement Officer or, in the absence of the Chief Procurement Officer, by an officer of the State Procurement Office who specifically has been delegated that task. The State Procurement Office also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

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

Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855

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

125-055-0045

Purchases under ORS 279.855

(1) Policy. QRFs, residential programs and public benefit corporations recognized by ORS 279.855 may acquire equipment, materials, supplies and services under the same conditions as state agencies that, under ORS 279.712(2), are not subject to the requirement that the Oregon Department of Administrative Services provide for their acquisition of such

items. Accordingly, QRFs, residential programs and public benefit corporations must enter into an agreement with the department in order to participate in the Oregon Cooperative Purchasing Program. The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the State Procurement Office that state agencies must execute in order to participate. In addition, QRFs, residential programs and public benefit corporations must comply with the applicable subsections of this rule to acquire equipment, materials, supplies or services under ORS 279.855.

(2) QRFs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the State Procurement Office in the same manner as state agencies, as provided in ORS 279.545 to 279.746 and 279.820 to 279.824.

(3) A residential program seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached a true and correct copy of its currently effective contract with the Department of Human Services to provide services to youth in the custody of the state. In addition, the residential program must submit a letter from the Oregon Department of Human Services, on the letterhead of that department or of a division of that department that contains the following information:

(a) The services the residential program must provide, including the scope of those services, under the currently effective contract with the Department of Human Services;

(b) The Department of Human Services contract number;

(c) The starting date and expiration date of the contract; and

(d) The name, original signature, mailing address and telephone number of the Department of Human Services' Contract Administrator for the contract.

(4) A public benefit corporation seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached:

(a) A certification by an authorized officer of the public benefit corporation that the applicant qualifies as a public benefit corporation under ORS 65.001;

(b) A true and correct copy of documentation, which may include the corporation's currently effective articles of incorporation, that demonstrates that the corporation is tax exempt under §501(c)(3) of the Internal Revenue Code and that the corporation is not a religious corporation as defined in ORS 65.001;

(c) A true and correct copy of at least one currently effective contract between the public benefit corporation and a state agency or unit of local government by which the corporation's contract performance is funded at least in part with state funds; and

(d) A letter from the state agency or unit of local government that confirms the existence and effectiveness of the contract submitted under subparagraph (c) of this subsection, on the letterhead of the state agency or unit of local government, that contains the following information:

(A) The services the public benefit corporation must provide, including the scope of those services, under the contract submitted under subparagraph (c) of this subsection;

(B) The contract number;

(C) The starting date and expiration date of the contract; and

(D) The name, original signature, mailing address and telephone number of the state agency or unit of local government's Contract Administrator for the contract.

(5) Neither the State Procurement Office nor the State of Oregon shall be liable for any obligation or debt entered into on behalf of a QRF, a residential program or a public benefit corporation, and likewise shall not be liable for any obligation or debt incurred by a QRF, a residential program or a public benefit corporation, in making purchases under subsections (1) to (3) of this rule.

(6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must notify the State Procurement Office in writing whenever a contract that is necessary for the organization to qualify under ORS 279.855 expires, is terminated, or is not renewed, and whenever the organization otherwise ceases to qualify under ORS 279.855 or this rule.

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

Stats. Implemented: ORS 279.855

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

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Department of Agriculture Chapter 603

Adm. Order No.: DOA 27-2004

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 12-28-04

Notice Publication Date: 12-1-04

Rules Amended: 603-052-1200

Subject: The amendment updates the state noxious weed quarantine to match recent changes made by the Oregon State Weed Board to the state noxious weed list. Paterson's curse, myrtle spurge and butterfly bush (except named horticultural varieties) are being added. Cordgrasses, goatgrasses, hawkweeds, sparges, starthistles, thistles, brooms, knapweeds, knotweeds and whitetops are being combined into groups.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1200

Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare. ORS 570.505.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" designated noxious weeds listed herein, except as provided in subsections (c) and (d). Plants on the Federal Noxious Weed List (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, *Imperata cylindrica*, var. Red Baron and Chinese water spinach, *Ipomoea aquatica*.

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make eradication/containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent:

- (A) African rue — *Peganum harmala*
- (B) Camelthorn — *Alhagi pseudalhagi*
- (C) Coltsfoot — *Tussilago farfara*
- (D) Cordgrasses:
 - (i) Common — *Spartina anglica*
 - (ii) Dense-flowered — *Spartina densiflora*
 - (iii) Saltmeadow — *Spartina patens*
 - (iv) Smooth — *Spartina alterniflora*
- (E) European water chestnut — *Trapa natans*
- (F) Giant hogweed — *Heracleum mantegazzianum*
- (G) Goatgrasses:
 - (i) Barbed — *Aegilops triuncialis*
 - (ii) Ovate — *Aegilops ovata*
- (H) Hawkweeds:
 - (i) King-devil — *Hieracium piloselloides*
 - (ii) Meadow — *Hieracium pratense*
 - (iii) Mouse-ear — *Hieracium pilosella*
 - (iv) Orange — *Hieracium aurantiacum*
 - (v) Yellow — *Hieracium floribundum*
- (I) Hydrilla — *Hydrilla verticillata*
- (J) Kudzu — *Pueraria lobata*
- (K) Matgrass — *Nardus stricta*
- (L) Paterson's curse — *Echium plantagineum*
- (M) Purple nutsedge — *Cyperus rotundus*
- (N) Silverleaf nightshade — *Solanum elaeagnifolium*
- (O) Skeletonleaf bursage — *Ambrosia tomentosa*
- (P) Squarrose knapweed — *Centaurea virgata*
- (Q) Starthistles:
 - (i) Iberian — *Centaurea iberica*
 - (ii) Purple — *Centaurea calcitrapa*
- (R) Syrian bean-caper — *Zygophyllum fabago*
- (S) Texas blueweed — *Helianthus ciliaris*
- (T) Thistles:
 - (i) Plumeless — *Carduus acanthoides*
 - (ii) Smooth distaff — *Carthamus baeticus*
 - (iii) Woolly distaff — *Carthamus lanatus*

(b) "B" designated weeds. Weeds of economic importance which are regionally abundant, but which may have limited distribution in some counties:

- (A) Austrian peaweed (Swainsonpea) — *Sphaerophysa salsula*
- (B) Bearded creeper (common crupina) — *Crupina vulgaris*
- (C) Biddy-biddy — *Acaena novae-zelandiae*
- (D) Brooms:
 - (i) French — *Genista monspessulana*
 - (ii) Portuguese — *Cytisus striatus*
 - (iii) Scotch — *Cytisus scoparius*
 - (iv) Spanish — *Spartium junceum*
- (E) Buffalobur — *Solanum rostratum*
- (F) Butterfly bush — *Buddleja davidii** (*except named horticultural varieties)
- (G) Common bugloss — *Anchusa officinalis*
- (H) Creeping yellow cress — *Rorippa sylvestris*
- (I) Cutleaf teasel — *Dipsacus laciniatus*
- (J) Dodder — *Cuscuta spp.** (*except northwest natives)
- (K) Dyers woad — *Isatis tinctoria*
- (L) English ivy — *Hedera helix** (*except named horticultural varieties)
- (M) Eurasian watermilfoil — *Myriophyllum spicatum*
- (N) False brome — *Brachypodium sylvaticum*
- (O) Field bindweed — *Convolvulus arvensis*
- (P) Giant horsetail — *Equisetum telmateia*
- (Q) Gorse — *Ulex europaeus*
- (R) Halogeton — *Halogeton glomeratus*
- (S) Himalayan blackberry — *Rubus discolor** (*R. aremeniacus* & *R. procerus*) (*except fruit for consumption)
- (T) Houndstongue — *Cynoglossum officinale*
- (U) Johnsongrass — *Sorghum halepense*
- (V) Jointed goatgrass — *Aegilops cylindrical*
- (W) Knapweeds:
 - (i) Diffuse — *Centaurea diffusa*
 - (ii) Meadow — *Centaurea pratensis* (*jacea x nigra*)
 - (iii) Russian — *Acroptilon repens*
 - (iv) Short-fringed — *Centaurea nigrescens*
 - (v) Spotted — *Centaurea maculosa* (*C. stoebe*)
- (X) Knotweeds:
 - (i) Giant — *Polygonum sachalinense*
 - (ii) Himalayan — *Polygonum polystachyum*
 - (iii) Japanese (fleece flower) — *Polygonum cuspidatum* (*Fallopia japonica*)
- (Y) Kochia — *Kochia scoparia*
- (Z) Mediterranean sage — *Salvia aethiopis*
- (AA) Medusahead rye — *Taeniatherum caput-medusae*
- (BB) Old man's beard — *Clematis vitalba*
- (CC) Perennial pepperweed — *Lepidium latifolium*
- (DD) Poison hemlock — *Conium maculatum*
- (EE) Puncturevine — *Tribulus terrestris*
- (FF) Purple loosestrife — *Lythrum salicaria*
- (GG) Quackgrass — *Agropyron repens*
- (HH) Ragweed — *Ambrosia artemisiifolia*
- (II) Rush skeletonweed — *Chondrilla juncea*
- (JJ) Saltcedar — *Tamarix ramosissima*
- (KK) Small broomrape — *Orobanche minor*
- (LL) South American waterweed (Elodea) — *Egeria* (*Elodea*) *densa*
- (MM) Spikeweed — *Hemizonia pungens*
- (NN) Spiny cocklebur — *Xanthium spinosum*
- (OO) Sparges:
 - (i) Leafy — *Euphorbia esula*
 - (ii) Myrtle — *Euphorbia myrsinites*
- (PP) Sulfur cinquefoil — *Potentilla recta*
- (QQ) Tansy ragwort — *Senecio jacobaea*
- (RR) Thistles:
 - (i) Bull — *Cirsium vulgare*
 - (ii) Canada — *Cirsium arvense*
 - (iii) Italian — *Carduus pycnocephalus*
 - (iv) Musk — *Carduus nutans*
 - (v) Scotch — *Onopordum acanthium*
 - (vi) Slender-flowered — *Carduus tenuiflorus*
- (SS) Toadflax:
 - (i) Dalmation — *Linaria dalmatica*
 - (ii) Yellow — *Linaria vulgaris*
- (TT) Velvetleaf — *Abutilon theophrasti*

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(UU) Whitetops:

- (i) Hairy — *Lepidium pubescens*
- (ii) Lens-podded — *Lepidium chalepensis*
- (iii) Whitetop (hoary cress) — *Lepidium draba*
- (VV) Wild proso millet — *Panicum miliaceum*
- (WW) Yellow nutsedge — *Cyperus esculentus*
- (XX) Yellow starthistle — *Centaurea solstitialis*

(c) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.

(d) Other commodities such as but not limited to wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.

(4) Prohibited and Permitted Acts:

(a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.

(b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.

(c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.

(d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.

(5) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(6) Exceptions. The director may issue a permit allowing entry into this state, propagation, or selling of plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein. Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305

Stats. Implemented: ORS 561.510

Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02; DOA 27-2004, f. & cert. ef. 12-28-04

Department of Agriculture, Oregon Raspberry and Blackberry Commission Chapter 611

Adm. Order No.: ORBC 1-2005

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-13-05

Notice Publication Date: 11-1-04

Rules Amended: 611-010-0020

Subject: The proposed rule changes penalties for late assessments to comply with ORS 576.355.

Rules Coordinator: Rachel Denué—(541) 758-4043

611-010-0020

Penalties

Penalty for delaying transmittal of assessment moneys (ORS 576.355): "In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the Commission shall pay ten percent of the amount due for the first month of delay and one and one-half percent of the amount due for each month of delay thereafter."

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.325 & ORS 576.355

Hist.: OCC 2-1981, f. 7-22-81, ef. 7-23-81; ORBC 1-2005, f. & cert. ef. 1-13-05

Department of Agriculture, Oregon Strawberry Commission Chapter 668

Adm. Order No.: SBY 1-2005

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-13-05

Notice Publication Date: 11-1-04

Rules Amended: 668-010-0020

Subject: The proposed rule changes penalties for late assessments to comply with ORS 576.355.

Rules Coordinator: Rachel Denué—(541) 758-4043

668-010-0020

Penalties

Penalty for delaying transmittal of assessment moneys is provided in ORS 576.355, which states: "In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the Commission shall pay ten percent of the amount due for the first month of delay and one and one-half percent of the amount due for each month of delay thereafter."

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.325 & ORS 576.355

Hist.: SBY 4, f. 5-31-67; SBY 5, f. 12-24-74, ef. 1-25-75; SBY 1-2005, f. & cert. ef. 1-13-05

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

Adm. Order No.: OMIPB 2-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 12-1-04

Rules Adopted: 443-002-0010, 443-002-0020, 443-002-0030, 443-002-0040, 443-002-0050, 443-002-0060, 443-002-0070, 443-002-0080, 443-002-0090, 443-002-0100, 443-002-0110, 443-002-0120, 443-002-0130, 443-002-0140, 443-002-0150, 443-002-0160, 443-002-0170, 443-002-0180, 443-002-0190

Rules Amended: 443-001-0000, 443-001-0005

Rules Repealed: 443-005-0000, 443-005-0010, 443-005-0020, 443-005-0040, 443-005-0050, 443-005-0060, 443-005-0070, 443-010-0010, 443-015-0010

Subject: Repealing Divisions 5, 10 and 15 and adopting Division 2 to clarify rules and put in an order that is easy to understand and that follows the procedures of the program more closely.

Amending Division 001 to make technical changes regarding rule notice and who must be contacted prior to filing new rules.

Rules Coordinator: Nicole Shuba—(503) 378-4676

443-001-0000

Notice of Rulemaking

Prior to adoption, amendment or repeal of any permanent rule, the Oregon Medical Insurance Pool Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days before the effective date of the intended action.

(2) By mailing copies of the notice at least thirty (30) days prior to the effective date to persons on the mailing list established by the Board under ORS 183.335 (8), and the following publications and organizations:

(a) Publications:

- (A) The Associated Press,
- (B) The Daily Journal of Commerce, and
- (C) The United Press International.

(b) Organizations:

- (A) Authorized health insurers;
- (B) Oregon Association of Health Underwriters;
- (C) Portland Business Group for Health;
- (D) Health Insurance Association of American;
- (E) Oregon Life Underwriters Association;
- (F) National Association, Multiple Sclerosis Society;
- (G) Oregon Association of Hospitals;
- (H) American Diabetes Association, Oregon Affiliate;
- (I) Oregon Medical Association;
- (J) American Heart Association, Oregon Affiliate;
- (K) American Cancer Society, Oregon Division;
- (L) Cascade Aids Project;
- (M) Associated Oregon Industries;
- (N) Oregon Association of Self-Insured Employers;
- (O) Pacific Northwest Personnel Management Association.

Stat. Auth.: ORS 183 & ORS 705

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Stats. Implemented:
Hist.: MIP 2-1989(Temp), f. & cert. ef. 10-4-89; MIP 1-1990, f. & cert. ef. 3-23-90; OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-001-0005

Rules of Administrative Procedure

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0080, in effect on December 9, 2003, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Oregon Medical Insurance Pool.

[ED NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Oregon Medical Insurance Pool Board.]

Stat. Auth.: ORS 183 & 735

Stats. Implemented:

Hist.: MIP 1-1989, f. & cert. ef. 10-4-89; OMIPB 1-2000, f. 2-29-00, cert. ef. 3-1-00; OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0010

Definitions

(1) "Administering Insurer" means the insurance company selected in keeping with ORS 735.620 to operate OMIP on behalf of the OMIP Board.

(2) "Appeal" means a request to have an adverse Grievance decision reviewed.

(3) "Applicant" means a person who has is applying for OMIP coverage.

(4) "Board" means the Oregon Medical Insurance Pool Board as established under ORS 735.610.

(5) "Carrier" means an insurance company or health care service contractor that has a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance.

(6) "Claim" means a request for payment under the terms of an insurance Contract.

(7) "Creditable Coverage" means prior health care coverage as defined in 42 U.S.C. 300gg as amended and in effect on July 1, 1997.

(8) "Dependent" means the Contract Holder's spouse, child, stepchild, or adopted child that is enrolled in OMIP as defined in OAR 443-002-0150 and OAR 443-002-0160.

(9) "Eligibility" means meeting the residency and medical or portability requirements to qualify for the OMIP program as established in OAR 443-002-0060.

(10) "Enrolled Dependent" means a Dependent of the Contract Holder whose application is accepted by OMIP and who is enrolled under an OMIP Contract.

(11) "Enrollee" means an individual who is enrolled in one of the OMIP medical benefit plans.

(12) "External Review" is a review performed by a state contracted independent review organization when an Enrollee has exhausted all internal Grievance and Appeal procedures and wants the opinion of a medical professional who is separate from the patient's health insurance company. External Review applies only to disputes about medical necessity, experimental or investigational treatment, or need for continuity of care.

(13) "Grievance" means a written complaint submitted to OMIP's Administering Insurer by or on behalf of an Enrollee regarding:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an Enrollee and OMIP.

(14) "Insurer" is defined in ORS 735.605(4).

(15) "Medicaid" means medical assistance provided under 42 U.S.C. section 396a.

(16) "Medically Necessary" means those services and supplies that are required for diagnosis or treatment of Illness or Injury and which, in the Reasonable judgment of OMIP, are: appropriate by treatment setting and level of care, in amount, duration and frequency of care and consistent with the symptoms or diagnosis and treatment of an Enrollee's condition; appropriate with regard to widely accepted standards of good medical practice; not primarily for the convenience of an Enrollee or a Provider of services or supplies; and the least costly of the treatment settings, alternative supplies or levels of service which can be safely provided to the patient. This means, for example, that care rendered in a Hospital inpatient setting or by a nurse in the patient's home is not Medically Necessary if it could have been provided in a less expensive setting, such as a Skilled Nursing Facility, without harm to the patient.

The fact that a Professional Provider furnished, prescribed, ordered, recommended, or approved a service or supply does not, of itself, make the service or supply Medically Necessary. We will consult with professional consultants, peer review committees, or other appropriate sources for recommendations regarding the necessity of the services received by enrollees.

Medically Necessary care excludes care that is primarily custodial care. Custodial care helps a person conduct activities of daily living and can be provided by people without medical or paramedical skills, for example, help in bathing, eating, dressing or getting in or out of bed. Custodial care also includes care that is primarily for the purpose of separating a patient from others or preventing a patient from harming him or herself. While a condition must be Medically Necessary for benefits to be paid, a Medically Necessary condition can be excluded from benefits provided by an OMIP Contract.

(17) "Medicare" is defined in ORS 735.605 (6).

(18) "OHP" means the same definition as given to Medicaid in subsection (15).

(19) "OMIP" means the Oregon Medical Insurance Pool.

(20) "Oregon Resident" means an individual resides permanently in Oregon as defined in OAR 443-002-0060(1)(a).

(21) "Portability Coverage" means that ongoing health insurance is available to an applicant if that applicant was enrolled in an employer-sponsored group health Plan for at least six months immediately prior to that insurance coverage ending.

(22) "Pre-existing Condition" means a condition for which medical advice, diagnosis, care, or treatment was recommended or received in the six-months before coverage began. For purposes of the six month limitation period, the term pregnancy shall include, pre and postnatal care, miscarriage, abortion, delivery (vaginal or surgical), and complication of pregnancy, including, but not limited to: intra-abdominal surgical procedures; placenta abruptio and placenta previa; acute exacerbations or heart conditions and or diabetes; toxemias.

(23) "Reinsurer" is defined in ORS 735.605(9).

Stat. Auth.: ORS 735.610(6)

Stats Implemented: 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0020

Administering Insurer

(1) The OMIP Board shall select an insurer or insurers through a competitive bidding process as established in ORS 735.620 that utilizes a Request for Proposal (RFP).

(2) The Administering Insurer shall be responsible for all requirements set forth in the RFP.

Stat. Auth.: ORS 735.610(6) & 735.620

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0030

Assessment for Operating Expenses and Counting Insureds

(1) OMIP shall assess insurers and reinsurers, as defined in ORS 735.605, for the purpose of collecting monies to cover expenses and losses of OMIP in excess of premiums, which are not or will not be sufficiently covered by funds in the OMIP Account defined in ORS 735.612.

(a) Pursuant to ORS 735.614(2), OMIP counts both the number of Oregon insureds and Oregon certificate holders for assessment purpose. Health insurance issued in other states for certificate holders in Oregon shall be subject to the assessment count.

(b) OMIP will assess insurance companies based on the number of persons insured in Oregon. The actual insurance transaction does not have to take place in the State of Oregon for it to be counted.

(c) All insurers that are authorized to transact health or medical insurance in Oregon and that insure persons residing in Oregon will be subject to the assessment. All reinsurers that reinsure medical insurance in Oregon on or after September 27, 1987, will be subject to assessment.

(2) The OMIP Board shall determine the frequency of such assessments based on projected cash balances and operating revenues and expenditures.

(3) The projected cash balance shall take into account a reserve intended to cover claims incurred but not reported or paid. The Board shall review the reserve quarterly to determine its adequacy and adjust it as needed.

(4) The amount for which OMIP assesses each insurer or reinsurer as defined in ORS 735.605 shall depend on each insurer's or reinsurer's proportion of the total of all Oregon insureds and certificate holders insured or

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reinsured and the amount of funds that OMIP needs to cover projected expenses and losses in excess of the premiums:

(a) Annually, OMIP will send a request to all insurers insuring or reinsuring health or medical insurance in Oregon to report the number of persons insured or reinsured in Oregon as of the end of the previous year.

(A) The insurer or reinsurer will have 30 days from the date of the request to return the requested count.

(B) Based on the information obtained in the requested count, OMIP will issue bi-annual assessments. Insurers, including reinsurers, will have 30 days from the notice of assessment to make payment.

(C) If OMIP discovers that an insurer (including a reinsurer) has inaccurately reported the number of persons insured, OMIP may request that the insurer provide an accurate count and may reassess the insurer accordingly.

(b) OMIP shall determine the total number of Oregon insureds and certificate holders insured or reinsured as follows:

(A) OMIP shall limit the count of insureds and certificate holders insured or reinsured to medical insurance as defined in ORS 735.605(5);

(B) The count shall include all insureds and certificate holders, including dependents, other individuals whose medical insurance coverage is insured or reinsured in whole or in part, and, to the extent permitted by federal law, individuals covered under excess loss coverage written on self-funded medical plans;

(C) Reinsurers may exclude from the number reported those individuals that the other insurers or reinsurers have counted;

(D) The insurers and reinsurers may use any reasonable method of estimating or may use actual counts of the number of individuals for whom coverage is provided. They must inform OMIP how they calculated any estimates.

(5) If assessment collections exceed the amount needed to meet OMIP expenses and losses, OMIP shall hold and invest the excess funds and use the earnings and interest, to offset future net losses or to reduce OMIP premiums. For the purposes of this section, "future net losses" include reserves for incurred-but-not-reported claims.

Stat. Auth.: ORS 735.610(6) & 735.614

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0040

Adjustment of Assessment for Insurers in Individual Health Benefits Market

(1) Licensed health insurance carriers and health care service contractors, herein referred to as insurers, participating in the Oregon individual health insurance market (non-Medicare, non-Medicaid) may voluntarily choose to apply for the assessment reduction. Such insurers are eligible for OMIP assessment reductions if, and only if, they meet all the following criteria:

(a) If the insurer is active in the group health insurance market and the individual health insurance market, the insurer must offer individual health insurance in the same or greater geographic area as its group health insurance; or, if the insurer is ONLY in the individual market, it must offer coverage statewide.

(b) The insurer must offer at least one individual health benefit plan that has a scope of benefits similar to OMIP with member cost sharing actuarially equivalent to at least one OMIP plan. The insurer shall attach along with its Assessment Reduction Application (Exhibit 1) the health benefit plan and its associated member cost sharing for OMIP to review for purposes of determining if actuarial equivalency exists.

(c) The rate schedule for the plan noted in subparagraph (b) must be, when averaged over a two-year period, less than the OMIP surcharged rate.

(d) The insurer must demonstrate an active marketing plan for all individual plans and it must make them continuously available. This includes plans that the insurer offers only in a specific market segment and it must make those plans continuously available to that market segment. OMIP may use any method that it deems appropriate to gather data and information to confirm that an insurer's coverage is continuously available, including, but not limited to, direct audit by OMIP staff or may rely upon an Insurance Division general or targeted market conduct examination.

(2) When OMIP has reviewed and approved data and information demonstrating compliance with section (1) OMIP may reduce an insurer's assessment based upon OMIP's determination of rates of rejection of individuals for coverage. The allowed exception to the rejection rate is existing pregnancy.

(a) OMIP will determine rejection rates based on a three-year rolling average. Insurers must submit rejection rates to OMIP quarterly in order to participate in the OMIP Assessment Reduction Program. If an insurer ini-

tially elects not to participate and later chooses to do so, or a new insurer enters the individual health insurance market, and elects to participate, it must submit a minimum of six months of rejection rate data to OMIP.

(b) A "rejection" or "rejected application" for the purposes of OMIP assessment reduction is such that rejection of an application for individual coverage occurs when the insurer denies an application for an individual health benefit plan because of the health status of the applicant or any other individual to be covered by the plan for which the individual applied. Health status includes previous claims history, previously treated conditions, current conditions, and anticipated claims. OMIP shall not count an insurer's rejection because of an existing pregnancy as a rejection nor as an acceptance under this definition. An application that the insurer does not act upon within thirty days from when the application was first received, or thirty days from the first request for additional information, shall be deemed a "rejection."

(c) The "rejection rate" equals the number of "rejected applications" divided by the sum of "accepted applications" plus "rejected applications." An "accepted application" is an offer to insure the person for any individual health benefit plan offered by the insurer. OMIP will exclude from its calculation of the rejection rate any denials of coverage for reasons other than health status (i.e. failure to include required premium payments, failure to provide information as requested by the insurer or incomplete or false applications, or other non-health related reasons).

(d) The data and information to confirm an insurer's rejection rate includes, but is not limited to, direct audit by OMIP staff or an Insurance Division general or targeted market conduct examination.

(3) Election to participate:

(a) Participation in the Assessment Reduction Program is voluntary and only those insurers that elect to participate must provide OMIP with quarterly information on rejection and acceptance rates and information required to determine whether an insurer meets the criteria established under the program.

(b) An insurer that chooses to participate must complete and send in the OMIP Assessment Reduction Application Form.

(c) An insurer that chooses not to participate in the Assessment Reduction Program is not required to complete or file the OMIP Assessment Reduction Application Form.

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

Stat. Auth.: ORS 735.610(6) & 735.614

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0050

Agent's Referral Fees

(1) OMIP will pay agent referral fees in the amount of \$75 for applications prepared and submitted by the agent and that the Administering Insurer accepts, approves and identifies as complete, and for which the member submits the first month's premium.

(2) OMIP reserves the right to refuse to pay the \$75 agent referral fee for applications submitted with incomplete or missing documentation.

Stat. Auth.: ORS 735.610(6) & 735.610

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0060

Eligibility

(1) Individuals applying for OMIP coverage must meet the following eligibility requirements:

(a) The applicant must be a resident of the State of Oregon.

(A) A resident is defined as a person who resides permanently in Oregon or;

(B) A person who maintains a permanent place of residence in Oregon, spends more than 180 days per year in Oregon and files income taxes in Oregon.

(b) The applicant must meet one of the medical eligibility requirements set forth in subsection (c) or one of the portability eligibility requirements set forth in subsection (d).

(c) The applicant must meet one of the following medical eligibility requirements:

(A) Applicant received a declination of individual health insurance coverage within the last six months due to health reasons; or

(B) A health insurance agent refused the applicant's request to submit an application for individual health insurance within the last six months because the agent believed that the insurance carrier would refuse to provide coverage due to the health condition of the applicant; or

(C) Applicant received a notice of termination of individual health insurance coverage within the last six months due to health reasons.

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(d) The applicant must apply for OMIP coverage within sixty-three (63) days of losing the prior group health insurance coverage and must have had the prior group coverage in place for a period of not less than 180 days and must meet one of the following portability eligibility requirements:

(A) Applicant was covered under a group health benefit plan from an Oregon employer but is ineligible for portability coverage from employer's insurance carrier because the applicant no longer resides in the carrier's service area; or

(B) Applicant has exhausted COBRA benefits and portability coverage is not available because the carrier is not required to offer it; or

(C) Applicant is moving to Oregon after leaving group coverage in another state, has exhausted all rights under federal or Oregon state law to continue that coverage (i.e. COBRA or Oregon state continuation), and does not have portability coverage available.

(2) If an applicant meets the eligibility requirements outlined in section 1 above, the applicant may also apply for OMIP coverage for their dependent(s).

(a) Dependents include a legal spouse and any unmarried children, under the age of 23 that live with the primary applicant. Other unmarried children, under age 23 are also eligible if the applicant is required to contribute toward their support. Also unmarried children, under the age of 23 who are enrolled as a full time student at an accredited institution of higher learning, are eligible even if he/she does not live in the applicants home.

(b) Children are defined as:

(A) The applicants natural child or;

(B) Stepchildren living in the home or non-resident step children if there is a qualified medical child support order that requires the applicant to provide health insurance or;

(C) Legally Adopted children.

(3) Applicants and/or dependents of applicants will be ineligible for OMIP coverage under the following conditions regardless of whether they satisfy other eligibility requirements:

(a) The applicant or dependent is 65 years of age and is eligible for Medicare;

(b) The applicant or dependent is eligible for and receiving a comprehensive health care benefit package under ORS chapter 414 (Medicaid);

(c) The applicant or dependent is a patient or an inmate of a State correctional or mental institution;

(d) The applicant or dependent terminated OMIP coverage within the last twelve (12) months for a reason other than becoming eligible for health care benefits under Medicaid, including non-payment of OMIP premiums;

(e) The applicant or dependent received \$1,000,000 in OMIP benefits under a prior OMIP policy(s);

(f) As of the effective date of OMIP coverage, the applicant or dependent is covered by health insurance or a self-insurance arrangement that is substantially equivalent to OMIP coverage;

(g) A public entity or a health care provider pays or reimburses the OMIP premiums for the applicant or dependent for the sole purpose of reducing the financial loss or obligation of that entity or provider;

(h) A business with two or more employees employs the applicant or the dependent and an insurance agent or insurance company directed the applicant to apply for OMIP coverage for the purpose of separating the applicant or dependent from health insurance benefits offered or provided in connection with the employer;

(i) The dependent is 23 years of age or older and is not mentally or physically incapacitated;

(j) The dependent is under 23 years of age but there is a court order requiring that someone other than the applicant provide insurance for the dependent;

(k) The dependent is under 23 years of age but is married, independent, or is not a full-time student in an accredited institution of higher education.

(4) Applicants must submit proof of eligibility for pool coverage together with the application. Proof of eligibility consists of the following:

(a) Proof of residency must be established with one of the following documents:

(A) A current valid Oregon driver's license or identification card issued by the Oregon Department of Motor Vehicles.

(B) A current valid Oregon voter registration card.

(C) A copy of the prior year's Oregon income tax return that includes applicant's name and current address.

(D) A dated rental agreement that shows the applicant's current residence address, which identifies the applicant as the current tenant and includes the signature of both the applicant and the landlord.

(E) A utility bill listing applicant's name, current residence address, and current dates of service.

(F) Any other document deemed appropriate by the Administering Insurer.

(b) If applying for pool coverage due to medical eligibility, proof of medical eligibility must be established with one of the following:

(A) A letter from an insurance company dated within the last six (6) months declining applicant for individual health insurance coverage due to health reasons; or

(B) A letter from an insurance company dated within the last six (6) months terminating applicant for individual health insurance coverage due to health reasons and not for non-payment of premiums; or

(C) A health insurance agent licensed to transact health insurance in the state of Oregon completes and signs the agent section of the OMIP application certifying that the agent is refusing to apply to an insurance company that he/she represents on behalf of applicant due to health reasons.

(c) If applying for pool coverage due to portability eligibility, proof of portability eligibility must be established by a Certificate of Coverage completed by the applicant's previous health insurer that provides the date coverage began and the date coverage ended. The coverage must have been in place for a period of not less than 180 days, and the applicant must apply for OMIP coverage within sixty-three (63) days of the termination date from the coverage.

Stat. Auth.: ORS 735.610(6), 735.615 & 735.616

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0070

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration for the OMIP program are set forth in the OMIP individual benefit plan contracts as of January 1, 2005, the OMIP application as of January 1, 2005, the OMIP handbook as of January 1, 2005, the OMIP Premium Rates and Instructions pamphlet as of January 1, 2005, the OMIP Benefit Summary pamphlet as of January 1, 2005 and any applicable endorsements. These documents are hereby incorporated into this rule by reference.

Stat. Auth.: ORS 735.610(6) & 735.625

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0080

Premiums

(1) Individuals eligible for OMIP due to Medical Eligibility pursuant to OAR 443-002-0060 must pay a premium rate determined by the OMIP Board in accordance with ORS 735.625(4)(c), but not more than 125% of the applicable rate.

(2) Individuals eligible for OMIP due to Portability Eligibility pursuant to OAR 443-002-0060 must pay a premium rate not to exceed 100% of the applicable rate as determined by the OMIP Board in accordance with ORS 735.625(4)(c) and ORS 735.616(3)(c) provided that they apply to OMIP within 63 days of the prior health benefit coverage termination date and that they had the prior group coverage in place for not less than 180 days.

(3) The Board will review the premium rates on an annual basis as defined in ORS 735.625.

(4) Premiums will be based on the age of the oldest enrolled person under the OMIP policy and are rated incrementally with 5-year age bands.

(5) Premiums may also be based on the geographic location in which an enrolled member lives.

Stat. Auth.: ORS 735.610(6), 735.616 & 735.625

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0090

Member Termination

(1) OMIP will terminate enrolled members and dependents automatically, without notice, if any of the following occurs:

(a) An enrolled member or dependent ceases to be an Oregon resident. Termination will become effective at the end of the month in which the member is no longer an Oregon resident. If OMIP becomes aware that a member is residing in another state for more than 180 days as evidenced by submitted claims, OMIP may request additional documentation from the member to verify Oregon residency. If OMIP determines that the member is not an Oregon resident as defined here, then OMIP may terminate coverage at the end of the month in which OMIP determines that individual is no longer an Oregon resident.

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(b) An enrolled member or dependent reaches 65 years of age and becomes eligible for Medicare. Termination will become effective at the first of the month in which the member or dependent becomes eligible for Medicare. An exception exists for members and dependents of OMIP who have been enrolled with OMIP for twelve consecutive months and wish to continue their OMIP coverage in addition to Medicare.

(A) A member or dependent who meets this twelve (12) month criteria and elects to continue OMIP coverage, must provide the Administering Insurer with a written request to do so no later than 30 days prior to becoming eligible for Medicare.

(B) The member or dependent must enroll in both Medicare Part A and B.

(C) If the member or dependent elects to continue OMIP coverage, OMIP will become the secondary payer to any benefits provided by Medicare.

(D) The member or dependent must pay full OMIP premiums in addition to any premiums paid for Medicare Part A and B.

(c) An enrolled member becomes eligible for and enrolled in a comprehensive health care benefit package under ORS chapter 414 (Medicaid). OMIP will terminate coverage effective on the date on which the member's coverage under Medicaid becomes effective. OMIP will prorate the monthly premium and refund any excess premium payments to the member.

(d) OMIP discovers that a public entity or health care provider pays the premiums for the enrolled member or dependent or reimburses him/her for premium payments for the sole purpose of reducing its own financial loss or obligation. Termination will take effect the date the public entity or health care provider began paying, or reimbursing the member for, the OMIP premium.

(e) An enrolled member is employed by a business with two or more employees and applied for OMIP coverage at the direction of an insurance agent or insurance company for the purpose of separating the member from health insurance benefits that the business offers or provides to its employees. Termination will take effect as of the effective date of OMIP coverage.

(f) OMIP discovers that an enrolled member had substantially equivalent health benefits as of the effective date of OMIP coverage. Termination will take effect as of the effective date of OMIP coverage. OMIP will attempt to recover any claims paid from the provider and request that the provider resubmit those to the other insurance company. The member will be responsible for reimbursing OMIP for any claims paid in the event OMIP is unable to recover payments from the providers. If OMIP is successful in recovering such claims from the provider or the member, OMIP will reimburse the member for any premiums paid from the effective date of OMIP coverage.

(g) OMIP has paid \$1 million in benefits on behalf of an enrolled member or dependent. Termination will take effect at the end of the month in which the member or dependent reaches \$1 million in benefits. Claim payments, however, will cease at \$1 million in paid benefits.

(h) An enrolled member becomes an inpatient or inmate at a State of Oregon correctional or mental institution as defined under ORS 179.321. Termination will take effect the date in which the member became an inpatient or inmate.

(i) OMIP discovers that an enrolled member made a material misrepresentation or omission on the application or enrollment form.

(A) If the member has been enrolled with OMIP for two years or less, OMIP may rescind coverage as of the first day it went into effect.

(B) If the member has been enrolled with OMIP over two years, OMIP may rescind coverage from the beginning, refuse to renew coverage, or deny or reduce a claim only if the material misstatement or misrepresentation was fraudulent.

(j) An enrolled member misuses the provider network by being disruptive, unruly or abusive in a way that threatens the physical health or well-being of health care staff and seriously impairs the ability of the carrier or its providers to provide service to that member. Termination will take effect at the end of the term for which the member has paid premium.

(k) An enrolled dependent turns 23 years of age and is not mentally or physically incapacitated. Termination will take effect at the end of the month in which the dependent reached his/her 23rd birthday.

(l) An enrolled dependent is under 23 years of age but there is a court order requiring that someone other than the applicant provide insurance for the child. Termination will take effect at the end of the month in which the court order takes effect.

(m) An enrolled dependent is under 23 years of age but is married, independent, or is not a full time student in an accredited institution of higher education. Termination will take effect at the end of the month in which

the dependent marries, becomes independent or is no longer a full time student in an accredited institution of higher education.

(n) For all enrolled dependents, on the last day of the month in which the enrolled primary member turns 65 and is eligible for Medicare, or dies. The Administering Insurer will notify enrolled dependents in writing of their health insurance options. They must request an extension of coverage in writing within 30 days of receiving the notice of termination.

(o) An enrolled member fails to pay the premium by the premium due date.

(A) The Administering Insurer will provide the enrolled member a 31 day grace period after the premium due date.

(B) Ten (10) days before the end of the grace period, the Administering Insurer will notify the member in writing that it did not receive the premium and that it will terminate the contract as of the premium due date if it does not receive the premium by the end of the applicable grace period. The Administering Insurer will send the notice by first class mail to the member's last known address.

(2) A member may voluntarily request that OMIP terminate coverage at the end of any period during which the member has paid premiums. The member must submit to the Administering Insurer a 30-day advance written notice to terminate. A member may also terminate coverage by not paying the premium for the next term.

(3) Once a member terminates, that member may not reenroll in OMIP for a period of 12 months. An exception to this exists when a member qualifies to requests suspension of OMIP coverage under OAR 443-002-0100.

Stat. Auth.: ORS 735.610(6) & 735.615

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0100

Member Suspension and Resumption of Coverage

(1) If a member or dependent is enrolled in OMIP and then becomes eligible for health care benefits under Medicare for reasons other than turning 65, OMIP may suspend coverage. The member must submit a request for suspension in writing to the Administering Insurer within 30 days of receiving a notice of eligibility for Medicare for reasons other than turning 65.

(a) If OMIP receives a request to suspend coverage as described above, OMIP shall suspend coverage effective at the first of the month in which the OMIP member or dependent became eligible for Medicare for reasons other than turning 65.

(b) OMIP will suspend coverage for a maximum of twelve months.

(c) OMIP will collect no premiums from the Medicare member or dependent during the period of suspended coverage.

(d) If the Medicare member or dependent loses eligibility for Medicare, the member may request in writing to the Administering Insurer that OMIP resume coverage. The Administering Insurer must receive the written request within 30 days of the date that the member or dependent receives notice of losing Medicare eligibility.

(A) If the member requests resumption of coverage but OMIP no longer offers the same Contract, OMIP will offer coverage available through the most similar current OMIP Contract.

(B) A person for whom coverage was suspended and later resumed will receive credit toward the six-month waiting period for pre-existing conditions based on the number of months previously covered by the OMIP contract and the number of months the person was covered by Medicare.

(C) If the individual is still eligible for Medicare after the twelve (12) month suspension period or fails to request resumption of OMIP coverage, OMIP will terminate the contract effective at the first of the month in which the person became eligible for Medicare.

(e) If the enrolled member does not notify OMIP of his/her desire to continue or suspend OMIP coverage when becoming eligible for Medicare, OMIP will terminate coverage effective the first of the month in which the member became eligible for Medicare.

(2) If a member or dependent is enrolled in OMIP and then becomes eligible and enrolls in a comprehensive health care benefit package under ORS chapter 414 (Medicaid), OMIP may suspend coverage. The member may request suspension of OMIP coverage in writing and submit it to the Administering Insurer within 30 days of receiving the notice of eligibility for Medicaid.

(a) If OMIP receives the request to suspend coverage as described above, OMIP shall suspend coverage effective on the date on which the member's coverage under Medicaid becomes effective.

(b) OMIP will suspend coverage for a maximum of twelve months.

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(c) OMIP will collect no premiums from the Medicaid member during the period it has suspended coverage.

(d) If the Medicaid member or dependent loses eligibility for Medicaid, the member may then request in writing to the Administering Insurer that OMIP resume coverage. The Administering Insurer must receive the written request within 30 days of the date that the member receives notice of losing Medicaid eligibility.

(A) If the member requests resumption of coverage but OMIP no longer offers the same Contract, OMIP will offer coverage available through the most similar current OMIP contract.

(B) A person who suspended coverage and then resumed it in accordance with this rule will receive credit toward the six-month waiting period for pre-existing conditions based on the number of months previously covered by the OMIP contract and the number of months the person was covered by Medicaid.

(C) If the individual is still eligible for Medicaid after the twelve (12) month suspension period or fails to request resumption of OMIP coverage, OMIP will terminate the contract effective the date in which the member's coverage under Medicaid became effective.

(e) If an enrolled member is found to have been receiving health care benefits under ORS chapter 414 (Medicaid) and failed to notify OMIP, OMIP will rescind coverage back to the effective date the member began receiving Medicaid. OMIP will attempt to recover any claims paid from the provider and request that the provider resubmit those claims to Medicaid. The member will be responsible for reimbursing OMIP for any claims paid in the event OMIP is unable to recover those from the provider. If OMIP successfully recovers such claims from the provider, OMIP will prorate and reimburse the member for any premiums paid from the effective date of the Medicaid coverage.

Stat. Auth.: ORS 735.610(6) & 735.615
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0110

Coordination of Benefits

If a member who is already enrolled in OMIP later becomes eligible for other individual or group coverage the member may request that OMIP continue his/her coverage, in addition to the other coverage.

(1) The effective date of the other coverage must have taken place AFTER the member enrolled in OMIP.

(2) In all instances, the other coverage will become the primary payer and OMIP will become the secondary payer.

(3) The member must pay full OMIP premiums, in addition to the premiums for the other coverage.

(4) The other insurance cannot be Medicaid (Oregon Health Plan/OHP).

(5) The other insurance cannot be Medicare unless the member has been enrolled in OMIP for at least 12 months before becoming eligible for Medicare.

(6) OMIP may retroactively pursue claim payments that it made as the primary payer, from the other insurance company as of the effective date of the other coverage.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0120

Effective Dates

(1) Effective dates for medical eligible applicants and their eligible dependents that are listed on the application shall be the first day of the month after the Administering Insurer has accepted and approved the application for enrollment.

(2) Effective dates for portability eligible applicants and their eligible dependents that are listed on the application shall be the first day after their previous group health plan ended.

(3) The Administering Insurer will inform applicants of their acceptance for OMIP coverage by sending a premium notice, identification card and policy contract.

(4) If an applicant fails to return the premium when requested, the Administering Insurer will reject the application as if the applicant were never effective or enrolled.

(5) If the Administering Insurer determines that an applicant or dependents of an applicant are not eligible for the program, the Administering Insurer will inform the applicant by sending the applicant a letter explaining the reason for the denial.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0130

Enrollment Limitations

In accordance with ORS 735.625(4)(d), OMIP may establish an enrollment schedule for new monthly enrollments and may establish the maximum number of policies that may be in force at the end of each month to keep pool losses under one percent of the total of all medical insurance premiums, subscriber contract charges and 110 percent of all benefits paid by member self-insurance arrangements:

(1) The Administering Insurer may approve applications for enrollment up to the monthly allocation and within the maximum number of policies in force.

(2) In determining the monthly allocation, the Administering Insurer shall include enrollment vacancies created by policy terminations from the previous month.

(3) The monthly allocation shall be cumulative and shall be carried forward to the following month as long as total monthly enrollments plus policies in force do not exceed the maximum established by the Board.

(4) In establishing the maximum enrollment and the monthly enrollment allocation, the Board shall take into account agency expenditure limitations established by the Oregon State Legislature, claims and revenue projections, and the level of cash reserve required to pay claims incurred but not yet paid or reported.

(5) At least once a quarter, the Board shall review and may modify the enrollment limitations and monthly allocations. The Board shall use the criteria for establishing the limitations and allocations to determine if it must make any modification.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0140

Waiting Lists

If the number of applications that OMIP approves exceeds the maximum number of policies in force or the monthly allocation, the Board shall close enrollment:

(1) OMIP may approve new applications but it shall not establish the effective date of coverage until openings occur.

(2) OMIP may establish a waiting list and notify applicants as follows:

(a) OMIP shall send a notification letter to the applicants informing them that it has approved their application but, because of enrollment limitations, OMIP has placed them on a waiting list and will notify them when an opening occurs;

(b) If an applicant sent an initial premium payment with the application, OMIP shall return the premium payment with the notification letter.

(3) OMIP shall establish a waiting list in chronological order of applications approved.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0150

Enrollment When Waiting Lists Exist

As openings occur, OMIP shall give first priority to approved applicants on the waiting lists and enroll them as follows:

(1) As an opening occurs, OMIP shall attempt to contact the next applicant on the waiting list and inform the applicant that there is an opening and that he/she must submit the initial premium payment to receive coverage.

(2) The applicant must submit the premium payment to the Administering Insurer within 15 calendar days from the date of the notice:

(a) If the applicant fails to submit the premium payment within the 15 calendar days, OMIP shall remove the applicant's name from the waiting list;

(b) If the applicant submits the premium payment within the prescribed time, the effective date of coverage shall be the first day of the month following the month of the postmark of the premium payment.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 – 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0160

Enrollment When No Waiting Lists Exist

(1) When enrollments are below the maximum allocated, priority for enrollment shall be as follows:

(a) Eligible applicants shall complete an original application and provide the requested documentation to the Administering Insurer. The Administering Insurer will date stamp the original application for verifica-

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tion of receipt. If the original application is received incomplete, the date stamp on the original application will serve only to indicate the date of receipt of the application. The date the application becomes complete will be used for determining eligibility for enrollment.

(A) The Administering Insurer shall pend for further information for up to 30 days incomplete applications or applications submitted without proper documentation. The Administering Insurer will send a notice to the applicant identifying the missing information or documentation and give the applicant 30 days to submit the requested information.

(B) Applicants whose applications have been pended and who fail to return the requested information within the 30 day time frame shall be rejected as if the applicant were never effective or enrolled.

(2) The Administering Insurer will process applications on a first come, first enrolled basis. The Administering Insurer has the authority to make exceptions to the application process.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0170

Pre-Existing Conditions

(1) A “pre-existing condition” is defined as “a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately preceding the insured’s OMIP effective date of coverage.”

(2) With respect to medically eligible applicants and dependents, during the first six months of the policy, OMIP will not pay claims for any condition that is a pre-existing condition.

(3) With respect to medically eligible applicants and dependents, pregnancy is a pre-existing condition and will not be a covered benefit for the first six months of an OMIP policy.

Stat. Auth.: ORS 735.610(6) & 735.625

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0180

Credit Towards the Six-Month Pre-Existing Condition Exclusion

(1) OMIP shall grant credit toward the six-month pre-existing condition exclusion in the following situations after the applicant has met eligibility criteria:

(a) Coverage under a prior health benefit plan was continuous to a date not more than 63 days before the effective date of OMIP coverage; and

(b) OMIP closed enrollment, approved the applicant and placed him or her on a waiting list as described in OAR 443-005-0020.

(2) The applicant must request credit toward the six-month pre-existing condition exclusion at the time of application for OMIP coverage and, in situations where prior health benefit plans have been terminated, attach to the application a Certificate of Coverage from the previous health insurance company stating that the applicant had six months or more of continuous coverage in place and that he/she applied to OMIP within 63 days of losing prior group coverage.

(3) In cases where prior health benefit coverage terminated and no waiting lists exist, OMIP will grant credit toward the six-month pre-existing condition exclusion for the time that a previous health benefit plan covered the enrollee, provided that:

(a) The eligible applicant made application for OMIP coverage within 63 days of the date that the previous health benefit plan terminated coverage;

(b) The effective date of OMIP coverage shall be the previous health benefit plan termination date; and

(c) The eligible applicant must pay premiums from the date that the previous health benefit plan coverage terminated.

(4) In cases where the previous health benefit plan coverage terminated and a waiting list exists, OMIP will grant credit toward the six-month pre-existing condition exclusion for both the time the eligible applicant was covered under a previous health benefit plan and the time spent on the waiting list, provided that:

(a) The eligible applicant makes application for OMIP coverage within 63 days of the date that the previous health benefit plan terminated coverage;

(b) The effective date of OMIP coverage shall be the date of enrollment; and

(c) The eligible applicant must pay premiums from the date of enrollment.

(5) In cases where OMIP placed an approved application on a waiting list, OMIP will grant credit toward the six-month pre-existing condition exclusion for the time spent on the waiting list, provided that:

(a) The effective date of OMIP coverage shall be the date of enrollment;

(b) OMIP shall base the amount of credit granted on the number of months the approved applicant was on the waiting list; and

(c) The eligible applicant must pay premiums from the date of enrollment.

(6) In cases where an individual’s health insurance coverage was in force less than six months before applying to OMIP, the individual may still receive credit toward the limitation period if he/she applies to OMIP within 63 days of losing that health coverage pursuant to ORS 735.625(5)(b). OMIP will base credit on the number of months the individual was previously insured under a comparable health benefit plan. OMIP will give month for month credit toward the limitation. OMIP will not credit coverage for benefits and services that the previous health benefit plan did not cover.

Stat. Auth.: ORS 735.610(6) & 735.625

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

443-002-0190

Grievance, Appeals, External Review

If an applicant or member believes that a contract, action, or decision of OMIP is incorrect, the applicant or member may file a written grievance or appeal.

(1) To file a grievance the applicant or member must submit a written statement to the Administering Insurers Customer Service Department containing all the information necessary to explain the issue.

(a) The Administering Insurer’s Customer Service Department must receive the grievance no later than 180 days after the adverse action.

(b) The Administering Insurer will respond to the applicant or member within five business days to acknowledge receipt of the grievance and initiate a formal review.

(c) The Administering Insurer will send a written decision to the applicant or member within 30 calendar days after receiving the grievance. In the event more extensive review is needed, the Administering Insurer will notify the applicant or member of the delay and will send a written response to the applicant or member within 45 calendar days after receiving the grievance.

(2) If, after filing a grievance, the applicant or member is dissatisfied with the Administering Insurer’s Customer Service Department’s response to the grievance, the applicant or member may file an appeal.

(a) The applicant or member must file an appeal in writing to the Administering Insurer within 180 days of receiving the Customer Service Department’s grievance response.

(b) The Administering Insurer will respond to the applicant or member within five business days to acknowledge receipt of the appeal.

(c) The Administering Insurer will mail a written decision to the applicant or member within 30 calendar days after receiving the appeal.

(3) If, after filing an appeal, the applicant or member is dissatisfied with the outcome of the appeal determination, the applicant or member may file a second appeal directly to OMIP.

(a) The applicant or member must file an appeal in writing directly to OMIP within 30 days from the date of the Administering Insurer’s written decision on appeal.

(b) OMIP will respond to the applicant or member within five business days to acknowledge receipt of the appeal.

(c) The OMIP administrator will review the appeal and may present it to the OMIP Board if he/she deems it necessary.

(d) OMIP will mail a written decision to the applicant or member within 30 calendar days after receiving the appeal.

(4) An individual, who is dissatisfied with the decision of OMIP, may request an external review if the dispute regards medical necessity, experimental or investigational procedures or need for continuity of care.

(a) The individual must request the external review by notifying the OMIP Administrator in writing within 180 days from the date of OMIP’s written decision on appeal.

(b) The State of Oregon Insurance Division will assign the external review to a particular review organization.

(c) The review organization will make its decision and notify the individual and OMIP. OMIP will be bound by the decision of the external review organization only as to those decisions relating to medical necessity, experimental or investigational procedures, or need for continuity of care.

Stat. Auth.: ORS 735.610(6)

Stats Implemented: ORS 735.600 – 735.650

Hist.: OMIPIB 2-2004, f. 12-30-04, cert. ef. 1-1-05

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

Adm. Order No.: OSHA 6-2004
Filed with Sec. of State: 12-30-2004
Certified to be Effective: 12-30-04
Notice Publication Date: 12-1-04
Rules Amended: 437-001-0001

Subject: Oregon OSHA amended OAR 437-001-0001, Model Rules of Procedure, in Division 1, General Administrative Rules. This amendment adopts the most recent version, January 15, 2004, of the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act, which is the model and guide for agency rulemaking.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0001

Model Rules of Procedure

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0080, in effect on January 15, 2004, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are adopted as the rules of procedure for rulemaking actions of the Oregon Occupational Safety and Health Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 654-025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 to 654.295

Hist.: OSHA 3-1991, f. & cert. ef. 2-25-91; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 2-1994, f. & cert. ef. 5-19-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-2000, f. & cert. ef. 12-12-00; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 6-2004, f. & cert. ef. 12-30-04

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Adm. Order No.: OSHA 7-2004
Filed with Sec. of State: 12-30-2004
Certified to be Effective: 12-30-04
Notice Publication Date: 12-1-04
Rules Amended: 437-004-6000

Subject: The Environmental Protection Agency (EPA), published in the September 1, 2004 Federal Register, amendments to 40 CFR 170, Worker Protection Standard. EPA amended the 1992 Pesticide Worker Protection Standard to permit optional use of separable glove liners beneath chemical-resistant gloves. This amendment also makes optional the provision that agricultural pilots wear gloves when entering or leaving aircraft. All other provisions of the Worker Protection Standard are unaffected by this rule. EPA believes that these changes will reduce the cost of compliance and will increase regulatory flexibility without increasing potential risks.

Oregon OSHA adopted these changes as published. These changes are in OR-OSHA's Division 4/W, Agriculture/Worker Protection Standard.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-004-6000

Adoption by Reference of Federal Standard

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, **40 CFR 170**, in the **Federal Register on 8/21/92, vol. 57, no. 163**:

- (1) **40 CFR 170.1** Scope and purpose, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (2) **40 CFR 170.3** Definitions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (3) **40 CFR 170.5** Effective date and compliance dates, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (4) **40 CFR 170.7** General duties and prohibited actions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (5) **40 CFR 170.9** Violations of this part, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(6) **40 CFR 170.102** Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21952.

(7) **40 CFR 170.103** Exceptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

(8) **40 CFR 170.104** Exemptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

(9) **40 CFR 170.110** Restrictions associated with pesticide applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(10) **40 CFR 170.112** Entry restrictions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/10/94, FR vol. 59, p. 30264; 5/3/95, FR vol. 60, no. 85, p.21952; 9/1/04, FR vol. 69, no. 169, p. 53341.

(11) **40 CFR 170.120** Notice of applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33207.

(12) **40 CFR 170.122** Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(13) **40 CFR 170.124** Notice of applications to handler employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(14) **40 CFR 170.130** Pesticide safety training, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21947 and 21952.

(15) **40 CFR 170.135** Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(16) **40 CFR 170.150** Decontamination, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33212.

(17) **40 CFR 170.160** Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(18) **40 CFR 170.202** Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(19) **40 CFR 170.203** Exceptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

(20) **40 CFR 170.204** Exemptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21953.

(21) **40 CFR 170.210** Restrictions during applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(22) **40 CFR 170.222** Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(23) **40 CFR 170.224** Notice of applications to agricultural employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(24) **40 CFR 170.230** Pesticide safety training, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21953

(25) **40 CFR 170.232** Knowledge of labeling and site-specific information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(26) **40 CFR 170.234** Safe operation of equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(27) **40 CFR 170.235** Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(28) **40 CFR 170.240** Personal protective equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33213; 9/1/04, FR vol. 69, no. 169, p. 53341.

(29) **40 CFR 170.250** Decontamination, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33213.

(30) **40 CFR 170.260** Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

[ED. NOTE: Standards referenced are available from the agency and the United States Government Printing Office.]

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

Stat. Auth.: ORS 654.025(2) & ORS 656.726(3)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 7-2004, f. & cert. ef. 12-30-04

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Adm. Order No.: OSHA 8-2004
Filed with Sec. of State: 12-30-2004
Certified to be Effective: 12-30-04
Notice Publication Date: 12-1-04
Rules Amended: 437-005-0001

Subject: Federal OSHA published, in the September 15, 2004 Federal Register, changes to 29 CFR 1915, Occupational Safety and

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Health for Shipyard Employment. Oregon OSHA's standards must be at least as effective as federal OSHA, therefore, we adopted the changes as published. These changes are in OR-OSHA's Division 5, Maritime Activities, and creates a new subpart P in 29 CFR 1915.

The new final standard, Fire Protection in Shipyard Employment, was developed through the negotiated rulemaking process and will provide increased protection from fire hazards for workers in the shipbuilding, ship repair and ship breaking industries. The standard reflects new technologies and current national consensus standards. It also gathers all fire-related safety practices for shipyard employment into a single subpart, which will make them more accessible and understandable for employers and employees.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-005-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1915, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A:

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/24/96, FR vol. 61, no. 102, p. 26359; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 9/15/04, FR vol. 69, p. 55667.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 4/20/82, FR vol. 47, p. 16984; amended 6/7/89, FR vol. 54, p. 24334; 7/25/94, FR vol. 59, p. 37856.

(2) Subdivision B:

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 4/20/82, FR vol. 47, p. 16984; amended 7/1/93, FR vol. 58, no. 125, p. 35514; amended 7/25/94, FR vol. 59, p. 37858; 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37861. Appendix A to Subpart B, published 7/25/94, FR vol. 59, p. 37816; amended 7/3/02, FR vol. 67, no. 128, p. 44541. Appendix B to Subpart B, published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C:

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

(4) Subdivision D:

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.52. Fire prevention, published 4/20/82, FR vol. 47, p. 16984; REMOVED 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.

(f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.

(5) Subdivision E:

(a) 29 CFR 1915.71. Scaffolds or staging, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.72. Ladders, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.73. Guarding of deck openings and edges, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.74. Access to vessels, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.77. Working surfaces, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(6) Subdivision F:

(a) 29 CFR 1915.91. Housekeeping, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.92. Illumination, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.93. Utilities, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.94. Work in confined or isolated spaces, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.95. Ship repairing and shipbuilding work on or in the vicinity of radar and radio, published 4/20/82, FR vol. 47, p. 16984; amended 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334.

(f) 29 CFR 1915.96. Work in or on lifeboats, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886.

(g) 29 CFR 1915.97. Health and sanitation, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(h) 29 CFR 1915.98. First aid, published 4/20/82, FR vol. 47, p. 16984.

NOTE: 29 CFR 1915.99, Hazard Communication, was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.

(i) 29 CFR 1915.100. Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(7) Subdivision G:

(a) 29 CFR 1915.111. Inspection, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.112. Ropes, chains and slings, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.113. Shackles and hooks, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562.

(d) 29 CFR 1915.114. Chain falls and pull-lifts, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.115. Hoisting and hauling equipment, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.116. Use of gear, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.

(h) 29 CFR 1915.118. Tables, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(8) Subdivision H:

ADMINISTRATIVE RULES

(a) 29 CFR 1915.131. General precautions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.133. Hand tools, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.134. Abrasive wheels, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.135. Powder actuated fastening tools, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.

(9) Subdivision I:

(a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.

(b) 29 CFR 1915.152. General requirements, published 5/24/96, FR vol. 61, no. 102, p. 26352; 6/13/96, FR vol. 61, p. 29957; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.153. Eye and face protection, published 5/24/96, FR vol. 61, no. 102, p. 26353.

(d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(e) 29 CFR 1915.155. Head protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(f) 29 CFR 1915.156. Foot protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(h) 29 CFR 1915.158. Lifesaving equipment, published 5/24/96, FR vol. 61, no. 102, p. 26354; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 5/24/96, FR vol. 61, no. 102, p. 26355; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(j) 29 CFR 1915.160. Positioning device systems, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix A to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26358; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(10) Subdivision J

(a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.162. Ship's boilers, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.163. Ship's piping systems, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.164. Ship's propulsion machinery, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.165. Ship's decking machinery, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(11) Subdivision K:

(a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.

(12) Subdivision L

(a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(13) Subdivisions M-O (Reserved).

(14) Subdivision P:

(a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.

(b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.

(d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.

(e) 29 CFR 1915.505. Fire response, published 9/15/04, FR vol. 69, p. 55667.

(f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.

(g) 29 CFR 1915.507. Land-side fire protection systems, published 9/15/04, FR vol. 69, p. 55667.

(h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.

(i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667. Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.

(15) Subdivision Q-Y (Reserved).

(16) Subdivision Z:

(a) 29 CFR 1915.1000. Air Contaminants, published 7/1/93, FR vol. 58, no. 125, p. 35514; 11/4/96, FR vol. 61, p. 56856; 1/10/97, FR vol. 62, p. 1619; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.1001. Asbestos, published 7/1/93, FR vol. 58, no. 125, p. 35514; 8/10/94, FR vol. 59, no. 153, p. 41080; 6/29/95, FR vol. 60, no. 125, pp. 33974-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, p. 43454; 6/29/98, FR vol. 63, no. 124, p. 35137; amended 7/3/02, FR vol. 67, no. 128, p. 44541. Appendix A to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix B to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix C to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix D to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964. Appendix E to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix F to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix G to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964. Appendix H to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix I to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964. Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964. Appendix K to 1915.1001, published 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972. Appendix L to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 2/21/95, FR vol. 60, p. 9624; amended 6/28/95, FR vol. 60, p. 33343; amended 6/29/95, FR vol. 60, p. 33972; amended 7/13/95, FR vol. 60, p. 36043; amended 9/29/95, FR vol. 60, p. 50411; amended 2/13/96, FR vol. 61, p. 5507; amended 8/23/96, FR vol. 61, p. 43454.

(c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(d) 29 CFR 1915.1003. 13 Carcinogens (4-Nitrophenyl, etc.), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(e) 29 CFR 1915.1004. alpha-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(f) 29 CFR 1915.1005. (Reserved)

(g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(i) 29 CFR 1915.1008. bis-Chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(j) 29 CFR 1915.1009. beta-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4-Aminodiphenyl, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

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(m) 29 CFR 1915.1012. Ethyleneimine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta-Propiolactone, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2-Acetylaminofluorene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4-Dimethylaminoazobenzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N-Nitrosodimethylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1027. Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42388-42452; amended 4/23/93, FR vol. 58, no. 177, p. 21778; 1/3/94, FR vol. 59, no. 1, pp. 146-215; 6/20/96, FR vol. 61, p. 31427.

(w) 29 CFR 1915.1028. Benzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1030. Bloodborne pathogens, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1044. 1,2 dibromo-3-chloropropane, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1045. Acrylonitrile, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1047. Ethylene oxide, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1048. Formaldehyde, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1050. Methylenedianiline, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ee) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

Note: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.

(ff) 29 CFR 1915.1200. Hazard communication, published 9/24/87, FR vol. 52, p. 31886; amended 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 7/1/93, FR vol. 58, no. 125, p. 35514; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(gg) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

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

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

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04

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

Adm. Order No.: WCD 1-2005

Filed with Sec. of State: 1-14-2005

Certified to be Effective: 1-14-05

Notice Publication Date:

Rules Amended: 436-001-0005

Subject: The director hereby adopts the Attorney General's Model Rules of Procedure, in effect as of January 14, 2005, for rulemaking actions of the Workers' Compensation Division.

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://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

436-001-0005

Model Rules of Procedure Governing Rulemaking

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0080, in effect on December 9, 2003, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Workers' Compensation Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 183.325-183.410 & 656.704(2)

Hist.: WCD 5-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 3-1978(Admin), f. & ef. 3-6-78; WCD 2-1982(Admin), f. 1-20-82, ef. 1-21-82; Renumbered from 436-090-0110 thru 436-090-0180, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; 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 1-2005, f. & cert. ef. 1-14-05

Department of Corrections Chapter 291

Adm. Order No.: DOC 16-2004(Temp)

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 12-28-04 thru 6-26-05

Notice Publication Date:

Rules Amended: 291-131-0015

Subject: This rule amendment is necessary to immediately implement a change in department policy to restrict inmate-to-inmate mail in certain specific instances. Several high profile cases have arisen in which segregated inmates used the mail system to communicate with other inmates information that constituted a direct threat and jeopardized the security, safety, health, good order and discipline of the facility.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-131-0015

General

(1) The functional unit manager or designee will ensure employees responsible for mail room operations are properly trained prior to assignment.

(2) Inmates shall not send, receive, transfer, or possess mail which violates the provisions of these rules.

(3) Inmates shall not send, receive, transfer, or possess mail to or from the victim(s) of their crime(s) of conviction (both past and present), except as authorized in writing by the functional unit manager or designee.

(4) Inmates shall not conduct business transactions by mail without the prior written consent of the functional unit manager or designee.

(5) Excluding weekends and holidays, incoming and outgoing correspondence should be processed within two days of receipt; publications and packages within four days of receipt, unless the mail is being reviewed for possible violations.

(6) All incoming and outgoing mail is subject to inspection or examination. Legal and official mail is subject to inspection or examination as provided in OAR 291-131-0030.

(7) All mail, excluding packages, shall be routed through the U.S. Postal Service, inter-agency or intra-departmental mail systems. Mail may also be sent by other approved mail service providers for packages and special circumstances, if authorized by the functional manager. Other mail service providers includes, but is not limited to, United Parcel Service, U.S. Airborne, Federal Express, approved newspaper delivery. Authorization may vary among Department of Corrections facilities depending upon security concerns, mail room operations and physical layout of the building and grounds.

(8) Inmates shall be permitted to send business mail to officials of the Department of Corrections in Central Administration through the intra-

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departmental mail system. Inmates shall not be permitted to send mail through the state inter-agency mail system. Inmates shall be permitted to receive mail from state agencies and officials through the inter-agency and intra-departmental mail systems.

(9) Each month an inmate, who in the previous month has not accumulated the cost of five postage paid envelopes (for less than one ounce) in his/her trust account, will be issued five postage paid envelopes by the facility if he/she requests.

(10) Upon recommendation of the functional unit manager and approval of the Assistant Director of Operations/designee, an inmate may be prohibited from sending or receiving mail to or from another inmate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 18(Temp), f. & ef. 12-18-73 thru 4-17-74; CD 22, f. 6-27-74, ef. 7-25-74; CD 1-1979, f. & ef. 1-4-79; Renumbered from 291-010-0300; CD 11-1980(Temp), f. & ef. 4-10-80; CD 16-1980(Temp), f. & ef. 4-18-80; CD 28-1980, f. & ef. 8-22-80; CD 22-1983(Temp), f. & ef. 6-3-83; CD 27-1983, f. & ef. 7-11-83; CD 57-1985, f. & ef. 8-16-85; CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 23-1998(Temp), f. & cert. ef. 12-23-98 thru 6-21-99; DOC 8-1999, f. 5-24-99, cert. ef. 6-1-99; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 4-2002(Temp), f. & cert. ef. 3-25-02 thru 9-21-02; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 16-2004(Temp), f. & cert. ef. 12-28-04 thru 6-26-05

Adm. Order No.: DOC 1-2005(Temp)

Filed with Sec. of State: 1-7-2005

Certified to be Effective: 1-7-05 thru 7-6-05

Notice Publication Date:

Rules Adopted: 291-082-0031, 291-082-0032, 291-082-0033

Rules Amended: 291-082-0010, 291-082-0020, 291-082-0030

Subject: These rule amendments are necessary to establish eligibility criteria for inmates assigned to work on a community custody work assignment, on-site work assignment, or unfenced minimum housing.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-082-0010

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.445, 423.020, 423.030, 423.075, and Article I, Section 41 of the Oregon Constitution.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures relating to the assessment, assignment, and supervision of inmates assigned to community custody work crews, on-site work assignments and unfenced minimum housing.

(3) Policy: The department has established specific eligibility criteria for inmates who are assigned to community custody work crews, on-site work assignments and unfenced minimum housing consistent with the mandates and purposes of Article I, section 41 of the Oregon Constitution, the Department of Corrections will seek opportunities to enter into cooperative agreements with local, state, federal governmental agencies, private non-profit and private entities for the use of inmate labor and services on work projects. The department will enforce the following procedures for inmate work crew supervision to support the safety of the community, staff, supervisors, and inmates, while inmates are working in the community.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

291-082-0020

Definitions

(1) Agency Work Crew: One or more inmates assigned to work in the community on a local, state (other than Department of Corrections) or federal governmental agency work project, outside of a Department of Corrections facility. An employee or agent of the local, state or federal governmental agency may supervise inmates assigned to an agency work crew pursuant to an intergovernmental agreement entered into by the agency and the Department of Corrections.

(2) Assignment and Assessment for Work and Housing:

(a) Community Custody: Custody of an inmate assigned to a work program/project that is located in the community, off Department of Corrections grounds.

(b) On-site Work Assignments: Work assignments that are restricted to institution grounds and/or DOC occupied building and/or grounds.

(c) Static 99: The STATIC-99 is an actuarial instrument designed to estimate the probability of sexual recidivism among adults, and is used to determine which offenders will be designated "Predatory".

(d) Community Custody/On-Site Work Eligibility Review Process: A review assessment form approved of by the Department of Corrections.

(3) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(4) Department of Corrections Employee: Any person employed full-time, part-time, or under any temporary appointment by the Department of Corrections; any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to the department programs.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(6) Inmate Work Crew: One to ten inmates assigned to work on site or in the community on a local, state, federal governmental agency, public non-profit or private entity work project.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

291-082-0030

Inmate Work Crews Agreements

(1) The Department of Corrections may, in its discretion, assign inmate work crews to work in the community on local, state, federal governmental agencies, private non-profit or private entity work projects.

(2) Institution superintendents will use private partnership review guidelines in determining appropriateness of private sector agreement requests.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

291-082-0031

Community Custody/On-Site Work Assignments

(1) Only those inmates classified as minimum custody in accordance with the Department of Corrections rule on Classification (Inmate), OAR 291-104, are eligible to be considered for assignment to a community custody work assignment or an on-site work assignment or unfenced minimum housing.

(2) An inmate is ineligible for assignment to a community custody work assignment or an on-site work assignment or unfenced minimum if he/she:

(a) Has ever been designated as a predatory sex offender in Oregon or any other state;

(b) Has an ICE (formerly INS) hold;

(c) Has a felony detainer that runs consecutive to another sentence(s), or pending felony charges;

(d) Has any medical restrictions as identified by Health Services staff that may limit or prohibit the inmates from participating in work assignments; or

(e) Has any psychological restrictions as identified by Correctional Treatment Services staff that may limit or prohibit the inmate from participating in work assignments.

(3) An inmate whose Crime of Conviction is for any of the following, including attempt, is ineligible for a community work assignment or an on-site work assignment if there is a score of 4 or greater on the Static-99:

(a) Rape I — ORS 163.375;

(b) Rape II — ORS 163.365;

(c) Rape III — ORS 163.355;

(d) Sodomy I — ORS 163.405;

(e) Sodomy II — ORS 163.395;

(f) Sodomy III — ORS 163.385;

(g) Unlawful Sexual Penetration I — ORS 163.411;

(h) Unlawful Sexual Penetration II — ORS 163.408;

(i) Sexual Abuse I — ORS 163.427;

(j) Sexual Abuse II — ORS 163.425;

(k) Sexual Abuse III — ORS 163.415;

(4) Any inmate whose current crime of conviction is for a sex offense, as defined in statute, is not to be housed at any unfenced minimum facility.

ADMINISTRATIVE RULES

(a) Pursuant to ORS 421.455, Forest work camps; restrictions on placement at camps: The Director of the Department of Corrections shall establish at places in state forests recommended by the State Board of Forestry one or more forest work camps at which state inmates and local inmates may be employed.

(b) Only such state inmates as are determined by the Department of Corrections to require minimum security may be placed at a forest work camp, but the Department of Corrections shall not place an inmate at a forest work camp if the department is aware that the inmate has ever been convicted, of:

- (A) Rape in the first degree, as described in ORS 163.375.
- (B) Rape in the second degree, as described in ORS 163.365.
- (C) Rape in the third degree, as described in ORS 163.355.
- (D) Sodomy in the first degree, as described in ORS 163.405.
- (E) Sodomy in the second degree, as described in ORS 163.395.
- (F) Sodomy in the third degree, as described in ORS 163.385.
- (G) Unlawful sexual penetration in the first degree, as described in ORS 163.411.

(H) Unlawful sexual penetration in the second degree, as described in ORS 163.408.

- (I) Sexual abuse in the first degree, as described in ORS 163.427.
- (J) Sexual abuse in the second degree, as described in ORS 163.425.
- (K) Any crime in any other jurisdiction that would constitute a crime described in this subsection if presently committed in this state.
- (L) Any attempt to commit a crime described in this subsection.

(5) An inmate with any conviction for Arson I, or any attempt, is ineligible for a community work assignment or an on-site work assignment or unfenced minimum housing."

(6) Any inmate sentenced for a "Matrix" person to person offense (Crime of conviction occurred before 11/1/89) is ineligible for community work assignment or an on-site work assignment or unfenced minimum housing.

(7) An inmate with a current stalking order, or an arrest history of felony stalking, are ineligible for a community work assignment or an on-site work assignment or unfenced minimum housing.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

291-082-0032

Eligible for Superintendent Approval

(1) For any inmate with a history of an arrest, charge or conviction, of any sex crime, defined by statute, but not listed in (3) above, a Static-99 will be completed and will be used in conjunction with a review of victim and community interests to determine placement on a community custody work assignment, an on-site assignment, or unfenced minimum.

(2) For any inmate whose current crime of conviction is for a non-sex crime, as defined by statute, but has a sexual component, a Static-99 will be completed and will be used in conjunction with a review of victim and community interests to determine placement on a community custody work assignment, an on-site assignment, or unfenced minimum.

(3) Inmate has served less than 60 days since the most recent date of admission to Department of Corrections custody, but would otherwise be eligible for placement on a community custody work assignment and on-site assignment or unfenced minimum housing.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

291-082-0033

Inmate Community Custody/On-Site Work Eligibility Review Process

(1) All eligible inmates being considered for a community work assignment or an on-site work assignment or unfenced minimum housing, must have an inmate community custody/on-site work eligibility form completed.

(2) The institution superintendent may further limit, which minimum custody inmates are eligible for assignment to inmate work crews or unfenced minimum housing.

Stat. Auth.: ORS 179.040, 421.440, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020 & 423.075
Hist.: DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05

Department of Energy
Chapter 330

Adm. Order No.: DOE 7-2004

Filed with Sec. of State: 12-20-2004

Certified to be Effective: 12-20-04

Notice Publication Date: 11-1-04

Rules Amended: 330-100-0000, 330-100-0005, 330-105-0005, 330-105-0007, 330-105-0008, 330-105-0015, 330-105-0020, 330-105-0025, 330-105-0030, 330-105-0035, 330-105-0040, 330-105-0045, 330-110-0005, 330-110-0010, 330-110-0015, 330-110-0016, 330-110-0020, 330-110-0025, 330-110-0030, 330-110-0035, 330-110-0036, 330-110-0040, 330-110-0042, 330-110-0045, 330-110-0050, 330-110-0055

Subject: The proposed changes to the rules include the following: extend the officers' term length and increase advisory capacity of the SELP Advisory Committee; reinforce SELP's fuel blind status, implement credit enhancements and other securities as collateral, outline circumstances for refinancing; clarify cogeneration projects, loan eligibility under Energy Facility Siting Counsel rules, substitute fuel and waste heat, use of taxable bonds and funding project costs; implement the SELP Technical Requirement document; reduce first and junior lien security value percentages, simplify fees and charges; and make general housekeeping changes including update of agency name and personnel titles.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-100-0000

Notification of Rulemaking Activities

Prior to the adoption, amendment or repeal of any rule, the Small Scale Local Energy Project Loan Program will 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 before the effective date of action;

(2) By mailing a copy of the notice to persons on the Small Scale Local Energy Program's mailing list established pursuant to ORS 183.335(7);

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 28 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the Associated Press, the Oregonian and the Capitol Press Room.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 470.140
Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-100-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Small Scale Local Energy Loan Program adopts the Attorney General's Uniform and Model Rules of Procedure Division I and II under the Administrative Procedures Act as amended and effective January 15, 2004.

[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 Energy.]

Stat. Auth.: ORS 183
Stats. Implemented: ORS 470.140
Hist.: DOE 10-1980, f. & ef. 9-5-80; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0005

Definitions

Where context permits, these definitions apply to ORS Chapter 470 and these rules:

(1) "Application" or "Request" means an application submitted on a Department-approved form and its supporting papers.

(2) "Adverse Decision" means a decision to deny a loan application or to make a loan in an amount contrary to advice of the Committee.

(3) "Committee" means the Small Scale Local Energy Project Advisory Committee created under ORS 470.070.

(4) "Secretary" means the Secretary to the Committee. He or she will be an employee chosen by the Director.

(5) The definitions contained in OAR 330.110 and ORS 470.050, as amended, apply to these rules.

Stat. Auth.: ORS 469 & 470.140
Stats. Implemented: ORS 470.050 - 470.100
Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

ADMINISTRATIVE RULES

330-105-0007

Committee Officers and Their Powers

The Committee will elect a Chair and Vice-Chair every two years. The Chair or Vice-Chair may serve until his or her successor is elected. The Chair or Vice-Chair may be removed by a unanimous vote of the other members. A vacant office will be filled by vote at the next Committee meeting.

(1) The Chair will preside over all Committee meetings. Except as provided in (3) below, the Chair will sign all documents on behalf of the Committee. The Vice-Chair will fill the role of the Chair when the Chair is absent.

(2) The Chair may create, and appoint members to, sub-committees. Sub-committee members are not required to vote or concur on their findings. Each may report alone to the Committee or Chair.

(3) Only the Chair may sign letters in the name of the Committee unless the Committee by vote authorizes a member or the Secretary to do so. All letters of the Committee will be prepared and filed by the Secretary. The Committee must approve in advance any letters.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.070

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0008

Committee Meetings

(1) The Committee will meet at the call of the Chair. Four or more members may also call a meeting. The Chair may run meetings informally. The Chair may require that Robert's Rules of Order be used to run all or part of any meeting.

(2) The agenda for each meeting will be prepared by the Secretary and the Chair. The agenda will set out all matters set to come before the Committee at the meeting. The Secretary will send the agenda and related material to members at least one week prior to a meeting. If the Chair or a majority of the members concur:

- (a) New matters may be added to the agenda;
- (b) Debate may be limited on any matter; or
- (c) The agenda may be revised.

(3) OAR 330-105-0007 through 330-105-0045 provide for the orderly conduct of Committee meetings. Failure to strictly comply with the requirements of OAR 330-105-0007 through 330-105-0045 will not invalidate any action taken by the Committee or keep it from taking action on a matter.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.070 - 470.080

Hist.: DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0015

Committee Review

(1) The Department will process each loan request and recommend approval or denial of the loan request and specify the amount, terms and conditions of the loan.

(2) The Department will send to the Committee members for review notice of its recommendations, together with a copy of the loan request and the staff review and findings, on the following:

- (a) Any loan requests, other than state agency loan requests, of more than \$100,000;
- (b) State agency loan requests of more than \$500,000;
- (c) Loan assumption requests of more than \$100,000 by non-government borrowers; and
- (d) Loan increase requests of more than \$25,000 and more than 10 percent of the original approved loan amount where the total loan amount exceeds the limits set above for Committee review.

(3) Failure of the Committee to respond to the Department within 14 days from the date of mailing of the Department's notice of its recommendations means concurrence with the Department's recommendations. Should a majority of Committee members, including the Chair, contact the Department and decline to hear the loan request before the 14 days have passed, the Department may proceed with its recommendation.

(4) The Secretary will inform the Committee members, in writing, of each loan amount or loan denial recommended to the Director.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0020

Oral Comments

(1) The Committee may choose whether to hear comment on any matter before it.

(2) The Department will inform applicants, in writing, of the date, time, and place of any Committee meeting set to hear their requests.

(3) The Committee may set time limits on comments.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0025

Committee's Advice to the Director

After its review, the Committee will inform the Director in writing:

(1) Whether the project complies with OAR 330-110; and

(2) The recommended amount and terms or conditions for the loan.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0030

Introduction

The Director will decide the amount of any loan. If the decision is adverse, the Committee may appeal to the Governor.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 - 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0035

Notice of Adverse Decision

The Secretary will give prompt notice of any adverse decision and the reasons for such decision. Notice will be sent to the applicant and Committee members.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.090

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0040

Appeal to the Committee

An applicant may ask the Committee to review an adverse decision. The request must be made in writing to the Secretary within 10 working days after the date of the notice of the Director's decision. It must give the grounds for review in detail. The Secretary will send the request promptly to the Committee.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

330-105-0045

Appeal to the Governor

(1) The Committee may decide by majority vote to appeal an adverse decision to the Governor. The appeal must be made within the time allowed by law. The appeal may include a copy of the application, the staff findings and recommendations, the notice of the Director's decision, and a statement of the reasons for the appeal. It may also include transcripts or recordings of comments made to the Committee during its review.

(2) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal is denied.

(3) The Secretary will inform the applicant and the Committee in writing of the Governor's decision.

Stat. Auth.: ORS 469 & 470

Stats. Implemented: ORS 470.100

Hist.: DOE 11-1980, f. & ef. 10-16-80; DOE 5-1982(Temp), f. & ef. 4-20-82; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0005

Purpose, Statutory Authorization, Policy

(1) The purpose of these rules is to provide procedures for the Small Scale Local Energy Project Loan Program and standards and criteria for projects to be met by applicants. The Loan Program implements chapter 672, Oregon Laws 1979. These rules are authorized by ORS 470.080, 470.140, 469.040, and ORS chapter 183.

ADMINISTRATIVE RULES

(2) It is the policy of the Department and the Committee that these rules and the loan program:

(a) Encourage diversity in projects;

(b) Give all the preference that is practical to individual and small business applicants;

(c) Avoid lending so much to one project type that another type must be denied; and

(d) Fund conservation projects without regard to energy source.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0010

Definitions

As used in ORS chapter 470 and in these rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Adequate security" means the pledge of real or personal property or a credit enhancement or other security of value authorized by ORS 470.170 to secure a loan against default.

(2)(a) "Alternative Fuel Project" means a fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, ethanol, gasohol with at least ten percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director; and

(B) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline.

(b) "Alternative Fuel Project" may include a facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

(3) "Applicant" means a loan program applicant or borrower.

(4) "Biomass" means plant and animal matter, but not fossil fuels.

(5) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source such as oil, natural gas, or biomass. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.

(6) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(7) "Conservation Measure" means a system, component of a system, mechanism or series of mechanisms, support service, or combination thereof that:

(a) Reduces the use of energy at the project site;

(b) Directly avoids the loss of energy in the transmission of energy;

(c) Conserves energy used in transportation with the energy savings being substantially in Oregon;

(d) Is a cogeneration project; or

(e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010(7), including but not limited to restarting a dormant project.

(8) "Conventional Fuels" means purchased electricity or fossil fuels.

(9) "Creditworthy" means an applicant has a satisfactory credit history and sufficient capacity to repay the loan.

(10) "Demonstration Project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace, including elements unrelated to energy production or conservation, but are practically inseparable from the project, and would not receive adequate financing unless these unrelated elements are also eligible for Department loan financing.

(11) "Department" means Department of Energy.

(12) "Director" means the Director of the Department of Energy or designee.

(13) "Eligible Federal Agency" means a federal agency or public corporation created by the Federal Government that proposes to use a loan for a small scale local energy project. "Eligible Federal Agency" does not include a federal agency or public corporation created by the federal government that proposes to use a loan for a small scale local energy project to generate electricity for sale.

(14) "Energy Need" means any of the energy demand forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.

(15) "Feasible" means that a project saves or produces reasonable amounts of energy compared to the project's cost and type. "Feasible" does not mean that a project must return its owner's money or make a profit.

(16) "Financial Statement" means any report of a person's or entity's financial operations or status including but not limited to balance sheets,

statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, and any accounting reports, reviews, audits, tax returns, or other financial information submitted as, or as a part of, a financial statement.

(17) "Fleet" means three or more vehicles used for commercial or governmental purposes within Oregon.

(18) "Individual" means a natural person whose project serves his or her dwelling, not his or her business.

(19) "Interim Loan" means a disbursement of a Program loan for the purpose of paying for pre-construction costs.

(20) "Loan Contract" means, in addition to the meaning set forth in ORS 470.050(9), the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(21) "Local Community or Region" means one or more energy users in Oregon.

(22) "Municipal Corporation" has the meaning assigned to that term by ORS 470.050.

(23) "Preference" means, in any choice between projects or applicants, preference under ORS 470.080 and these rules. It does not mean that any loan will be approved that does not conform to the law and these rules.

(24) "Program" means the Small Scale Local Energy Project Loan Program.

(25) "Qualified" means one is able and eligible under the law to apply for a loan and enter into a loan contract.

(26) "Recycling Project" means a facility or equipment that converts solid waste, as defined in ORS 459.005, into a new and usable product. Materials excluded from the definition of solid waste in ORS 459.005 that can be used for fertilizer or other productive purposes or are salvageable are not, for the purposes of this OAR 330-110-0005(26), excluded if such materials exist in excess of what the market can use for these other purposes.

(28) "Renewable Resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(29) "Responsible" means private and business history and circumstances indicating an applicant can be relied upon. For a business, it also means the owners of the business will, if asked, pledge to repay the loan.

(30) "Revolving Loan" means a loan made from funds moved to the loan fund from the sinking fund.

(31) "Security Value" means the value assigned by the Department to the project or other security.

(32) "Small Business" has the meaning given in ORS 470.050. The phrases "retail or service" and "industrial or manufacturing" as used therein include all types of businesses.

(33) "Small Scale Local Energy Project" or "Project" has the meaning given in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action, or substitute fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device otherwise described in this OAR 330-110-0005(30), including but not limited to restarting a dormant project. No improvement that is a hydroelectric project may exceed five megawatts of electric generating capacity.

(34) "Small Scale Local Energy Loan Program Technical Requirements" means the specific technical requirements of the Department for certain projects. A loan application will be subject to the technical requirements in effect on the date the Department receives the loan application.

(35) "Subsidiary" means a business that is owned by another, economically controlled by another, or owned in common with another.

(36) "Substitute Fuel" means organic matter that can be used directly or converted in order to replace Conventional Fuel.

(37) "Usable Life" of a project means the number of years that a project can likely function without major repair or replacement.

(38) "Waste Heat" means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. &

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cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0015

Eligible Costs

Subject to these rules, a loan may be approved to pay:

- (1) The costs of buying, building, and installing a project;
- (2) Costs of obtaining the loan;
- (3) Audit, study, commissioning, design, and license costs;
- (4) Reserves, starting funds, interest, staff training, and site costs; and
- (5) Grant matching funds and other costs or funds needed for the project.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0016

Ineligible Costs

(1) Loans funded from proceeds of private activity bonds may not pay costs incurred prior to loan approval unless the Department issues a letter authorizing use of loan funds for this purpose.

(2) A loan may not pay for parts of a project that are not consistent with energy production or conservation or that do not qualify as an alternative fuel project or recycling project, unless the project is found by the Director to be a demonstration project.

(3) A loan may not pay for any project or component of a project the cost of which is equaled or exceeded by the projected value of its energy costs savings in its first year. "Component" means a part of a project that ordinarily saves energy by itself and that costs more than ten percent of total, estimated project costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0020

Preferences

(1) Preference to the extent practical will be given to projects of individuals and small businesses with the least preference given to projects proposed by an eligible federal agency.

(2) To obtain diversity, preference will be given to practical kinds of projects which are seldom financed by the Department or which are not common.

(3) The Director may deny a loan because other sources of funding are adequate. The Director may limit the size or number of loans to anyone to carry out these rules.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 470.090

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0025

Application

(1) If asked, the Department may give advice on a loan before an application is filed. The Department may advise whether the project appears to comply with these rules, whether funds are likely to be available, and which costs may be eligible. The Department's advice, however, does not constitute a loan approval or any other binding commitment.

(2) Application must be made on forms and in a manner set by the Department.

(3) For the purpose of OAR 330-110-0025 and ORS 470.060, "application" includes any documents submitted by an applicant to comply with conditions to a loan commitment.

(4) The Department may request an applicant's social security number in accordance with provisions of the Privacy Act of 1974.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.080

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0030

Application Review Process

(1) The Department will review all applications. It may require an applicant to submit further documentation to find whether a loan should be made. If the Department fails to receive any items asked for within fourteen days after making its request to the applicant in writing, the loan request

may be denied. If the loan request is denied and the applicant still desires to make a loan request, the applicant will have to submit a new application and pay again any fees and charges applicable to loan applications.

(2) Application review and appeal must conform to ORS 470.080 to 470.100 and OAR 330-105.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 - 470.100

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0035

Findings by the Director

(1) To approve an application for a loan, the Director must make the following findings:

(a) The project is consistent with preservation and enhancement of the environment. Factors to evaluate may include whether the project saves conventional fuel, makes efficient use of a renewable resource, reduces greenhouse gas emissions or promotes sustainability. Applicants are expected to comply with all federal, state, and local environmental requirements

(b) The plan for the project assures its timely completion, quality, and adequate funding. "Funding" includes working capital and reserves.

(c) The loan will not preclude individuals and small businesses access to loan funds. Preclude does not mean a delay in funding waiting for good bond sale conditions.

(d) The project meets the goals of the Department.

(e) Any other finding required by ORS 470.090.

(2) The Director may deny a loan to any applicant that restricts membership, sales, or services on the basis of any of the protected classes listed in ORS 659A.003.

(3) Findings under OAR 330-110-0035 and ORS 470.090 are for the benefit of the Department for lending purposes only. They do not endorse the project, its design, or its parts. They offer no assurance of any kind to any other person or entity for any purpose.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0036

Public Health, Safety, and Environmental Issues

(1) The policy of the Department is:

(a) To accept the findings of local, state and federal agencies that license or permit projects to be built or run; and

(b) To avoid influencing any of those agencies to approve or deny a license or a permit.

(2) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project.

(b) Comply with the express terms and conditions of each permit and license; and

(c) Comply with all state laws and regulations that apply to the project.

(3) The Department may issue a loan commitment based on the applicant's representation or promise that each license and permit has been or will be obtained. If the applicant fails to obtain any required license or permit, the Department may revoke the loan or commitment.

(4) The licensing or permitting agency must confirm in writing if any license or permit named in these rules is not required. Such confirmation is not needed for conservation measures of a kind already so confirmed.

(5) Waterpower developers must comply with at least the following:

(a) A project on a navigable stream or connecting to a utility must obtain a license or exemption from the Federal Energy Regulatory Commission;

(b) A license or permit to use water for power must be obtained from the Water Resources Commission;

(c) A land use permit or variance must be obtained from the city or county where the project will be built; and

(d) The Northwest Power and Conservation Council's Columbia Basin Fish and Wildlife Program.

(6) Geothermal developers must comply with at least the following:

(a) A geothermal well permit must be obtained from the Department of Geology and Mineral Industries, or a permit to use ground water must be obtained from the Water Resources Commission; and

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(b) A land use permit or variance must be obtained from the city or county where the project will be built.

(7) Wind developers must obtain a land use permit or variance from the city or county where the project will be built.

(8) Biomass cogeneration developers must comply with at least the following:

(a) An air contaminant discharge permit, a waste discharge permit and a solid waste disposal permit must be obtained from the Department of Environmental Quality; and

(b) A land use permit or variance must be obtained from the city or county where the project will be built.

(9) An applicant that must obtain an energy facility site certificate under ORS 469.300 to 469.520 for a project is not eligible for a loan except if the project is exempted from the site certificate requirement by ORS 469.320(2) or other exemptions granted by the Energy Facility Siting Council.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.090 & 470.150

Hist.: DOE 1-1985, f. & ef. 1-2-85; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0040

Loan Limits, Security, and Conditions

(1) The Director may limit the term and amount of any loan or loan commitment. The Director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds.

(2) A loan secured by residential property must not exceed 80 percent of security value of such property if the Department has a first lien or 75 percent if the Department has a junior lien.

(3) A loan to a municipal corporation that will be repaid from project income may be secured by project income. The projected income, net of operating expenses and maintenance costs, must be at least 125% of debt service for each year of the loan. A loan to a municipal corporation for conservation measures, alternative fuel projects or recycling projects may be secured by the facility or equipment that make up the project. Total cost savings are expected to equal loan payments for municipal conservation projects.

(4) A loan to a state agency, an eligible federal agency or a public corporation may be secured by project income, by the facility or equipment that make up the project, by a lease purchase contract or by any other income or security deemed sufficient by the Director.

(5) The Director may include savings in operation and maintenance costs in estimating the annual Project cost savings. The Director may also, when calculating the estimated savings in fuel costs, include reasonably expected increases in the cost of fuel.

(6) A project that primarily produces energy for sale must have:

(a) Secure sources of supply and contracts for the sale of output;

(b) Projected income, net of operating expenses and maintenance costs, of at least 125% of debt service for each year of the loan; and

(c) A secure source of repayment apart from the project income when the project is not similar to one that has been proven successful.

(7) Unless the Director finds that financial factors warrant otherwise, a loan to a business for a project that saves or produces energy for use on site, is an alternative fuel project, or is a recycling project may be made only:

(a) Upon the pledge or delivery of adequate security;

(b) For less than 80 percent of the security value of real property on which the Department has a first lien or 75 percent if the Department has a junior lien;

(c) To a business that has made a profit after taxes for at least the two years immediately preceding the loan application; and

(d) To a business that has a ratio of current assets to current liabilities of at least 1.75 to 1 and a ratio of total debt to owner's equity of no more than 2 to 1.

The Director may exempt a business from the requirements of OAR 330-110-0040(7) if it demonstrates to the satisfaction of the Director that sound businesses of similar type and size do not normally meet these standards.

(8) Loan proceeds may be used for the following purposes and amounts:

(a) Cost of acquisition of the project site: Not to exceed ten percent of the project's budget;

(b) Capital for start-up: Not to exceed three percent of the project's budget;

(c) Reserves: Not to exceed fifteen percent of the loan amount;

(d) Pre-construction costs: Not to exceed five percent of the project's budget;

(e) Costs for starting construction: Not to exceed ten percent of the project's budget.

(9) Alternative fueling stations with underground fuel tanks do not qualify for funding as an Alternative Fuel project. The proceeds of an Alternative Fuel project loan may only be used for the following purposes:

(a) Incremental costs of the project that are the added costs beyond a reasonable minimum expected to construct or install a similar project without alternative fuel features. Incremental costs do not include equipment or devices that, in standard industry practice, are used to dispense gasoline or, in the case of vehicles, equipment or devices that use gasoline and that also allow use of an alternative fuel without modification.

(b) In the case of vehicles, products and installations approved by and meeting or exceeding the emission standards of the Department of Environmental Quality.

(10) No more than 50% of loan proceeds may be used to refinance existing debt authorized by ORS 470.050(16)(a)(F) unless such debt is with the Department. Security obtained through refinancing must add significant value to the loan security.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080, 470.120, 470.150-470.155, 470.170 & 470.210

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0042

Bond Refunding

(1)(a) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department. When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made under the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings, calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan.

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

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0045

Waiver, Authority of Administrator

The Director:

(1) May, in writing, waive any of these rules. The waiver must serve the aims of, and not conflict with, ORS chapter 470.

(2) May contract with regulated financial institutions, state or federal agencies or others to provide services, subsidies, or grants to the program.

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(3) May take such steps as are needed to recover loan funds and prevent their misuse, or to prevent a project from being diverted from its purposes.

(4) May delegate, in writing, authority to approve, deny, or amend loans and to execute bond and loan documents. A partial release of lien may be granted by the Director upon the written request of an applicant if the remaining security value is adequate to secure the loan and meet the security requirements of OAR 330-110-0040. The Director will consider the creditworthiness and repayment history of the applicant in considering such a request.

(5) May contract with a utility to operate a project in the event of any default that results in the Department taking and running the project.

(6) May settle, modify or release any loan debt so long as such action does not damage the loan program.

(7) May take any action allowed by law to comply with federal codes and rules on bonding or to assure the payment of program bonds.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080 & 470.150

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0050

Confidential Records

(1) Upon written request and within a reasonable time, the Director will provide non-exempt loan program records for inspection in accordance with the Oregon Public Records Law, ORS 192.410 to 192.505.

(2) The person asking to inspect the records may be charged in advance for the Department's cost to locate, compile, copy, and mail the records. Such costs include but are not limited to costs incurred in separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, and telefaxing materials. Such charges will be estimated or itemized for the person making the request before they are incurred.

(3) The following records are exempt from disclosure if the person providing these records so requests:

(a) Financial statements;

(b) Customer lists;

(c) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation that has been concluded, and nothing in this subsection may limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(d) Production, sales or cost data; and

(e) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.065

Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

330-110-0055

Fees and Charges

Pursuant to ORS 470.060, an applicant will pay the Department for costs to review, process, and service a request or loan. Applicants will pay the following charges:

(1) A non-refundable application fee as fixed by statute. "Application", as used here, includes requests to assume or transfer or increase existing loans but does not include interim loan requests made with a project loan request.

(2) A non-refundable underwriting fee of \$500 or one-half of one percent of the loan request amount, whichever is greater, but not to exceed \$5,000. All but \$500 of the underwriting fee may be applied toward the loan fee upon closing of the loan.

(3) A loan fee of one percent of the loan amount required at loan closing.

(4) Charges for credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(5) Charges for managing construction fund investments for an applicant are one-half of one percent of the earnings.

(6) A fee of \$500 for each request to release or modify security. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the applicant before they are incurred.

(7) Department costs in excess of any fees and charges will be collected through interest and any other charges specified in the loan contract executed by the applicant and the Department.

(8) The interest rate on a loan will be the rate in effect for the type or size of loan on the date of the note or other evidence of indebtedness. However, the interest rate set in a binding loan commitment may not be increased without the applicant's consent. The interest rate for any project proposed by an eligible federal agency must be set in accordance with ORS 470.150(2). Loan contracts may provide for rates to be adjusted upon issuance of the bonds whose proceeds fund the loans.

(9) The Department may offer a fee that combines the fees and charges in OAR 330-110-0055(1) through (3) and that is equal to or less than the sum of the fees and charges in OAR 330-110-0055(1) through (3). If offered, a combined fee will apply to any applicant receiving similar loan terms.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.060 & 470.150

Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04

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Rules Repealed: 340-071-0195, 340-071-0300, 340-071-0401, 340-071-0450

Rules Ren. & Amended: 340-071-0116 to 340-071-0135, 340-071-0117 to 340-071-0135, 340-071-0305 to 340-071-0290

Subject: Proposed changes to OAR chapter 340, divisions 071 and 073 will allow additional alternative treatment technologies (ATTs) to be used in Oregon, simplify permitting for onsite systems using alternative technologies, replace the use of Water Pollution Control Facilities (WPCF) with Construction-Installation permits for small onsite systems, allow third-parties to certify onsite system installers and maintenance providers, change annual licenses to multi-year licenses for system installers and pumpers, update technical requirements for onsite systems, incorporate fee changes to support program changes, and make the rules consistent with current practices and more readable. Specifically, the proposed amendments:

a. Streamline the permitting and approval process for alternative onsite systems [OAR 340-071-0345].

• Establish an approval process and standards for onsite systems using ATTs. Apply a fee for approval of other innovative technologies to the approval process for ATTs.

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- Repeal the existing standards for aerobic treatment units, which will be incorporated into the new proposed ATT standards.

- Allow, but not require, four types of alternative systems to be constructed under construction-installation permits instead of the more complex WPCF permits: recirculating gravel filters (RGFs), commercial sand filters (CSFs), ATTs, and holding tanks. Establish construction-installation permit and annual evaluation fees for these systems [OAR 340-071-0130].

b. Repeal the existing process for permitting experimental systems, which will be allowed as ATTs or through a revised innovative technology approval process [OAR 340-071-0135 or 0345].

c. Update fees [OAR 340-071-0140].

- Reduce the fee for renewing authorizations for hardship exceptions for temporary dwellings.

- Establish a new flat fee to replace the existing fee structure for major repair permits of commercial systems. The flat fee will be lower for some commercial systems and will remain the same for all other systems.

- Modify the fee categories for the annual compliance determination fee for onsite systems under WPCF permits. Fees will be lower for a few systems and the same for all others.

- Repeal a redundant site evaluation fee for variances in designated rural areas.

- Repeal fees for sewage lagoons, as sewage lagoons are no longer permitted under division 71.

d. Revise technical requirements for onsite systems to improve performance and make the requirements more workable [OAR 340-071-0110 to 0650 and 340-073-0025 to 0080].

e. Require the owner of real property served by an ATT to have the system evaluated before transferring the property [OAR 340-071-0131].

f. Clarify the process the Department uses to approve innovative technologies, materials, and designs for onsite systems [OAR 340-071-0135].

g. Lengthen from one to three years the term of the license required for persons who install and pump onsite systems. Increase the amount of the surety bond required for each license [OAR 340-071-0600].

h. Authorize the Department to implement a program to certify onsite system installers and maintenance providers through an agreement with another governmental entity (e.g., a community college). Require alternative systems maintenance providers to be certified and establish a deadline for certification [OAR 340-071-0650].

Rules Coordinator: Loretta Pickerell—(503) 229-5808

340-071-0100

Definitions

As used in OAR 340, divisions 071 and 073, unless otherwise specified:

(1) “Absorption Area” means the entire area used for underground dispersion of the liquid portion of sewage including the area designated for a future replacement system. It may consist of a seepage pit, absorption field, or combination of the two. It may also consist of a cesspool, seepage bed, bottomless sand filter, or evapotranspiration-absorption system.

(2) “Absorption Facility” means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities that are designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(3) “Absorption Field” means a system of absorption trenches, a seepage trench, or a system of seepage trenches.

(4) “Absorption Trench” means a ditch or a trench installed into soil, permeable saprolite, or diggable bedrock, with vertical sides and a substantially flat bottom.

(5) “Active Sand Dune” means wind-drifted ridges and intervening valleys, pockets, and swales of sand adjacent to the beach. The sand is grayish-brown with little or no horizon, color, or textural difference. Active dunes are either bare of vegetation or lack sufficient vegetation to prevent blowing of sand.

(6) “Aerobic Sewage Treatment Facility” means a sewage treatment plant that incorporates a means of introducing air and oxygen into the sewage to provide aerobic biochemical stabilization during a detention period. Aerobic sewage treatment facilities may include anaerobic processes as part of the treatment system.

(7) “Aerobic System” means an alternative system that incorporates a septic tank or other treatment facility, an aerobic sewage treatment facility, and an absorption facility to provide treatment before dispersal.

(8) “Agent” means the director or person authorized to act on behalf of the director, frequently referring to department or contract county staff performing onsite permitting activities.

(9) “Alteration” means expansion or change in location of an existing system or any part thereof. Major alteration is the expansion or change in location of the soil absorption facility or any part thereof. Minor alteration is the replacement or relocation of a septic tank or other components of the system other than the soil absorption facility.

(10) “Alternative System” means any onsite wastewater treatment system approved by the commission or department for use in lieu of the standard subsurface system.

(11) “Alternative Treatment Technologies” means an alternative system that incorporates aerobic and other treatment technologies or units not specifically described elsewhere in this division.

(12) “Approved Material” means construction items that have been approved for use by the department.

(13) “Approved Criteria” means methods of design or construction that have been approved for use by the department.

(14) “ASTM” means American Society of Testing Materials.

(15) “Authorization Notice” means a written document issued by an agent establishing that an existing onsite wastewater treatment system appears adequate for its intended use.

(16) “Authorized Representative” means a person with written authorization to act as another person’s delegate.

(17) “Automatic Siphon” means a hydraulic device designed to rapidly discharge the contents of a dosing tank between predetermined liquid levels.

(18) “Bedroom” means any room within a dwelling accepted as a bedroom by state or local building departments.

(19) “Biochemical Oxygen Demand (BOD)” means the quantity of oxygen used in the biochemical oxidation of organic matter. Unless specified otherwise, all references to BOD are for the five-day BOD (BOD5).

(20) “Black Waste” means human body wastes including feces, urine, other substances of body origin, and toilet paper.

(21) “Capping Fill System” means an alternative system that incorporates an absorption trench with an effective sidewall installed a minimum of 12 inches into the natural soil below a soil cap of specified depth and texture.

(22) “Carbonaceous Biochemical Oxygen Demand (CBOD5)” means BOD minus the nitrogenous oxygen demand, typically measured in mg/L. Unless specified otherwise, all references to CBOD are for the five-day CBOD.

(23) “Cesspool” means a lined pit that receives raw sewage, allows separation of solids and liquids, retains the solids, and allows liquids to seep into the surrounding soil through perforations in the lining.

(24) “Chemical Recirculating Toilet Facility” means a toilet facility wherein black wastes are deposited and carried from a bowl by a combination of liquid waste and water that has been chemically treated and filtered.

(25) “Chemical Toilet Facility” means a nonflushing, nonrecirculating toilet facility wherein black wastes are deposited directly into a chamber containing a solution of water and chemical.

(26) “Clayey Soil” means mineral soil with over 40 percent clay that shrinks and develops wide cracks when dry and swells and shears when wet, forming slickensides and wedge-shaped structure. Clayey soil is very hard or extremely hard when dry, very firm when moist, and very sticky and very plastic when wet.

(27) “Claypan” means a dense, compact clay layer in the subsoil. It has a much lower permeability than the overlying soil horizon from which it is separated by an abrupt boundary. Claypans are hard when dry and very sticky and very plastic when wet and impede movement of water, air, and growth of plant roots.

(28) “Combustion Toilet Facility” means a toilet facility wherein black wastes are deposited directly into a combination chamber for incineration.

(29) “Commercial Facility” means any structure or building or portion thereof other than a single-family dwelling.

(30) “Commission” means the Environmental Quality Commission.

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(31) "Community System" means an onsite system that serves more than one lot or parcel, more than one condominium unit, or more than one unit of a planned unit development.

(32) "Completed Application" means an application form that is completed in full; is signed by the owner or owner's authorized representative or, for WPCF permits, by the applicant or applicant's authorized representative; and is accompanied by all required exhibits and fees.

(33) "Conditions Associated With Saturation" means soil morphological properties that may indicate the presence of a water table that persists long enough to impair system function and create a potential health hazard. These conditions include depleted matrix chromas caused by saturation and not a relic or parent material feature, and the following:

(a) High chroma matrix with iron depletions. Soil horizons whose matrix chroma is 3 or more in which there are some visible iron depletions having a value 4 or more and a chroma of 2 or less. Iron-manganese concentrations as soft masses or pore linings may be present but are not diagnostic of conditions associated with saturation.

(b) Depleted matrix with iron concentrations. Soil horizons whose matrix color has a value of 4 or more and a chroma of 2 or less as a result of removal of iron and manganese oxides. Some visible zones of iron concentration are present as soft masses or pore linings.

(c) Depleted matrix without iron concentrations. Soil horizons whose color is more or less uniform with a value of 4 or more and a chroma of 2 or less as a result of removal of iron and manganese oxides. These horizons lack visible iron concentrations as soft masses or pore linings.

(d) Reduced matrix. Soil horizons whose color has a value of 4 or more and a chroma of 2 or less with hues that are often, but not exclusively, on the gley pages of the Munsell Color Book. Upon exposure to air, yellow colors form within 24 hours as some of the ferrous iron oxidizes.

(e) Dark colored soils with organic matter accumulation. Mineral soils with a high amount of decomposed organic matter in the saturated zone, a value of 3 or less, and a chroma of 1 or less. Included in this category are organic soils with a minor amount of mineral matter.

(f) Soils with a dark surface. The upper surface layer has a dark color with a value of 3 or less and a chroma of 1 or less immediately underlain by a layer with a chroma of 2 or less.

(g) Iron stripping and staining in sandy soils. Soil horizons in which iron/manganese oxides or organic matter or both have been stripped from the matrix, exposing the primary base color of soil materials. The stripped areas and trans-located oxides or organic matter form a diffuse splotchy pattern of two or more colors.

(h) Salt-affected soils. Soils in arid and semi-arid areas that have visible accumulations of soluble salts at or near the ground surface.

(i) Dark colored shrink-swell soils. Vertisols whose colors have values of 3 or less and chromas of 1 or less. Iron concentrations may be present but are not diagnostic of conditions associated with saturation.

(j) Other soils that lack the diagnostic value and chroma as described in this section but remain saturated long enough to impair system function and have a high water table in accordance with OAR 340-071-0130(23).

(34) "Confining Layer" means a layer associated with an aquifer that because of low permeability does not allow water to move through it perceptibly under head differences occurring in the groundwater system.

(35) "Construction" includes the installation of a new system or part thereof or the alteration, repair, or extension of an existing system. The grading, excavating, and earth-moving work connected with installation, alteration, or repair of a system or part thereof is considered system construction.

(36) "Contract County" means a local unit of government that has entered into an agreement with the department under OAR 340-071-0120 to perform duties of the department under this division.

(37) "Conventional Sand Filter" means a filter with 2 feet or more of sand filter media designed to chemically and biologically process septic tank or other treatment unit effluent from a pressure distribution system operated on an intermittent basis.

(38) "Curtain Drain" means a groundwater interceptor that is designed to divert groundwater from an absorption facility. The drain creates a "curtain" to block water from reaching the absorption facility.

(39) "Cut-manmade" means a land surface resulting from mechanical land shaping operations where the modified slope is greater than 50 percent and the depth of cut exceeds 30 inches.

(40) "Department" means the Department of Environmental Quality.

(41) "Design Capacity" means the maximum daily flow a system is designed to treat and disperse.

(42) "Design Criteria" means the criteria used in designing onsite wastewater treatment systems including but not limited to dimensions,

geometry, type of materials, size of drain media or filter media, absorption field sizing, depth, grade or slope, hydraulic loading rate, or any other factor relevant to the successful operation of the system. It does not include absorption area siting criteria.

(43) "Designer" means a person who plans onsite wastewater treatment and dispersal technology for an onsite system.

(44) "Director" means the Director of the Department of Environmental Quality.

(45) "Disposal Trench" means "absorption trench."

(46) "Distribution Box" means a watertight structure that receives septic tank or other treatment facility effluent and distributes it concurrently into 2 or more header pipes leading to the absorption area.

(47) "Distribution Pipe" means an open-jointed or perforated pipe used in the dispersion of septic tank or other treatment facility effluent into absorption trenches, seepage trenches, or seepage beds.

(48) "Distribution Unit" means a distribution box, dosing tank, diversion valve or box, header pipe, or other means of transmitting septic tank or other treatment unit effluent from the effluent sewer to the distribution pipes.

(49) "Diversion Valve" means a watertight structure that receives septic tank or other treatment facility effluent through one inlet and distributes it to 2 outlets, only one of which is used at a time.

(50) "Dosing Tank" means a watertight receptacle placed after a septic tank or other treatment facility equipped with an automatic siphon or pump.

(51) "Dosing Septic Tank" means a unitized device performing functions of both a septic tank and a dosing tank.

(52) "Drainfield" means a "absorption field."

(53) "Drain Media" means clean washed gravel or clean, crushed rock with a minimum size of 3/4 inch and a maximum size of 2-1/2 inches used in the distribution of effluent. The material must be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time, and will not be detrimental to the performance of the system. Drain media also includes any product or material approved by the department for distribution of effluent in an absorption field.

(54) "Dwelling" means any structure or building or portion thereof that is used, intended, or designed to be occupied for human living purposes including but not limited to houses, houseboats, boathouses, mobile homes, recreational cabins, travel trailers, hotels, motels, and apartments.

(55) "Effective Seepage Area" means the sidewall area within an absorption trench or a seepage trench from the bottom of the trench to a level 2 inches above the distribution pipes; the sidewall area of any cesspool, seepage pit, unsealed earth pit privy, gray water waste absorption sump seepage chamber, or trench with drain media substitute; or the bottom area of a pressurized soil absorption facility installed in soil.

(56) "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water and air and growth of plant roots. Layers that differ from overlying soil material enough to limit effective soil depth are hardpans, claypans, fragipans, compacted soil, bedrock, saprolite, and clayey soil.

(57) "Effluent Filter" means an effluent treatment device installed on the outlet of a septic tank or outside the septic tank in a separate enclosure and designed to prevent the passage of suspended matter larger than 1/8 inch in size.

(58) "Effluent Lift Pump" means a pump used to lift septic tank or other treatment facility effluent to a higher elevation.

(59) "Effluent Sewer" means that part of the system of drainage piping that conveys partially treated sewage from a septic tank or other treatment facility into a distribution unit or an absorption facility.

(60) "Emergency Repair" means immediate action to repair a failing system when sewage is backing up into a dwelling or building or to repair a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities but does include use of the septic tank as a temporary holding tank until new or additional absorption facilities can be permitted and constructed.

(61) "Equal Distribution" means the distribution of effluent to a set of absorption trenches in which each trench receives effluent in equivalent or proportional volumes.

(62) "Escarpment" means any naturally occurring slope greater than 50 percent that extends vertically 6 feet or more from toe to top, is characterized by a long cliff or steep slope that separates two or more comparatively level or gently sloping surfaces, and may intercept one or more layers that limit effective soil depth.

(63) "Evapotranspiration-Absorption (ETA) System" means an alternative system consisting of a septic tank or other treatment facility, effluent

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sewer, and seepage bed or absorption trenches and designed to distribute effluent for evaporation, transpiration by plants, and absorption into the underlying soil.

(64) "Existing Onsite Wastewater Treatment System" means any installed onsite wastewater treatment system constructed in conformance with the rules, laws, and local ordinances in effect at the time of construction.

(65) "Existing System" means "existing onsite wastewater treatment system."

(66) "Failing System" means any system that discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters or that creates a public health hazard.

(67) "Family Member" means any one of two or more persons related by blood or by law.

(68) "Fecal Coliform" means bacteria common to the digestive systems of warm-blooded animals and cultured in standard tests. The term is typically used to indicate fecal pollution and the possible presence of enteric pathogens and is measured as colonies/100ml.

(69) "Filter Fabric" means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt, and clay into drain media.

(70) "Five-Day Biochemical Oxygen Demand (BOD5)" means the quantity of oxygen used in the biochemical oxidation of organic matter in five days at 20 degrees centigrade under specified conditions and reported as milligrams per liter (mg/L).

(71) "Five-Day Carbonaceous Biochemical Oxygen Demand" means BOD5, minus the nitrogenous demand, typically measured in mg/L.

(72) "Fragipan" means a loamy subsurface horizon with high bulk density relative to the horizon above, seemingly cemented when dry, and weakly to moderately brittle when moist. Fragipans are mottled and low in organic matter, and they impede movement of water and air and growth of plant roots.

(73) "Governmental Unit" means the state or any county, municipality, or political subdivision or any agency thereof.

(74) "Grade" means the rate of fall or drop in inches per foot or the percentage of fall of a pipe.

(75) "Gray Water" means household sewage other than "black wastes," such as bath water, kitchen waste water, and laundry wastes.

(76) "Gray Water Waste Sump" means a receptacle or series of receptacles designed to receive hand-carried gray water for dispersal into the soil.

(77) "Grease and Oils" means a component of sewage typically originating from food stuffs, consisting of compounds of alcohol or glycerol with fatty acids.

(78) "Groundwater Interceptor" means any natural or artificial groundwater or surface water drainage system, including drain tile, curtain drain, foundation drain, cut banks, and ditches, that intercept and divert groundwater or surface water from the area of the absorption facility.

(79) "Hardpan" means a hardened layer in soil caused by cementation of soil particles with silica, calcium carbonate, magnesium carbonate, iron, or organic matter. The hardness does not change appreciably with changes in moisture content. Hardpans impede movement of water and air and growth of plant roots.

(80) "Header Pipe" means a tight-jointed part of the sewage drainage conduit that receives septic tank effluent from the distribution box, drop box, or effluent sewer and conveys it to the absorption area.

(81) "Headwall" means a steep slope at the head or upper end of a land slump block or unstable landform.

(82) "Holding Tank" means a watertight receptacle designed to receive and store sewage to facilitate treatment at another location.

(83) "Holding Tank System" means an alternative system consisting the combination of a holding tank, service riser, and level indicator (alarm), designed to receive and store sewage for intermittent removal for treatment at another location.

(84) "Hydrosplitter" or "hydrasplitter" means a hydraulic device to proportion flow under pressure by the use of one or more orifices.

(85) "Incinerator Toilet Facility" means "combustion toilet facility."

(86) "Individual System" means a system that is not a community system.

(87) "Individual Water Supply" means a source of water and a distribution system that provides water for drinking, culinary, or household uses and is not a public water supply system.

(88) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste or a combination thereof resulting from any process of industry,

manufacturing, trade, or business or from the development or recovery of any natural resources.

(89) "Intermittent Sand Filter" means a conventional sand filter.

(90) "Intermittent Stream" means any public surface water or groundwater interceptor that continuously flows water for a period greater than two months in any one year but not continuously for that year.

(91) "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

(92) "Large System" means any onsite system with a projected daily sewage flow greater than 2,500 gallons.

(93) "Lateral Pipe" means "distribution pipe."

(94) "Maintenance" means taking the actions necessary to keep onsite system components properly functioning as designed. Maintenance includes but is not limited to pump repair, replacement of screen or filter, and other component cleaning and replacement.

(95) "Maintenance provider" means a person who performs maintenance of onsite systems and:

(a) Possesses adequate skills and knowledge regarding onsite wastewater treatment, absorption facilities, and system functions to competently inspect and maintain onsite systems, and

(b) Is certified in compliance with OAR 340-071-0650 or owns the system being serviced and has received training from the manufacturer on proper maintenance for that system.

(96) "Mechanical Sewage Treatment Facility" or "Mechanical Oxidation Sewage Treatment Facility" means an aerobic sewage treatment facility.

(97) "Nonwater-Carried Waste Facility" means any toilet facility that has no direct water connection, including but not limited to pit privies, vault privies, and portable toilets.

(98) "Occupant" means any person living or sleeping in a dwelling.

(99) "Onsite Sewage Disposal System" means "onsite wastewater treatment system."

(100) "Onsite Wastewater Treatment System" means any existing or proposed subsurface onsite wastewater treatment and dispersal system including but not limited to a standard subsurface, alternative, experimental, or nonwater-carried sewage system. It does not include systems that are designed to treat and dispose of industrial waste as defined in OAR chapter 340, division 045.

(101) "Operating Permit" means a WPCF permit issued pursuant to these rules.

(102) "Owner" means any person who alone, jointly, or severally:

(a) Has legal title to any single lot, dwelling, dwelling unit, or commercial facility;

(b) Has care, charge, or control of any real property as agent, executor, administrator, trustee, commercial lessee, or guardian of the estate of the holder of legal title; or

(c) Is the contract purchaser of real property.

(103) "Peer Review" means a review by at least three members of a scientific community recognized as experts in the field of study and well-rehearsed with scientific principles and experimentation.

(104) "Permanent Groundwater Table" means the upper surface of a saturated zone that exists year-round. The thickness of the saturated zone and resulting elevation of the permanent groundwater table may fluctuate as much as 20 feet or more annually, but the saturated zone and associated permanent groundwater table is present at some depth beneath land surface throughout the year.

(105) "Permit" means the written document, issued and signed by an agent, that authorizes a permittee to install a system or any part thereof and, in some cases, to operate and maintain the system in accordance with the permit.

(106) "Permit Action" means the issuance, modification, renewal, reinstatement, or revocation of a permit by an agent.

(107) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(108) "Pollution" or "Water Pollution" means any alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or any discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that, alone or in connection with any other substance, threatens to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural, recreational or other legiti-

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mate beneficial uses or to livestock, wildlife, fish, or other aquatic life or the habitat thereof.

(109) "Portable Toilet" means any self-contained chemical toilet facility that is housed within a portable toilet shelter and includes but is not limited to construction-type chemical toilets.

(110) "Portable Toilet Shelter" means any readily relocatable structure built to house a toilet facility.

(111) "Pressure Distribution Lateral" means piping and fittings in pressure distribution systems that distribute septic tank or other treatment unit effluent to drain media through small diameter orifices.

(112) "Pressure Distribution Manifold" means piping and fittings in a pressure distribution system that supply effluent from pressure transport piping to pressure distribution laterals.

(113) "Pressure Distribution System" means any system designed to uniformly distribute septic tank or other treatment unit effluent under pressure in an absorption facility or treatment unit.

(114) "Pressure Transport Piping" means piping that conveys sewage effluent from a septic tank or other treatment or distribution unit by means of a pump or siphon.

(115) "Pretreatment" means the wastewater treatment that takes place prior to discharging to any component of an onsite wastewater treatment system, including but not limited to pH adjustment, oil and grease removal, BOD5 and TSS reduction, screening, and detoxification.

(116) "Prior Approval" means a written approval for an onsite wastewater treatment system for a specific lot issued before January 1, 1974.

(117) "Prior Construction Permit" means a subsurface wastewater treatment system construction-installation permit issued before January 1, 1974, by a county that had an ordinance requiring construction-installation permits for subsurface wastewater treatment systems.

(118) "Privy" means a structure used for disposal of human waste without the aid of water. It consists of a shelter built above a pit or vault in the ground into which human waste falls.

(119) "Projected Daily Sewage Flow" or "design flow" means the peak daily quantity of sewage production from a facility for which a system is sized and designed. The projected daily sewage flow allows for a safety margin and reserve capacity for the system during periods of heavy use.

(120) "Public Health Hazard" means the presence of sufficient types or amounts of biological, chemical, physical, or radiological agents relating to water or sewage that cause or threaten to cause human illness, disorders, or disability. These include but are not limited to pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

(121) "Public Waters" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except private waters that do not combine or effect a junction with natural surface or underground waters), that are wholly or partially within or bordering the state or within its jurisdiction.

(122) "Recirculating Gravel Filter (RGF)" means a gravel filter wastewater treatment system in which a portion of the filtered effluent is mixed with septic tank effluent in a recirculation/dilution tank and redistributed to the filter.

(123) "Recirculating Gravel Filter System" means a recirculating gravel filter and an absorption facility used to treat wastewater.

(124) "Redundant Absorption Field System" means a system in which two complete absorption fields are installed, the absorption trenches of each system alternate with each other, and only one system operates at a given time.

(125) "Repair" means installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system. Major repair is the replacement of a sand filter, RGF, ATT, or soil absorption system. Minor repair is the replacement of a septic tank, broken pipe, distribution unit, or any part of the onsite system external to the septic tank, sand filter, RGF, or ATT except the soil absorption system. Unless classified as a major repair, any replacement of a part of a system with a part that does not meet the original design specifications is a minor repair.

(126) "Residential Strength Wastewater" means septic tank effluent that does not typically exceed five-day biochemical oxygen demand (BOD5) of 300 mg/L; total suspended solids (TSS) of 150 mg/L; total Kjeldahl nitrogen (TKN) of 150 mg/L; oil & grease of 25 mg/L; or concentrations or quantities of other contaminants normally found in residential sewage.

(127) "Sand Filter Media" means a medium sand or other approved material used in a conventional sand filter. The media must be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time, and will not be detrimental to the performance of the system. The particle size distribution of the media must be determined through a sieve analysis conducted in accordance with ASTM C-117 and ASTM C-136. The media must comply with the following particle size distribution: 100 percent passing the 3/8 inch sieve, 95 percent to 100 percent passing the No. 4 sieve, 80 percent to 100 percent passing the No. 8 sieve, 45 percent to 85 percent passing the No. 16 sieve, 15 percent to 60 percent passing the No. 30 sieve, 3 percent to 15 percent passing the No. 50 sieve, and 4 percent or less passing the No. 100 sieve.

(128) "Sand Filter Surface Area" means the area of the level plane section in the medium sand horizon of a conventional sand filter located 2 feet below the bottom of the drain media containing the pressurized distribution piping.

(129) "Sand Filter System" means an alternative system that combines a septic tank or other treatment unit; a dosing system with effluent pump and controls or dosing siphon, piping and fittings; a sand filter; and an absorption facility to treat wastewater.

(130) "Sanitary Drainage System" means that part of a system's drainage piping that conveys untreated sewage from a building or structure to a septic tank or other treatment facility, to a service lateral at a curb or in a street or alley, or to another disposal terminal holding human or domestic sewage. The sanitary drainage system consists of a building drain or building drain and building sewer.

(131) "Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands or cut with a knife. It has rock structure instead of soil structure and does not include hard bedrock or hard fractured bedrock.

(132) "Saturated Zone" means a three-dimensional layer, lens, or other section of the subsurface in which all open spaces including joints, fractures, interstitial voids, and pores are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge or discharge.

(133) "Scum" means a mass of sewage solids floating at the surface of sewage that is buoyed up by entrained gas, grease, or other substances.

(134) "Seepage Area" means "effective seepage area."

(135) "Seepage Bed" means an absorption system having absorption trenches wider than 3 feet.

(136) "Seepage Pit" means a cesspool that has a treatment facility such as a septic tank ahead of it.

(137) "Seepage Trench System" means a system with absorption trenches with more than 6 inches of drain media below the distribution pipe.

(138) "Self-Contained Nonwater-Carried Waste Containment Facility" means a system in which all waste is contained in a watertight receptacle, including but not limited to vault privies, chemical toilets, combustion toilets, recirculating toilets, and portable toilets.

(139) "Septage" means the domestic liquid and solid sewage pumped from septic tanks, cesspools, holding tanks, vault toilets, chemical toilets or other similar domestic sewage treatment components or systems and other sewage sludge not derived at sewage treatment plants.

(140) "Septic Tank" means a watertight receptacle that receives sewage from a sanitary drainage system and is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption facility.

(141) "Septic Tank Effluent" means partially treated sewage that is discharged from a septic tank.

(142) "Serial Distribution" means the distribution of effluent to a set of absorption trenches constructed at different elevations in which one trench at a time receives effluent in consecutive order beginning with the uppermost trench by means of a drop box, a serial overflow, or another approved distribution unit. The effluent in an individual trench must reach a level of 2 inches above the distribution pipe before effluent is distributed to the next lower trench.

(143) "Sewage" means water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with any groundwater infiltration, surface waters, or industrial waste that may be present.

(144) "Sewage Disposal Service" means:

(a) The construction of onsite wastewater treatment systems (including the placement of portable toilets) or any part thereof;

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(b) The pumping out or cleaning of onsite wastewater treatment systems (including portable toilets) or any part thereof;

(c) The disposal of material derived from the pumping out or cleaning of onsite wastewater treatment systems (including portable toilets); or

(d) Grading, excavating, and earth-moving work connected with the operations described in subsection (a) of this section.

(145) "Sewage Stabilization Pond" means a pond designed to receive the raw sewage flow from a dwelling or other building and retain that flow for treatment without discharge.

(146) "Site Evaluation Report" means a report on the evaluation of a site to determine its suitability for an onsite system prepared in accordance with OAR 340-071-0150.

(147) "Slope" means the rate of fall or drop in feet per 100 feet of the ground surface. It is expressed as percent of grade.

(148) "Soil Permeability" refers to the ability of a soil to transmit water or air.

(149) "Soil Separate" means the size of soil particles described in Table 7.

(150) "Soil Texture" means the amount of each soil separate in a soil mixture. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are defined as follows and shown in Table 6.

(A) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released but will crumble when touched.

(B) Loamy Sand: Consists primarily of sand, but has enough silt and clay to make it somewhat cohesive. The individual sand grains can readily be seen and felt. Squeezed when dry, the soil will form a cast that will readily fall apart, but if squeezed when moist, a cast can be formed that will withstand careful handling without breaking.

(C) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(D) Loam: Consists of an even mixture of the different sizes of sand and of silt and clay. It is easily crumbled when dry and has a slightly gritty, yet fairly smooth feel. It is slightly plastic. Squeezed in the hand when dry, it will form a cast that will withstand careful handling. The cast formed of moist soil can be handled freely without breaking.

(E) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is passing between thumb and finger, it will not press out into a smooth, unbroken ribbon but will have a broken appearance.

(F) Clay Loam: Consists of an even mixture of sand, silt, and clay that breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling.

(G) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or 1/8-inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement.

(H) Silty Clay: Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or lumps when dry. When moist, a thin ribbon or 1/8 inch or smaller wire formed between thumb and finger will withstand considerable movement and deformation.

(I) Clay: Consists of large amounts of clay and moderate to small amounts of sand and silt. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or 1/16-inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

(b) Soil textural characteristics described in the United States Department of Agriculture Textural Classification Chart are incorporated herein by reference. This textural classification chart is based on the

Standard Pipette Analysis as defined in the United States Department of Agriculture, **Soil Conservation Service Soil Survey Investigations Report No. 1 (See Table 6).**

(151) "Soil With Rapid or Very Rapid Permeability" means:

(a) Soil that contains 35 percent or more of coarse fragments 2 millimeters in diameter or larger by volume with interstitial soil of sandy loam texture or coarser;

(b) Coarse textured soil defined as loamy sand or sand in this rule; or

(c) Stones, cobbles, gravel, and rock fragments with too little soil material to fill interstices larger than 1 millimeter in diameter.

(152) "Split Waste Method" means a process where black waste sewage and gray water from the same dwelling or building are managed by separate systems.

(153) "Stabilized Dune" means a sand dune that is similar to an active dune except that vegetative growth is dense enough to prevent blowing of sand. The surface horizon is either covered by a mat of decomposed and partially decomposed leaves, needles, roots, twigs, moss, or other vegetative material or contains roots to a depth of at least 6 inches and has a color value of 3 or less.

(154) "Standard Subsurface System" means an onsite wastewater treatment system consisting of a septic tank, distribution unit, and absorption facility constructed in accordance with OAR 340-071-0220.

(155) "Steep Slope System" means a seepage trench system installed on slopes greater than 30 percent and less than or equal to 45 percent.

(156) "Subsurface Absorption System" means the combination of a septic tank or other treatment unit and an effluent sewer and absorption facility.

(157) "Subsurface Sewage Disposal" means "subsurface wastewater treatment."

(158) "Subsurface Disposal System" means "subsurface absorption system."

(159) "Subsurface Wastewater Treatment" means the dispersal of wastewater from a septic tank or other treatment unit into the zone of aeration to be further treated through physical, chemical, or biological processes.

(160) "System" or "onsite system" means "onsite wastewater treatment system."

(161) "Temporary Groundwater Table" means the upper surface of a saturated zone that exists only on a seasonal or periodic basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate, but a temporary groundwater table and associated saturated zone will dry up for a period of time each year.

(162) "Test Pit" means an open pit dug to sufficient size and depth to permit thorough examination of the soil to evaluate its suitability for subsurface wastewater treatment.

(163) "Third-Party" means a consulting firm, research institute, academic institute, or other similar entity with no vested interest in the outcome of test results of a material, design, or technology under evaluation.

(164) "Tile Dewatering System" means an alternative system in which the absorption facility is encompassed with field collection drainage tile to reduce and control a groundwater table and create a zone of aeration below the bottom of the absorption facility.

(165) "Toilet Facility" means a fixture housed within a toilet room or shelter to receive black waste.

(166) "Total Kjeldahl Nitrogen (TKN)" means the combination of ammonia and organic nitrogen, excluding nitrate and nitrite nitrogen.

(167) "Total Nitrogen" (TN) means the sum of all nitrogen forms.

(168) "Total Suspended Solids" (TSS) means solids in wastewater that can be removed readily by standard filtering procedures in a laboratory and reported as milligrams per liter (mg/L).

(169) "Treatment" means the alteration of the quality of wastewaters by physical, chemical, or biological means or combination thereof to reduce potential degradation of water quality or the environment and risk to public health.

(170) "Treatment Standard 1" means a 30-day average of less than 20 mg/L of biochemical oxygen demand (BOD) (5 day BOD5) and 20 mg/L of total suspended solids (TSS).

(171) "Treatment Standard 2" means a 30-day average of less than 20 mg/L of biochemical oxygen demand (BOD) (5 day BOD5) and 20 mg/L of total suspended solids (TSS), a 30-day geometric mean of less than 400 fecal coliform per 100 milliliters, and a 30-day average of 30 mg/L of Total Nitrogen (TN).

(172) "Turbidity" means the optical condition of waters caused by suspended or dissolved particles or colloids that scatter and absorb light rays

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instead of transmitting light in straight lines through the water column. Turbidity may be expressed as nephelometric turbidity units (NTU) measured with a calibrated turbidimeter.

(173) "Underdrain Media" means the material placed under the sand filter media in a sand filter and consists of clean, washed pea gravel with 100 percent passing the 1/2 inch sieve, 18 to 100 percent passing the 1/4 inch sieve, 5 to 75 percent passing the No. 4 sieve, 24 percent or less passing the No. 10 sieve, 2 percent or less passing the No. 16 sieve, and 1 percent or less passing the No. 100 sieve.

(174) "Unstable Landforms" means areas showing evidence of mass downslope movement such as debris flow, landslides, rockfall, and hummock hill slopes with undrained depressions upslope. Examples are landforms exhibiting slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, and telephone poles that appear tilted; and tree trunks that bend uniformly as they enter the ground. Active sand dunes are unstable landforms.

(175) "Vertisols" means a mineral soil characterized by a high content of swelling-type clays that in dry seasons cause the soils to develop deep, wide cracks.

(176) "WPCF Permit" means a Water Pollution Control Facilities permit that has been issued under OAR chapter 340, divisions 045 or 071.

(177) "Wastewater" means "sewage."

(178) "Zone of Aeration" means the unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists.

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

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.605 & 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0110

Purpose

These rules establish requirements for the construction, alteration, repair, operation, and maintenance of onsite wastewater treatment systems. Their purpose is to restore and maintain the quality of public waters and to protect the public health and general welfare of the people of the State of Oregon.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.605 - ORS 454.780

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0115

Technical Review Committee

(1) The Director may form a Technical Review Committee (TRC) to advise and assist the department in:

(a) Implementing the onsite wastewater management program, including development of program improvements and rules; and

(b) Evaluating the use of new or innovative technologies, materials, or designs that maintain or advance protection of the quality of public waters and public health and general welfare in Oregon. The TRC may use performance standards and criteria as appropriate to evaluate the efficiency and safety of new technologies, materials, or designs.

(2) Committee composition and term. The TRC may consist of up to 9 persons appointed for 3-year, staggered terms by and serving at the pleasure of the Director. The TRC may include onsite wastewater treatment experts from local government, the department, equipment manufacturers, consultants, installers and pumpers and other persons with technical or scientific knowledge applicable to the onsite program.

(3) Chair. The Director will approve the chair of the TRC for a term determined by the Director.

(4) Meeting frequency. The department may convene the TRC as necessary and reimburse members for reasonable expenses in accordance with department policy.

(5) Staffing. The department will provide the necessary technical, engineering, and clerical staff and services for the TRC to fulfill its responsibilities in a timely, professional, informed, and responsible manner.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.775

Hist.: DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0120

Jurisdiction and Policy

(1) The department may enter agreements with local governmental units authorizing those units to become the department's agents for permitting onsite systems, including receiving and processing applications, issuing permits, enforcing, and performing required inspections for onsite systems that do not require WPCF permits. The department retains those responsibilities for systems in nonagreement counties and for all systems that require WPCF permits.

(2) Each owner of real property is jointly and severally responsible for:

(a) Treating wastewater generated on that property in conformance with the rules adopted by the commission;

(b) Connecting all plumbing fixtures from which wastewater is or may be discharged to a sewerage facility or onsite system approved by the department or an agent;

(c) Maintaining, repairing, and replacing the onsite system on that property as necessary to ensure proper operation of the system; and

(d) Complying with all requirements for construction, installation, maintenance, replacement, and repair of onsite systems required in this division and OAR chapter 340, division 073.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.665, 454.725 & 454.755

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0130

General Standards, Prohibitions and Requirements

(1) Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary.

(2) Approved treatment and dispersal required. All wastewater must be treated and dispersed in a manner approved in accordance with these rules.

(3) Prohibited discharges of wastewater. A person may not discharge untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into public waters. Such discharge constitutes a public health hazard and is prohibited.

(4) Prohibited discharges to systems. A person may not discharge into any system cooling water, air conditioning water, water softener brine, groundwater, oil, hazardous materials, roof drainage, or other aqueous or nonaqueous substances that are detrimental to the performance of the system or to groundwater.

(5) Increased flows prohibited. Except where specifically allowed by this division, a person may not connect a dwelling or commercial facility to a system if the total projected sewage flow would be greater than that allowed under the original system construction-installation permit.

(6) System capacity. Each system must have adequate capacity to properly treat and disperse the maximum projected daily sewage flow. The projected quantity of sewage flow must be determined from **Table 2** or other information the agent determines to be valid.

(7) Material standards. All materials used in onsite systems must comply with standards in this division and OAR chapter 340, division 073.

(8) Encumbrances. Before a permit to install a new system may be issued, the site for the new system must be approved pursuant to OAR 340-071-0150 and be free of encumbrances (such as easements or deed restrictions) that could prevent the installation or operation of the system from conforming with the rules of this division.

(9) Plumbing fixtures connected. All plumbing fixtures in dwellings, commercial facilities, and other structures from which sewage is or may be discharged must be connected to and discharge into an approved area-wide sewerage system or an approved onsite system that is not failing.

(10) Future connection to sewerage system. Placement of plumbing in buildings to facilitate connection to a sewerage system is encouraged in areas where a district has been formed to provide sewerage facilities.

(11) Property lines crossed: All or part of an onsite system, including areas for future repair or replacement, may be located on one or more lots or parcels different from the lot or parcel on which the facility the system serves is located. The lots and parcels may be under the same or different ownership.

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(a) For each lot or parcel different from and under different ownership than the lot or parcel served, the owner of the lot or parcel served must ensure that a utility easement and covenant against conflicting uses is executed and recorded in such owner's favor, on a form approved by the agent, in the county land title records. The easements and covenants must accommodate the parts of the system, including a 10-foot setback surrounding the areas for future repair or replacement, that lie beyond the property line of the facility served and must allow entry by the grantee, successor, or assigns to install, maintain, and repair the system.

(b) For each lot or parcel different from but under the same ownership as the lot or parcel served, the owner of the property must execute and record in the county land title records, on a form approved by the department, an easement and a covenant in favor of the State of Oregon:

(A) Allowing the state's officers, agents, employees, and representatives to enter and inspect, including by excavation, that portion of the system, including setbacks, on the servient lot or parcel;

(B) Agreeing not to put that portion of the servient lot or parcel to a conflicting use; and

(C) Agreeing, upon severance of the lots or parcels, to grant or reserve and record a utility easement and covenant against conflicting uses, in a form approved by the department, in favor of the owner of the lot or parcel served by the system in accordance with subsection (a) of this section.

(12) Initial and replacement absorption area. Except as provided in specific rules, the absorption area, including installed system and replacement area, must not be subject to activity that is likely, in the opinion of the agent, to adversely affect the soil or the functioning of the system. This may include but is not limited to vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification.

(13) Operation and maintenance. Owners of onsite systems must operate and maintain their systems in compliance with all permit conditions and applicable requirements in this division and must not create a public health hazard or pollute public waters. Operation and maintenance requirements for systems under WPCF permits are established by the WPCF permits required in this division.

(14) Construction. An agent may limit the time period during which a system can be constructed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.

(15) Permit requirements.

(a) A person may not cause or allow construction, alteration, or repair of a system or any part thereof without a WPCF permit issued under OAR 340-071-0162 or a construction-installation, alteration, or repair permit under OAR 340-071-0160, 340-071-0210, and 340-071-0215 except for emergency repairs authorized under OAR 340-071-0215(1) and (2).

(b) The following systems must be constructed and operated under a renewable WPCF permit issued pursuant to OAR 340-071-0162.

(A) Any system or combination of systems located on the same property or serving the same facility and having a total sewage flow design capacity greater than 2,500 gpd. Flows from single family residences or equivalent flows on separate systems incidental to the purpose of the large system or combination of systems (e.g., caretaker residence for a mobile home park) need not be included.

(B) A system of any size, if the septic tank effluent produced is greater than residential strength wastewater.

(C) Other systems that are not described in this division and do not discharge to surface public waters or the ground surface.

(16) WPCF permits for existing facilities.

(a) The owner of an existing system required to have a WPCF permit under subsection (15)(b) of this rule is not required to obtain a WPCF permit until a system major repair or major alteration of a system, or facility expansion, is necessary.

(b) The permittee of an existing aerobic treatment unit, recirculating gravel filter, commercial sand filter, or alternative treatment technology system constructed or operating under a WPCF permit that is no longer required under section (15) of this rule may request the department to terminate the permit.

(A) The permittee must submit, on a form approved by the department:

(i) A copy of the service contract required in OAR 340-071-0290, 340-071-0302, or 340-071-0345; and

(ii) A written statement from a maintenance provider certifying that the system is not failing.

(B) The department will send a letter to the permittee to terminate a WPCF permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system.

(c) The department may terminate WPCF permits for existing holding tanks for which permits are no longer required under section (15) of this rule. The department will send a letter to the permittee to terminate the permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system.

(17) Annual permit fees and reports.

(a) Commercial sand filter, recirculating gravel filter, and alternative treatment technology systems not under WPCF permits. Owners of commercial sand filter, recirculating gravel filter, and alternative treatment technology systems not under WPCF permits must submit annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in OAR 340-071-0140(3)(k)(B) by the date specified by the department for each year the system is in operation. A system is placed in operation when it first receives wastewater and remains in operation until the department receives notice the system has been decommissioned.

(B) Owners must submit written certification prepared by a maintenance provider on a department-approved form that:

(i) The system has been maintained in accordance with the requirements of the rules in this division during the reporting year and is operating in accordance with the agent-approved design specifications, or

(ii) The owner has applied for a repair permit under OAR 340-071-0215.

(C) Owners are not required to submit fees or reports under this subsection that a maintenance provider has submitted on behalf of the owner in accordance with OAR 340-071-0290(7)(b), 340-071-0302(6)(c)(E), or 340-071-0345(14)(c)(E).

(b) Owners of holding tanks not under WPCF permits. Owners of holding tanks not under WPCF permits must pay annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in 340-071-0140(3)(k)(A) by the date specified by the department for each calendar year the tank is in operation.

(B) Owners must submit written certification on a department-approved form that the holding tank has been regularly inspected and pumped during the reporting year and that the year's service log for the holding tank is available for inspection by the agent.

(c) Fees for systems under WPCF permits. Permittees of onsite systems under WPCF permits must pay the annual compliance determination fee in OAR 340-071-0140(4)(e) by the date specified by the department for each year the system is in operation.

(18) Engineering plan review. Unless specifically exempted in this division, all plans and specifications for the construction, installation, or modification of onsite systems must be submitted to the agent for approval or denial. The design criteria and rules governing the plan review are as follows:

(a) The agent must review all plans and specifications for WPCF permits in accordance with OAR chapter 340, division 052.

(b) Plans and specifications for construction-installation permits for commercial sand filter, recirculating gravel filter, and advanced treatment technology systems with design capacities greater than 600 gpd must be signed by a person registered in accordance with ORS 672 or 700.

(19) Criteria and standards for design and construction. The criteria and standards for design and construction in this division and OAR chapter 340, division 073 apply to all onsite systems.

(a) For onsite systems subject to WPCF onsite permits, the department may allow variations of the criteria, standards, and technologies in this division and OAR chapter 340, division 073 based on adequate documentation of successful operation of the proposed technology or design. The system designer must demonstrate the performance of new processes, treatment systems, and technologies in accordance with OAR chapter 340, division 052.

(b) For systems not requiring WPCF permits, the department may authorize variances from the criteria, standards, and technologies in this division through the variance processes in OAR 340-071-0415 through OAR 340-071-0445.

(20) Manufacturer's specifications. All materials and equipment, including but not limited to tanks, pipe, fittings, solvents, pumps, controls, and valves, must be installed, constructed, operated, and maintained in accordance with manufacturer's specifications.

(21) Sewer and water lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building, as defined by the 2000 Edition of the Oregon State Plumbing Specialty Code, may be run in the same trench. Effluent sewer pipe of material not approved for use

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in a building must not be run or laid in the same trench as water pipe unless both of the following conditions are met.

(a) The bottom of the water pipe at all points is at least 12 inches above the top of the sewer pipe.

(b) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 12 inches from the sewer pipe.

(22) Septage management. A person may not dispose of wastewater, septage, or sewage-contaminated materials in any location or manner not authorized by the department.

(23) Groundwater levels. All groundwater levels must be predicted using conditions associated with saturation. In areas where conditions associated with saturation do not occur or are inconclusive, such as in soil with rapid or very rapid permeability, predictions of the high level of the water table must be based on past recorded observations of an agent. If such observations have not been made or are inconclusive, the application must be denied until observations can be made. Groundwater level observations must be made during the period of the year in which high groundwater normally occurs in an area. A properly installed nest of piezometers or other methods acceptable to the department must be used for making water table observations.

(24) A person may not submit information required by statute, rule, permit, or order that is false, inaccurate, or incomplete.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.695, 468B.050, 468B.055 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 5-2000(Temp), f. 2-24-00, cert. ef. 3-1-00 thru 8-27-00; DEQ 14-2000, f. & cert. ef. 8-24-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0131

Time of Transfer Evaluation

(1) After January 1, 2006, before transferring ownership of real estate served by an onsite system using alternative treatment technology, the seller must have the system evaluated in accordance with this rule.

(a) The evaluation must be performed by an agent or a person who is qualified to perform the evaluation and is registered in accordance with ORS chapters 672 or 700 or has a current NSF International wastewater system inspector accreditation or other certification approved by the department.

(b) The evaluation must include the following:

(i) An examination of the records available on the existing system, including all permit records and pumping and other maintenance records.

(ii) A field evaluation of the existing system.

(iii) A report of findings on a form approved by the department including the information obtained relevant to system performance, such as age; usage; records of installation, maintenance, and repairs; type, size, capacity, and condition of components; evidence of any failures; other relevant information (e.g., condition of repair area if known); and a complete sketch of the system showing location and distances of major components.

(c) The seller must ensure that a copy of the report is submitted to the buyer before completion of the transfer and submitted to the agent within 30 days of the completed transfer.

(d) The evaluation must include all portions of the system that serve the property being transferred, including any portion located on lots or parcels not being transferred.

(e) The evaluation is required for all systems that have been made operational.

(2) An evaluation required by this rule cannot be waived even if a buyer agrees to a waiver.

(3) An evaluation completed in accordance with this rule remains valid for property transfers that occur within two years of the evaluation, unless the seller has reason to believe the evaluation no longer represents relevant site or system conditions.

(4) The failure of an owner to comply with this rule does not invalidate an instrument of conveyance executed in the transaction.

(5) A person may not conduct a time of transfer evaluation required by this rule unless he or she meets the qualifications in subsection (1)(a) of this rule.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0135

Approval of New or Innovative Technologies, Materials, or Designs for Onsite Systems

(1) Department approval.

(a) Coordination with listing of alternative treatment technologies, OAR 340-071-0345. Under OAR 340-071-0345, the department maintains a list of alternative treatment technologies (ATTs) that have been certified by the NSF International and meet the performance standards and other requirements in that rule. ATTs are usually separate treatment units that are installed in onsite systems. Only listed ATTs may be installed under the siting criteria in OAR 340-071-0345. This rule, OAR 340-071-0135, provides a process for approving new or innovative technologies, materials, or designs for various components of onsite systems, such as drainfield products or apurtenances. Add-on treatment units, such as units to remove nitrogen following an ATT or sandfilter, may also be approved under this rule. However, the department does not intend to approve alternatives to standard systems under this rule. Alternative systems will need to be listed as ATTs under OAR 340-071-0345 or approved under new rules in this division.

(b) The department may approve new or innovative technologies, materials, or designs for onsite systems pursuant to this rule if it determines they will protect public health, safety, and waters of the state as effectively as systems authorized in this division. The department must base approval on one or more of the following.

(A) A performance evaluation conducted in accordance with section (3) of this rule that demonstrates the technology, material, or design will achieve applicable performance standards in OAR chapter 340, divisions 071 and 073 and any additional standards the department determines are necessary to satisfy the requirements of subsection (1)(b) of this rule.

(B) Documentation that the alternative drainfield products are functionally equivalent to drainfield products approved by the department.

(C) Documentation that the material used as a substitute for drain media in absorption trenches will achieve the performance standards and design criteria in section (5) of this rule.

(D) Certification of the new material, technology, or design for proposed uses by NSF International, EPA's Environmental Technology Verification (ETV) program, or another program providing certification equivalent to the performance demonstration required by this rule and approved by the department.

(c) The department may approve or deny a request for approval of a new or innovative technology, material, or design or may limit approval to those locations or conditions for which achievement of standards has been demonstrated.

(d) The department may amend or revoke approval of a new or innovative material, technology, or design if it determines:

(A) Approval was based on false or misleading information;

(B) The material, technology, or design no longer achieves performance standards for which it was approved; or

(C) The manufacturer is not meeting the requirements in this rule or conditions of the approval.

(e) Approvals of all new or innovative technologies or materials for drainfield products granted before July 1, 1999, expired on December 31, 2002, unless:

(A) Before December 31, 2002, the department determined that the technology or material achieved equivalent or better performance than the standard gravel absorption trench established in this division; or

(B) A performance evaluation approved by the department before December 31, 2002, is underway to demonstrate that the new or innovative technology or material will achieve equivalent or better performance than the standard gravel disposal trench described in this division. Upon conclusion of the evaluation, but no later than December 31, 2005, the department will determine whether to approve the new or innovative technology or material.

(2) Requests for approval.

(a) Any person may submit a completed application for approval of a new or innovative technology, material, or design for onsite systems to the department.

(b) The application must include the following:

(A) For approval based on a performance evaluation under paragraph (1)(b)(A) of this rule:

(i) A proposed evaluation protocol in accordance with section (3) of this rule and a proposed schedule for completing the proposed evaluation; and

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(ii) At the conclusion of the performance evaluation, documentation demonstrating the technology, material, or design achieves applicable standards.

(B) For approval under paragraph (1)(b)(B) of this rule, documentation supporting a determination of functional equivalency.

(C) For approval under paragraph (1)(b)(C) of this rule, documentation supporting a determination that the applicable standards will be achieved.

(D) For approval under paragraph (1)(b)(D) of this rule, documentation of certification by an approved program.

(E) The Innovative or Alternative Technology, Material, or Design Review fee established in OAR 340-071-0140.

(3) Requirements for studies. Field or other studies used to demonstrate performance of technologies, materials, or designs under paragraph (1)(b)(A) of this rule must satisfy the following requirements.

(a) Be based on theory or applied research that supports the intended use of the technology, material, or design.

(b) Follow an evaluation protocol that has been peer reviewed and approved by the department and that clearly defines the number of systems for installation reasonably necessary for the study and performance objectives, including standards to be achieved; performance measurements to validate attainment of the objectives; and the variables to be considered, including climate, soil, waste characteristics such as flow and strength, and topography.

(c) Include controls that represent the standards to be achieved.

(d) Include sufficient monitoring and reporting of performance data on both the test product and control product to support direct comparisons to the standards to be achieved.

(e) Address system operations at maturity and relevant temporal variations to support comparison to the standards to be achieved.

(f) Be designed and conducted by a qualified third party approved by the department who certifies whether the installation, monitoring, and evaluation of the systems studied and reports submitted to the department satisfy the requirements of this rule.

(g) At the conclusion of the study, provide sufficient performance data to demonstrate standards are met. Data must be peer-reviewed, be scientifically defensible, and have sufficient replication to be representative and to address variations in climate, soil, topography, waste loading, and strength relevant to the proposed use.

(4) Installation of onsite systems for study. The following requirements must be met for each system incorporating unapproved new or innovative technologies, materials, or designs installed for study under this rule or OAR 340-071-0130, or former OAR 340-071-0116 or 340-071-0117 (replaced by this rule).

(a) Prior to installation, the system owner must obtain a WPCF permit under OAR 340-071-0162 or, for a system incorporating only unapproved drainfield materials and not otherwise requiring a WPCF permit, or a construction-installation permit under OAR 340-071-0160.

(b) Before installation, the system owner must provide legal and physical access for construction inspections and monitoring.

(c) The system owner must acknowledge that the system being installed is an unapproved technology and must agree in writing to hold the State of Oregon and its officers, employees, and agents harmless of any and all loss or damage caused by system failure or defective installation or operation of the proposed systems.

(d) Before transferring ownership of a system using an unapproved technology, the system owner must notify all transferees that the technology has not been approved, and the transferee must agree in writing to hold the state of Oregon and its officers, employees, and agents harmless of any and all loss or damage caused by system failure or defective installation or operation of the proposed systems.

(e) A site evaluation must be conducted in accordance with this division. Suitable area must be available for installation of both an initial onsite system and a full replacement system.

(5) Standards and design criteria for drain media substitutes. To be approved under (1)(b)(C) of this rule, substitutes for drain media used in absorption trenches, including seepage trenches, seepage beds, or other similar absorption facilities, must meet the following performance standards and design criteria.

(a) Performance standards. New or innovative materials to be used as a substitute for drain media must be structurally sound, durable, and inert in the environment they are placed. The substitute material must be capable of passing wastewater toward the infiltrative surfaces at a rate equal to or greater than gravel drain media.

(b) Design criteria for absorption trenches.

(A) The trench must be excavated in conformance with the trench standards described in this division. If warranted by the design configuration of the substitute material, the trench width may be less than 24 inches, provided the trench length is increased to compensate for the loss of the bottom surface area using the following formula: Adjusted Trench Length = (24 inches ÷ W) × L, where W = the reduced trench width in inches, and L = the original trench length as specified in paragraph (5)(b)(F) of this rule.

(B) The substitute material for the drain media must be placed in the trench and be in uniform contact with the trench bottom and both sidewalls. If voids larger than typically found with the use of drain media are present along the trench bottom after placement of the substitute material, steps must be taken to prevent the entry of burrowing rodents. If the substitute material for drain media is not in uniform contact with both sidewalls, drain media must be placed in the trench to provide that contact.

(C) The substitute material for drain media must be placed to provide a uniform sidewall infiltrative surface depth as measured along the trench sidewall from the bottom to the top of the drain media substitute in contact with the sidewall. In seepage trenches, the depth of the substitute material must be greater than 12 inches. If the substitute material provides less than 12 inches of sidewall contact depth, either drain media must be placed to accomplish the minimum sidewall contact depth, or the length of the absorption trench must be increased to compensate for the reduced sidewall seepage area depth using the following formula: Adjusted Trench Length = (12 inches ÷ D) × L, where D = the reduced sidewall seepage area depth in inches, and L = the original trench length as specified in paragraph (5)(b)(F) of this rule.

(D) If a substitute material is used in a trench that is both narrower than 24 inches and has a sidewall contact depth that is less than 12 inches, the adjusted trench length must be the longer of the adjusted trench lengths calculated using the formulae in paragraphs (A) and (C) of this subsection.

(E) The top surface of the substitute material for the drain media must be level across the trench and in contact with each side of the trench. The substitute material for drain media must have porosity at the top surface that is not appreciably different from the porosity of drain media. Drain media may be placed across the top of the substitute material to provide the level surface extending from sidewall to sidewall.

(F) The sizing for standard absorption trenches using a substitute material for drain media must conform to applicable criteria in OAR 340-071-0220(2), 340-071-0290(3), or 340-071-0360(2)(a). Seepage trenches using a substitute material for drain media must be sized in conformance with applicable criteria in OAR 340-071-0280(2), 340-071-0290(3), 340-071-0310(2), or 340-071-0360(2)(b).

(c) Design criteria for ETA beds and seepage beds.

(A) Beds must be excavated in conformance with the standards described in OAR 340-071-0270(2) or 340-071-0275(4)(d).

(B) The substitute material for drain media must be placed in the excavation and in contact with the bottom and sidewalls of the bed. If voids larger than typically found with the use of drain media are present along the bottom or sidewalls after placement of the substitute material, steps must be taken to prevent entry of burrowing rodents.

(C) The substitute material for drain media must be placed to provide a substitute material depth of at least 12 inches, as measured from the bottom of the excavation to the top of the drain media substitute. If the depth of the media substitute is less than 12 inches, drain media must be placed within the excavation to provide this depth.

(D) The upper surface of the substitute material for drain media must be level from sidewall to sidewall. The porosity of the top surface of the substitute material must not appreciably differ from the porosity of drain media. Drain media may be placed across the top of the substitute material to provide the level surface extending from sidewall to sidewall.

(E) ETA beds that contain a substitute material for drain media must be sized in accordance with OAR 340-071-0270(2). Seepage beds using a substitute material for drain media must be sized in conformance to OAR 340-071-0275(4)(d)(B).

(d) Distribution piping in absorption facilities using a substitute material for drain media must comply with the appropriate pipe standards in this division and OAR chapter 340, division 073.

(6) Study protocols for substitutes for drain media — example. This section provides an example study protocol to demonstrate substitute drain media under paragraph (1)(b)(C) of this rule. Proposed protocols must be approved for study under section (3) of this rule.

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(a) A standard onsite system must be installed and sized for a given soil group according to **Tables 4 and 5** of this division. The system must be designed to allow a side-by-side performance comparison of the substitute material with a standard absorption trench (the control). For this purpose, the drainfield must contain four small test cells, two of them containing the substitute material and two the standard drain media, that receive septic tank effluent before the remaining portion of the drainfield. The test cells must represent approximately one-third of the total drainfield. The cells containing the substitute material must be sized according to the manufacturer's claim for equivalence to the standard trench length.

(b) A drop box or similar monitoring box containing a sump must be placed at the end of each test cell. All drop boxes must be connected to the remaining portion of the drainfield.

(c) The test cells must be fed by a pump and a hydrosplitter to distribute the effluent equally to each test cell. Installation of a water meter or pump cycle-counter may be required.

(d) Observation ports must be installed in each test cell to allow measurement and recording of the effluent ponding depth.

(e) Domestic wastewater coming directly from a septic tank connected to a residence or facility must be used in the field study.

(f) The performance standard to be achieved is the acceptance rate of the effluent by the substitute material, measured by observing the time required for each test cell to overflow to the drop box.

(g) The test must conclude at the end of three years or when overflow is observed in one of each paired test cells, whichever occurs first. Observation of overflow or no overflow and of ponding must be recorded at least monthly.

(h) For approval for statewide use, the testing described in this section must be duplicated at sites within the two major climatic regimes of Oregon (west of the Cascade Mountain Range and east of the Cascade Mountain Range) and in each of the soil groups described in **Tables 4 and 5** of this division. At least 18 duplicate sites are required, with 3 sites in each of 3 soil groups in the 2 major climatic regimes of Oregon. Studies may include additional sites.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.607, 454.615, 454.784, 468.035, 468.045, 468.065, & 468B.050.

Hist.: DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 14-2000, f. & cert. ef. 8-24-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05, Renumbered from 340-071-0116 & 340-071-0117

340-071-0140

Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services the department provides under this division.

(2) Site evaluation and existing system evaluation fees.

(a) New Site Evaluation fees. Fees in this section apply to each system for which site suitability is evaluated.

(A) Single family dwelling.

(i) First lot — \$425.

(ii) Each additional lot evaluated during initial visit — \$425.

(B) Commercial facility.

(i) For systems with a design capacity of 1,000 gpd or less — \$425.

(ii) For systems with a design capacity greater than 1,000 gpd but not more than 5,000 gpd, the fee is \$425 plus \$110 for each 500 gallons or part thereof above 1,000 gallons.

(iii) Facilities with a design flow greater than 5,000 gpd — \$1,440.

(b) Site Evaluation Report Review fee — \$400.

(c) Existing System Evaluation Report fee — \$400.

(d) Site Evaluation Confirmation fee (for WPCF permits) — \$420.

(3) Permitting fees for systems not subject to WPCF permits

(a) Construction-Installation Permit fees.

(A) For systems with a design capacity of 1,000 gpd or less.

(i) Standard onsite system — \$630.

(ii) Alternative systems.

(I) Alternative treatment technologies — \$950.

(II) Capping fill — \$950.

(III) Absorption trenches in saporlite — \$630.

(IV) Evapotranspiration-absorption — \$630.

(V) Gray water waste disposal sump — \$280.

(VI) Holding tanks — \$540.

(VII) Pressure distribution — \$950.

(VIII) Recirculating gravel filter — \$950.

(IX) Redundant — \$630.

(X) Sand filter (commercial or residential) — \$950.

(XI) Seepage trench — \$630.

(XII) Steep slope — \$630.

(XIII) Tile dewatering — \$950.

(B) For systems with a design capacity greater than 1,000 gpd but not more than 2,500 gpd, the fee is equal to the fee required in paragraph (3)(a)(A) of this rule plus \$60 for each 500 gallons or part thereof above 1,000 gallons.

(b) Reinspection fee — \$235.

(c) Pump Evaluation fee. For all permits that specify the use of a pump or dosing siphon except for sand filter, ATT, RGF, and pressure distribution systems — \$40.

(d) Plan Review fees for commercial facility systems.

(A) For a system with a design capacity of less than 600 gpd, the plan review fee is included in the permit application fee.

(B) For a system with a design capacity of 600 gpd but not more than 1,000 gpd — \$230.

(C) For a system with a design capacity greater than 1,000 gpd but not more than 2,500 gpd, the plan review fee is \$230, plus \$40 for each 500 gallons or part thereof above 1,000 gallons.

(e) Permit Transfer, Reinstatement, or Renewal fees.

(A) Field Visit required — \$325.

(B) No Field Visit required — \$95.

(f) Alteration Permit fees.

(A) Major — \$345.

(B) Minor — \$165.

(g) Repair Permit fees.

(A) Single Family Dwelling.

(i) Major — \$345.

(ii) Minor — \$165.

(B) Commercial Facility.

(i) Major — \$630 or the applicable construction-installation permit fee, whichever is lower.

(ii) Minor — \$290.

(h) Permit Denial Review fee — \$220.

(i) Authorization Notice fees.

(A) Field Visit required — \$390.

(B) No Field Visit required — \$100.

(C) Authorization Notice Denial Review — \$400.

(D) Renewal of hardship authorization for temporary dwelling, if field visit required — \$330.

(j) Alternative system inspection fee.

(A) Holding tanks — \$240.

(B) Other alternative systems in subsection (3)(a) of this rule — \$330.

(k) Annual report evaluation fee.

(A) Holding tanks — \$25.

(B) Commercial sand filters, recirculating gravel filters, and alternative treatment technology — \$50.

(l) Variance from onsite system rules — \$1,300.

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162.

(a) Application filing fee (all systems) — \$60.

(b) Permit processing fees for onsite systems with a design capacity of 1,200 gpd or less.

(A) New application — \$480.

(B) Permit renewal (involving request for effluent limit modifications) — \$240.

(C) Permit renewal (without request for effluent limit modifications) — \$120.

(D) Permit modification (involving increase in effluent limitations) — \$180.

(E) Permit modification (not involving an increase in effluent limits) — \$120.

(c) Permit processing fees for onsite systems with a design capacity over 1,200 gpd:

(A) New applications — \$2,400.

(B) Permit renewals (involving request for effluent limit modifications) — \$1,200.

(C) Permit renewal (without request for effluent limit modifications) — \$600.

(D) Permit modification (involving increase in effluent limits) — \$1,200.

(E) Permit modification (not involving an increase in effluent limits) — \$600.

(d) Plan Review fee.

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(A) Commercial facilities with a design capacity of less than 2,500 gpd, fees in subsection (3)(d) of this rule.

(B) For commercial facilities with a design capacity of 2,500 gpd but less than 5,000 gpd, the fee is \$370 plus \$40 for each 500 gallons or part thereof above 2,500 gallons.

(C) Commercial facilities with a design capacity of 5,000 gpd or more — \$600.

(D) Single family dwelling — \$120.

(e) Annual Compliance Determination fee.

(A) Onsite sewage lagoon with no discharge — \$720.

(B) Onsite subsurface systems.

(i) Systems with design capacities of 20,000 gpd or more and not included in subparagraphs (iii) or (iv) of this paragraph that are permitted to discharge septic tank effluent into an absorption facility — \$600.

(ii) Systems with design capacities less than 20,000 gpd and not included in subparagraphs (iii) or (iv) of this paragraph that are permitted to discharge septic tank effluent into an absorption facility — \$300.

(iii) Systems with design capacities of 2,500 gpd or more permitted to discharge effluent meeting at least treatment standard 1 into an absorption facility — \$600.

(iv) Systems with design capacities of less than 2,500 gpd permitted to discharge effluent meeting at least treatment standard 1 into an absorption facility — \$300.

(v) Holding tanks, if owners do not comply with subparagraph (vi) of this section — \$240.

(vi) Holding tanks, if by the date specified by the department, the owner submits written certification to the department that the holding tank has been operated the previous calendar year in full compliance with the permit and that the previous year's service logs for the holdings tanks are available for inspection by the department — \$25.

(5) Innovative or Alternative Technology or Material Review fees — \$1,000.

(6) Material Plan Review fees — \$300.

(7) Sewage Disposal Service License and Truck Inspection fees.

(a) New 3-year business license — \$355 per year.

(b) Renewal of business license — \$320 per year.

(c) Transfer of or amendments to license — \$200.

(d) Reinstatement of suspended license — \$250.

(e) Pumper truck inspections.

(A) First vehicle, each inspection — \$100.

(B) Each additional vehicle, each inspection — \$50.

(8) Contract county fee schedules.

(a) Each county having an agreement with the department under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include the department's surcharge established in section (9) of this rule unless identified as a department surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to the department.

(c) Fees may not exceed actual costs for efficiently conducted services.

(9) Department surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, the department and contract counties must levy a surcharge of \$40 for each site evaluation, report permit, and other activity for which an application is required in this division. This surcharge does not apply to sewage disposal service license applications, pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers.

(b) Proceeds from surcharges collected by the department and contract counties must be accounted for separately. Each contract county must forward the proceeds to the department in accordance with its agreement with the department.

(10) Refunds. The department may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f.

& cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0150

Site Evaluation Procedures

(1) A site evaluation is the first step in the process of obtaining a construction-installation permit for an onsite system. Except as otherwise provided in these rules, before obtaining a permit to construct an onsite system, a person must obtain a site evaluation report finding the site suitable for an onsite system in accordance with this division.

(2) Completed applications for site evaluations must be submitted to the agent with all required exhibits and the applicable site evaluation fee in OAR 340-071-0140.

(a) Unless other procedures are approved by the department for a contract county, applicants must provide at least two test pits, with dimensions and configuration as directed by the agent, located approximately 75 feet apart and within the area of the proposed system, including the repair/replacement area.

(b) The fee paid for a site evaluation report covers as many site inspections within ninety days of the initial inspection as necessary to determine the suitability of a single lot or parcel for a single system. A site is considered to be suitable as soon as it is found to meet the criteria for any type of onsite system.

(3) Site evaluation report.

(a) The agent or, for WPCF permits, an agent or a qualified private contractor must evaluate the site of the proposed system, consider all system options, and provide a report of such evaluation.

(b) The site evaluation report must be on a form approved by the department.

(c) The report must contain, at a minimum, a site diagram and observations of the following site characteristics.

(A) Parcel size;

(B) Slope in absorption field and replacement areas (percent and direction);

(C) Surface streams, springs, other bodies of water;

(D) Existing and proposed wells;

(E) Escarpments;

(F) Cuts and fills;

(G) Unstable landforms;

(H) Soil profiles determined from test pits provided by applicant;

(I) Water table levels (as indicated by conditions associated with saturation or water table observations);

(J) Useable area for initial and replacement absorption areas;

(K) Encumbrances observed or listed on the application;

(L) Sewerage availability;

(M) Other observations including off-site features as appropriate.

(d) Site evaluation reports for subdivisions or other land divisions must be based on an evaluation of each lot.

(e) Specific conditions or limitations imposed on an approved site must be listed on the evaluation report.

(f) A site evaluation report approving a site for a system qualifies the property owner for a permit to construct a system on that property if other requirements for a permit are met.

(4) Approval or denial:

(a) A site must be approved for a system if the site evaluation report documents the following:

(A) The site evaluation report identifies the types of the initial and replacement systems for which the site is approved.

(B) All criteria for approval of a specific type or types of systems, as described in this division are satisfied.

(C) Each lot or parcel has sufficient usable area available to accommodate an initial and replacement system. The usable area may be located within the lot or parcel or within the bounds of another lot or parcel that is secured in accordance with OAR 340-071-0130(11). The initial and replacement systems may be of different types, e.g., a standard subsurface system as the initial system and an alternative system as the replacement system. The site evaluation report must indicate the types of the initial and replacement systems for which the site is approved.

(D) A replacement area is not required in areas under control of a legal entity such as a city, county, or sanitary district if the legal entity gives a written commitment that sewerage service will be provided within five years.

(b) A site must be denied if the conditions identified in subsection (4)(a) of this rule are not met.

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(c) Changes in technical requirements in this division may not invalidate a site approval but may require design changes or use of a different type of system.

(5) Site evaluation report review. An applicant may request the department to review a site evaluation report issued by an agent. The application for review must be submitted to the department in writing within 60 days after the site evaluation report issue date and must include the site evaluation review fee in OAR 340-071-0140(2). The department will review and approve or disapprove the site evaluation report.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.655 & 454.755

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0155

Existing System Evaluation Report

(1) Any person may request an agent to provide an evaluation report on an existing onsite wastewater treatment system.

(2) A completed application form must be submitted to the agent with all necessary exhibits and the existing system evaluation fee in OAR 340-071-0140(2).

(3) The agent must:

(a) Examine the records available on the existing system, including all permit records and pumping and other maintenance records;

(b) Conduct a field evaluation of the existing system; and

(c) Issue a report of findings to the applicant. The report must address the information obtained relevant to system performance such as age; usage; records of installation, maintenance, and repairs; type, size, capacity and condition of components; evidence of any failures; other relevant information (e.g., condition of repair area if known); and a complete sketch of the system showing location and distances of major components.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.755, 468B.015 & 468B.080

Hist.: DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0160

Permit Application Procedures — Construction, Installation, Alteration, and Repair Permits

(1) Permittees. A permit for construction of a system may be issued under this rule only to the owner of the real property that the system will serve.

(2) Application. A completed application for a construction — installation, alteration, or repair permit must be submitted to the appropriate agent on approved forms with all required exhibits the applicable permit application fee in OAR 340-071-0140(3). Applications that are not completed in accordance with this section will not be accepted for filing. Except as otherwise allowed in this division, the exhibits must include:

(a) A site evaluation report approving the site for the type and quantity of waste to be disposed. Agents may waive the requirement for the report and fee for applications for repair or alteration permits.

(b) A land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission-acknowledged comprehensive plan or complies with the statewide planning goals.

(c) Plans and specifications for the onsite system proposed for installation within the area identified and approved by the agent in a site evaluation report. The agent must determine and request the minimum level of detail necessary to insure proper system construction.

(d) Any other information the agent determines is necessary to complete the permit application.

(3) Deadlines for action. The agent must either issue or deny the permit within 20 days after receipt of the completed application unless weather conditions or distance and unavailability of transportation prevent the agent from timely action. The agent must notify the applicant in writing of any delay and the reason for delay and must either issue or deny the permit within 60 days after the mailing date of notification.

(4) Permit denial. The agent must deny a permit if any of the following occurs.

(a) The application contains false information.

(b) The application was wrongfully received by the agent.

(c) The proposed system would not comply with applicable requirements in this division or in OAR chapter 340, division 073.

(d) The proposed system, if constructed, would violate a commission moratorium under OAR 340-071-0460.

(e) The proposed system location is encumbered as described in OAR 340-071-0130(8).

(f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physical availability.

(i) A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies.

(I) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(II) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(III) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability.

(B) Legal availability. A sewerage system is deemed legally available if the system is not under a department connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.

(5) Permit effective dates. A permit issued for construction of a system pursuant to this rule is effective for one year from the date of issuance. After a system has been installed pursuant to the permit and a Certificate of Satisfactory Completion has been issued for the installation, conditions specified in the Certificate of Satisfactory Completion continue in force as long as the system is in use.

(6) Permit renewal, reinstatement, or transfer. An agent may renew, reinstate, or transfer a permit if the following conditions are met.

(a) The applicant submits a completed application for permit renewal before the permit expiration date or for reinstatement within one year after the permit expiration date.

(b) Applications for transfer of a permit from a permittee to another person must be filed before the permit expiration date. Only the name of the permittee may be changed in a transfer.

(c) Applications for permit renewal, reinstatement, or transfer must conform to the requirements of this rule and the permit will be issued or denied in accordance with this rule.

(7) Temporary holding tank. If a permit has been issued pursuant to these rules but existing soil moisture conditions preclude the construction of the soil absorption system, an agent may approve installation of a septic tank for use as a temporary holding tank for up to 12 months. Before approval, the permittee must demonstrate that the outlet of the tank has been sealed with a water tight seal and that the permittee has entered into a pumping contract for the tank. The septic tank must be designed and constructed in accordance with OAR 340-071-0340.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.655

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0162

Permit Application Procedures — WPCF Permits

(1) Procedures in this rule are for applications for WPCF permits for onsite systems.

(2) Any person may request a new, modified, or renewal WPCF permit by submitting a application on forms provided by the department with the specified number of copies of all required exhibits. The name of the applicant and permittee must be the legal name of the owner of the facilities served by the system or the lessee responsible for the operation and maintenance. Applications must be submitted at least 60 days before a permit is needed. Required exhibits include but are not limited to the following:

(a) A land use compatibility statement from the local land use planning agency indicating that the site is approved for the activity for which the applicant is applying. If the activity is approved only upon conditions in a conditional use permit, a copy of the conditional use permit must be provided;

(b) A copy of a site evaluation report approving the site for the type and quantity of wastes to be disposed;

(c) Evidence that the permit processing fees and the first year's annual compliance determination fee in OAR 340-071-0140 have been paid to the department or agent, as directed; and

ADMINISTRATIVE RULES

(d) A site diagram meeting the requirements of OAR 340-071-0160(2)(c).

(3) Applications that are obviously incomplete, improperly signed, or lacking required exhibits clearly identified will not be accepted by the department for filing and will be returned for completion. Applications that are correctly signed and appear administratively complete will be considered timely upon receipt. A request for further information under section (4) of this rule will not affect the timeliness of an application.

(4) Within 45 days after receipt of an application, the department will preliminarily review the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude the department from later requesting additional information from the applicant as provided in this section.

(a) The department will request in writing from the applicant any additional information needed to review the application. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(b) If the department determines that additional measures are necessary to gather facts regarding the application, the department will notify the applicant of measures to be instituted and the timetable and procedures to be followed. The application will be considered withdrawn if the applicant fails to comply with the additional measures.

(5) Draft permit review. Before issuing a permit, the department will send a draft permit to the applicant for review. The applicant will have up to 14 calendar days to comment on the draft permit.

(6) Public participation. The department will provide for public participation in accordance with the requirements for WPCF permits in OAR chapter 340, division 045.

(7) Final department action. The department must take final action on the permit application within 45 days of the close of the public comment period if a comment period is required. The department will consider all timely comments and other information obtained pertinent to the permit action. The department will notify the applicant of the action taken.

(8) Applicant's appeal rights. The department's final action is effective 20 days from the date of service of the notice to the applicant of the department's final action unless the applicant requests a hearing before the effective date. The request for a hearing must be in writing and state the grounds for the request. Any hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 011.

(9) Permit term. The term of a permit issued pursuant to this rule may not exceed ten years. The expiration date will be recorded on each permit issued.

(10) For systems that are proposed to be or are operating under a WPCF permit, a person may not construct, alter, or repair the absorption facility or any part thereof unless that person is licensed under ORS 454.695 or is the permittee.

(11) A person may not connect to or use any system authorized by a WPCF permit unless the system has been inspected and certified in accordance with OAR chapter 340, division 052 and the department has accepted that certification.

(12) Renewal of a permit. The procedures for issuance of a new WPCF permit apply to renewal of a permit. A permit may be renewed if a completed permit renewal application, on forms provided by the department, is filed with the department at least sixty days before the permit expires. The permit will not expire until final action has been taken on a timely renewal application.

(13) The department may terminate, revoke, modify, or transfer a permit in accordance with the rules in OAR chapter 340, division 045 applicable to WPCF permits.

(14) Rules which do not apply to WPCF applicants or permittees.

(a) Because the permit review, issuance, and appeal procedures for WPCF permits are different from those of other onsite permits in these rules, the following rules do not apply to WPCF applicants or permittees: OAR 340-071-0135; 340-071-0155; 340-071-0160(1), (2)(a), (b), and (d), (3), (5) and (6); 340-071-0165(1); 340-071-0170; 340-071-0175; 340-071-0185; 340-071-0200; 340-071-0205; 340-071-0210; 340-071-0215(1), (2), (3), and (5); 340-071-0270; 340-071-0275(4)(c)(A); 340-071-0290(7); 340-071-0295(1); 340-071-0302(6); 340-071-0330; 340-071-0345(1)-(7) and (9)-(14); 340-071-0360(2)(b)(B); 340-071-0410; 340-071-0415; 340-071-0420; 340-071-0425; 340-071-0430; 340-071-0435; 340-071-0440; 340-071-0445; and 340-071-0500.

(b) WPCF permit applicants and permittees are not subject to any WPCF permit-related fees other than those specified in OAR 340-071-0140.

(c) The following rules in OAR chapter 340, division 073 do not apply to WPCF applicants or permittees: OAR 340-073-0030(1); 340-073-0065; 340-073-0070; and 340-073-0075.

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 468.065, 468.070, 468B.050 & 468B.055

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0165

Permit Denial Review — Construction-Installation, Repair, Alteration Permits

(1) Upon request of the applicant, the department must review a permit denied by an agent. The application for review must be submitted to the department in writing within 60 days of the date the agent issues the permit denial notice and must include the permit denial review fee in OAR 340-071-0140(3).

(2) Permit denials for systems proposed to serve commercial facilities intended for use in a commercial activity, trade, occupation, or profession may be appealed through the contested case hearing procedure set forth in ORS Chapter 183 and OAR chapter 340, division 11.

(3) If the agent intends to deny a permit for a parcel of ten acres or larger, the agent must:

(a) Provide the applicant with a Notice of Intent to Deny;

(b) Specify reasons for the intended denial; and

(c) Offer a contested case hearing in accordance with ORS chapter 183 and OAR chapter 340, division 11.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.655

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0170

Pre-Cover Inspections

(1) System installers must request a pre-cover inspection when construction, alteration, or repair of a system is complete except for backfill (cover) and as otherwise required by a permit. The agent must inspect the installation to determine whether it complies with this division, unless the agent waives the inspection in accordance with section (2) of this rule or OAR 340-071-0400(6).

(2) The agent may waive inspections for a system proposed to serve a single family dwelling or for a system of similar flow and waste strength if:

(a) The system was installed by a sewage disposal service business licensed under ORS 454.695;

(b) The installer complies with all requirements of this rule; and

(c) Upon request by the agent, the installer submits to the agent photographs of those portions of the construction for which the inspection is waived.

(3) To request a pre-cover inspection, the installer must submit the following information to the agent at the time construction of the system is complete.

(a) A detailed and accurate as-built plan of the constructed system.

(b) A list of all materials used in the construction of the system.

(c) Certification on an approved form signed by the permittee who installed the system or an installer certified in accordance with OAR 340-071-0650 on a department-approved form that the system was constructed in accordance with the permit, this division, and OAR chapter 340, division 073.

(4) An agent may require an owner to pay the reinspection fee in OAR 340-071-0140(3) when a pre-cover inspection correction notice requires correction of improper construction and, at a subsequent inspection, the agent finds system construction deficiencies have not been corrected.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.665

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0175

Certificate of Satisfactory Completion

(1) The agent may issue a Certificate of Satisfactory Completion for a system installation if, upon inspection, the agent determines the system complies with applicable requirements in this division and OAR chapter 340, division 073 and the conditions of the permit.

(2) If an agent determines an installation does not comply with the requirements in section (1) of this rule, the agent must notify the permittee in writing or post a Correction Notice on the site. The notice must explain the system deficiencies and corrective action required.

ADMINISTRATIVE RULES

(3) If an agent does not inspect a system within 7 days after notification of completion or waives the inspection in accordance with OAR 340-071-0170(2) or 340-071-0400(6)(d), a Certificate of Satisfactory Completion will be deemed to have been issued by operation of law. In such cases, a modified Certificate will be issued to the owner.

(4) A system may be backfilled (covered) after installation only after:

(a) The agent has notified the permittee that the inspection will not be conducted;

(b) The agent has inspected the system and issued a Certificate of Satisfactory Completion; or

(c) A Certificate of Satisfactory Completion has been issued by operation of law in accordance with section (3) of this rule.

(5) The permittee must ensure satisfactory completion of a system installation within 30 days after written notification or posting of a Correction Notice in accordance with section (2) of this rule unless the agent agrees to a later time.

(6) A person may not connect to or use any system completed after January 1, 1974, unless a Certificate of Satisfactory Completion has been issued for the installation or deemed issued by operation of law in accordance with this rule.

(7) Unless otherwise required by the agent, the system installer must backfill (cover) a system within 10 days after issuance of a Certificate of Satisfactory Completion for that system.

(8) A Certificate of Satisfactory Completion is valid for a period of five years for connection of the system to the facility for which it was constructed. After the five-year period, an Authorization Notice, alteration permit, or construction-installation permit may be required under OAR 340-071-0160, 340-071-0205, or 340-071-0210.

(9) A permittee may appeal the denial or revocation of a Certificate of Satisfactory Completion in accordance with ORS 183.310 through 183.550 and OAR chapter 340, division 11.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.655

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0185

Decommissioning of Systems

(1) The owner must decommission a system when:

(a) A sewerage system becomes available and the facility the system serves has been connected to that sewerage system;

(b) The source of sewage has been permanently eliminated;

(c) The system has been operated in violation of OAR 340-071-0130(13) and a repair permit and Certificate of Satisfactory Completion have not subsequently been issued for the system;

(d) The system has been constructed, installed, altered, or repaired without a permit required in this division, and a permit has not subsequently been issued for the system; or

(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice and a Certificate of Satisfactory Completion or Authorization Notice has not subsequently been issued for the system.

(2) Procedures for decommissioning.

(a) Tanks, cesspools, and seepage pits must be pumped by a licensed sewage disposal service to remove all septage.

(b) Tanks, cesspools, and seepage pits must be filled with reject sand, bar run gravel, or other material approved by the agent, or the container must be removed and properly disposed.

(3) If, in the judgment of the agent, compliance with section (2) of this rule is not reasonably possible or necessary to protect public health, welfare, safety, or public waters, the agent may waive one or both of those requirements.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.655

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0200

Prior Construction Permits or Approvals

All construction-installation permits and written approvals issued before January 1, 1974, expired on July 1, 1976.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.655

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0205

Authorization to Use Existing Systems

(1) Authorization Notice required. Except as specifically allowed in this rule, a person may not place into service, reconnect to, change the use of, or increase the projected daily sewage flow into an existing onsite system without first obtaining an Authorization Notice, construction-installation permit, or alteration permit as appropriate.

(2) Exceptions.

(a) An Authorization Notice is not required to replace a mobile home with a similar mobile home in a mobile home park or a recreation vehicle with another recreation vehicle in a lawful recreation vehicle park if the onsite wastewater system has adequate capacity for safe treatment of wastewater generated within the park.

(b) An Authorization Notice is not required to place into service a previously unused system for which a Certificate of Satisfactory Completion has been issued within five years of the date such system is placed into service if the projected daily sewage flow does not exceed the design flow and the system is in compliance with the requirements of the Certificate of Satisfactory Completion and applicable requirements in this division.

(3) A completed application for the Authorization Notice must be submitted to an agent with all required exhibits and the authorization notice fee in OAR 340-071-0140. The exhibits must include:

(a) A land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;

(b) An accurate property development plan;

(c) An onsite system description;

(d) A lot map or equivalent plat map for the property;

(e) Documentation of any hardship claimed;

(f) All other information the agent finds necessary to complete the application.

(4) An agent may issue an Authorization Notice valid for up to one year to place into service or change the use of an existing onsite system when no increase in sewage flow is projected and the design flow is not exceeded, if:

(a) The existing system is not failing;

(b) All set-backs between the existing system and structures can be maintained; and

(c) In the opinion of the agent, the proposed use would not create a public health hazard on the ground surface or in public surface waters.

(5) An agent may issue an Authorization Notice valid for up to one year to place into service or change the use of an existing system when projected daily sewage flow would increase by not more than 300 gallons above the design capacity and not more than 50 percent of the design capacity for the system if:

(a) The existing system is not failing;

(b) All set-backs between the existing system and the structure can be maintained;

(c) A full system replacement area is available and meets all siting requirements in this division except those relating to soil conditions and groundwater; and

(d) In the opinion of the agent, the proposed increase in sewage flow would not create a public health hazard or pollute water.

(6) A construction-installation permit is required to place into service or change the use of a system when projected daily sewage flows would increase by more than 300 gallons above the design capacity or by more than 50 percent of the design capacity of the system.

(7) Personal hardship.

(a) The agent may issue an Authorization Notice allowing a temporary dwelling to use an existing system serving another single family dwelling to provide housing for a person suffering hardship or for an individual providing care for such a person if:

(A) The agent receives a hardship approval issued under local planning ordinances;

(B) The system is not failing; and

(C) The agent receives evidence that local zoning and land use planning regulations allow placement of a hardship temporary dwelling on the subject property.

(b) The Authorization Notice remains in effect for a specified period not to exceed 5 years, but may not exceed cessation of the hardship. The Authorization Notice may be extended for additional periods upon application in accordance with the requirements in section (3) of this rule.

ADMINISTRATIVE RULES

(c) The agent must impose conditions in the Authorization Notice that are necessary to protect public health.

(8) Temporary placement.

(a) The agent may issue an Authorization Notice allowing a temporary dwelling to use an existing system serving another single family dwelling to provide temporary housing for a family member in need if:

(A) The agent receives evidence that the family member is in need of temporary housing;

(B) The system is not failing;

(C) A full system replacement area is available; and

(D) The agent receives evidence that local zoning and land use planning regulations allow placement of a temporary dwelling on the subject property.

(b) The Authorization Notice may authorize use for no more than 2 years and is not renewable. The agent must impose conditions in the Authorization Notice necessary to protect public health. If the system fails during the temporary placement and additional replacement area is no longer available, the owner must disconnect the temporary dwelling from the system.

(9) If the conditions of sections (4), (5), (6), (7), and (8) of this rule are not satisfied, the agent must either deny the Authorization Notice or withhold issuance until necessary alterations or repairs to the system are made.

(a) Alteration or repair requires a permit in accordance with OAR 340-071-0160, 340-071-0210, or 340-071-0215. The agent must credit the Authorization Notice fee submitted with the Authorization Notice application toward the permit fee.

(b) The agent may require submittal of the exhibits described in OAR 340-071-0160(2) to complete the permit application and must issue or deny the permit in accordance with OAR 340-071-0160.

(10) Upon request of the applicant, the department will review an Authorization Notice denied by an agent. The application for review must be submitted to the department in writing within 45 days of the Authorization Notice denial along with the denial review fee in OAR 340-071-0140(3) and other information the department finds necessary to complete the review. The department will prepare a report of the review.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0210

Alteration of Existing Onsite Wastewater Treatment Systems

(1) Permit required. A person may not alter or increase the design capacity of an existing onsite wastewater treatment system not under a WPCF permit without first obtaining an alteration permit in accordance with this rule or a construction-installation permit in accordance with OAR 340-071-0160, as applicable. The permit application procedure is described in OAR 340-071-0160.

(2) An agent may issue an alteration permit if the requirements of either subsections (a) or (b) of this section are met.

(a) Alterations do not increase the system's design capacity above the original design flow and:

(A) The existing system is not failing;

(B) The site setbacks in **Table 1** can be met except that if the setbacks in **Table 1** for septic tanks, treatment units, effluent sewers, and distribution units cannot be met, the agent may allow a reasonable installation; and

(C) In the opinion of the agent, use of the onsite system would not create a public health hazard or result in water pollution.

(b) Alterations do not exceed the existing system design capacity by more than 300 gpd or 50 percent, and:

(A) The existing system is not failing;

(B) The setbacks in **Table 1** can be met; and

(C) In the opinion of the agent, use of the onsite system would not create a public health hazard or result in water pollution.

(3) An application for a construction-installation permit in accordance with OAR 340-071-0160 is required when the existing system design capacity is proposed to be exceeded by more than 300 gpd or more than 50 percent.

(4) Certificate of Satisfactory Completion required. Upon completion of installation of that part of a system for which a permit has been issued, the system installer must comply with the requirements for pre-cover inspections in OAR 340-071-0170. The agent must issue or deny the Certificate of Satisfactory Completion for the completed construction in accordance with

OAR 340-071-0175. An increase in the projected daily sewage flow into the system is prohibited until the Certificate is issued.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.665 & 454.675

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0215

Repair of Existing Systems

(1) A failing system must be immediately repaired unless, in the opinion of the agent, adverse soil conditions resulting from climatic conditions would likely preclude a successful repair. In that circumstance, the agent may allow a delay in commencing or completing repairs until the soil conditions improve. If a delay is authorized, the agent must issue a notice of noncompliance to the system owner specifying a compliance date and any interim provisions required to prevent a public health hazard and protect public waters.

(2) Except for emergency repairs, a person may not repair a failing system without first obtaining a repair permit in accordance with this rule. Emergency repairs may be made without first obtaining a permit if a repair permit application is submitted to the agent within three working days after the emergency repairs are begun. The permit application procedure is described in OAR 340-071-0160.

(3) Certificate of Satisfactory Completion. Upon completion of installation of that part of a system for which a repair permit has been issued, the system installer must comply with the requirements for pre-cover inspections in OAR 340-071-0170. The agent must issue or deny the Certificate of Satisfactory Completion in accordance with OAR 340-071-0175.

(4) Criteria for permit issuance.

(a) If the site characteristics and standards in OAR 340-071-0220 can be met, the repair installation must conform with the requirements.

(b) If the site characteristics or standards in OAR 340-071-0220 cannot be met, the agent may allow a reasonable repair installation to eliminate a public health hazard, including the installation of an alternative system as necessary.

(5) Notwithstanding the permit duration specified in OAR 340-071-0160(5), a permit issued pursuant to this rule may be effective for a period of less than one year from the date of issue if specified by the agent.

(6) System owners must decommission failing systems in accordance with OAR 340-071-0185 if the systems cannot be repaired.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.665, 454.675 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0220

Standard Subsurface Systems

(1) Criteria For standard subsurface systems. Each site must meet all of the conditions in this section to be approved for a standard subsurface system.

(a) Effective soil depth must extend 30 inches or more below the ground surface as shown in **Table 3**. A minimum 6-inch separation must be maintained between the layer that limits effective soil depth and the bottom of the absorption facility.

(b) Water table levels must be predicted using standards in OAR 340-071-0130(23).

(A) The permanent water table must be at least 4 feet below the bottom of the absorption facility, except in defined geographic areas where the department has determined through a groundwater study that less separation will not degrade groundwater or threaten public health. In these exception areas, the permanent water table must be at least 24 inches below the ground surface.

(B) A temporary water table must be 24 inches or more below the ground surface. An absorption facility may not be installed deeper than the top of the temporary water table.

(C) A groundwater interceptor may be used to intercept or drain water from an absorption area on sites with adequate slope to permit proper drainage. An agent may require a demonstration that the site can be dewatered before issuing a site evaluation report approving the site. Where required, groundwater interceptors are an integral part of the system but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds, or other surface water bodies that are required for the wastewater absorption area.

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(c) Except as provided in subsection (d) of this section, soil with rapid or very rapid permeability must be 36 inches or more below the ground surface. A minimum 18-inch separation must be maintained between soil with rapid or very rapid permeability and the bottom of absorption trenches.

(d) Sites may be approved with no separation between the bottom of absorption trenches and soil with rapid or very rapid permeability as defined in OAR 340-071-0100(151)(a) and (b) and absorption trenches may be placed into such soil if any of the following conditions occur.

(A) A confining layer occurs between the bottom of absorption trenches and the groundwater table and a minimum 6-inch separation is maintained between the bottom of absorption trenches and the top of the confining layer.

(B) A layer of nongravely (less than 15 percent gravel) soil with sandy loam or finer texture at least 18 inches thick occurs between the bottom of the absorption trenches and the groundwater table.

(C) The projected daily sewage flow does not exceed a loading rate of 450 gallons per acre per day.

(e) Slopes do not exceed 30 percent or the slope/effective soil depth relationship set forth in Table 3.

(f) The site has not been filled or the soil has not been modified in a way that would in the opinion of the agent, adversely affect functioning of the system.

(g) The site is not on an unstable land form that might adversely affect operation of the system.

(h) The site of the initial and replacement absorption facility is not covered by asphalt or concrete or subject to vehicular traffic, livestock, or other activity that would adversely affect the soil.

(i) The site of the initial and replacement absorption facility will not be subjected to excessive saturation from artificial drainage of ground surfaces, driveways, roads, roof drains, or other circumstances.

(j) Setbacks in Table 1 except as modified by this subsection can be met.

(A) Surface waters setbacks. Setback from streams or other surface waters must be measured from bank drop-off or mean yearly high water mark, whichever provides the greatest separation distance.

(B) Lots created before May 1, 1973. For lots or parcels legally created before May 1, 1973, the agent may approve installation of a standard or alternative system with a setback from surface waters of less than 100 feet but not less than 50 feet if all other applicable provisions of this rule can be met.

(C) Water lines and sewer lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building in the 2000 Edition of the Oregon State Plumbing Specialty Code may be run in the same trench or may cross. Where the effluent sewer pipe material is not approved for use in a building, it may not be run or laid in the same trench as water pipe unless:

(i) The bottom of the water pipe at all points is set at least 12 inches above the top of the sewer pipe; and

(ii) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum, clear, horizontal distance of at least 12 inches from the sewer pipe.

(D) Septic tank setbacks. The agent must encourage the placement of septic tanks and other treatment units as close as feasible to the minimum separation from the building foundation to minimize clogging of the building sewer.

(E) Pressure transport pipe setback to well. Notwithstanding the setback distance in Table 1, the agent may allow the separation distance between a pressure transport pipe and a well to be less than 50 feet but no less than 25 feet when:

(i) The pressure transport pipe is PVC Sch. 40 or heavier pressure-rated piping meeting ASTM Specification D-2241;

(ii) The pressure transport pipe is placed within a larger diameter PVC or ABS Sch. 40 or heavier encasement pipe, with the pipe ends located at least 50 feet away from the well; and

(iii) All pipe joints in the pressure transport pipe and encasement pipe are solvent-welded.

(2) Criteria for sizing absorption fields. Absorption fields must be designed and sized based on the criteria in this section.

(a) Table 2, specifying quantities of sewage flows, or other information the agent determines is reliable with the following exception. A system must be sized on the basis of 300 gallons sewage flow per day plus 75 gallons per day for the third bedroom when the system:

(A) Is proposed to serve a single family dwelling on a lot of record created before March 1, 1978, that is too small to accommodate a system sized for a daily sewage flow of 450 gallons; or

(B) Serves specifically planned developments with living units of three or fewer bedrooms and deed restrictions prohibit an increase in the number of bedrooms.

(b) Table 4, specifying the minimum length of absorption trenches based on soil texture and effective soil depth.

(c) Table 5, specifying the minimum length of absorption trenches based on soil texture and depth to temporary water.

(d) Strength of the wastewater. If the strength of the wastewater exceeds the maximum limits for residential strength wastewater or the contents of the wastewater are atypical of residential strength wastewater or pose a threat to groundwater, public health, or the environment, the wastewater must be pretreated to acceptable levels before being discharged into a standard or alternative system. Systems requiring pretreatment require a WPCF permit for construction and operation.

(3) Septic tank.

(a) Liquid capacity.

(A) The quantity of daily sewage flow projected for a facility must be estimated from Table 2. The agent must determine the projected daily sewage flow for establishments not listed in Table 2.

(B) A septic tank that serves a commercial facility must have a liquid capacity of at least two times the projected daily sewage flow unless otherwise authorized by the agent. In all cases the capacity must be at least 1,000 gallons.

(C) The capacity of a septic tank that serves a single family dwelling must be based on the number of bedrooms in the dwelling. For a dwelling with 4 or fewer bedrooms, the tank capacity must be at least 1,000 gallons. Septic tank capacity must be at least 1,500 gallons for dwellings with more than 4 bedrooms.

(D) The agent may require a larger capacity than specified in this subsection as needed for special or unique waste characteristics, such as flow patterns, volumes, waste strength, or facility operation.

(b) Installation requirements.

(A) Septic tanks must be installed on a level, stable base that will not settle.

(B) Septic tanks located in high groundwater area must be weighted or provided with an antibuoyancy device to prevent flotation in accordance with the manufacturer's instructions.

(C) Tanks must be installed with at least one watertight riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches or when the tank capacity exceeds 3,000 gallons. A gasketed cover must be provided and securely fastened or weighted to prevent unauthorized access.

(D) Tanks must be installed in a location that provides access for maintenance.

(E) Where practicable, the sewage flow from an establishment must be consolidated into one septic tank.

(F) The agent may allow a removable plug to be placed in the top of a septic tank inlet sanitary tee if the septic tank discharges directly into a gravity-fed absorption facility.

(G) A demonstration of watertightness is required for all tanks after installation in accordance with OAR 340-073-0025.(H) Unless otherwise allowed by the agent, an effluent filter meeting the requirements of OAR 340-073-0056 must be installed at the septic tank outlet if a tank serves a commercial facility. A service access riser and cover meeting the requirements of OAR 340-071-0220(3)(b)(C) must be placed above the effluent filter.

(c) Construction. Tank construction must comply with minimum standards in OAR chapter 340, division 073, unless otherwise authorized in writing by the department.

(d) Multi-compartment tank requirement.

(A) With the exception in paragraph (B) of this subsection, if a septic tank is preceded by a sewage ejector pump, the tank must be manufactured as a multi-compartment tank in accordance with requirements in this division and OAR chapter 340, division 073. An effluent filter must be installed unless the agent allows other methods with equal or better performance in preventing the passage of suspended solids to the drainfield.

(B) If the sewage ejector pump preceding the septic tank at a single family residence receives wastewater from only a clothes washing machine and a sink, a single-compartment septic tank may be used in lieu of a multi-compartment septic tank. The tank must meet the minimum capacity requirement in subsection (a) of this section, and an effluent filter must be installed in the tank's outlet tee fitting. Alternatively, the agent may allow the

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filter to be placed in a separate vault and riser located just outside the septic tank or may authorize other alternatives as appropriate.

(4) Distribution techniques. Absorption trenches must be constructed according to one of the methods in this section.

(a) Gravity-fed equal distribution (including loop).

(A) Equal distribution must be used on generally level ground. All trenches and piping must be level within a tolerance of plus or minus 1 inch. All lateral piping must be at the same elevation.

(B) A pressure-operated hydrosplitter may be used to achieve equal distribution.

(C) To determine the total useable area of a looped soil absorption facility, the agent must add the sum of the lengths of the parallel absorption trenches and the lengths of up to two absorption trenches intersecting the parallel trenches.

(b) Serial distribution. Serial distribution is generally used on sloping ground. Each trench must be level within a tolerance of plus or minus 1 inch. Serial distribution may be a combination of equal distribution and serial distribution.

(c) Pressurized distribution systems. Pressurized distribution must satisfy the requirements in OAR 340-071-0275.

(5) Distribution boxes and drop boxes.

(a) Construction. Construction of distribution boxes and drop boxes must comply with standards in OAR 340-073-0035 and 340-073-0040.

(b) Foundation. All distribution boxes and drop boxes must be bedded on a stable, level base.

(c) In all gravity distribution techniques, the connection of the effluent piping to the distribution piping must include at least one distribution or drop box or other device acceptable to the agent as a means for locating and monitoring the absorption field.

(6) Dosing tanks and dosing septic tanks.

(a) Tank construction must comply with the standards in OAR chapter 340, division 073 unless otherwise authorized in writing by the department.

(b) The tank must be installed on a stable, level base at a location that provides access for maintenance.

(c) The tank must be provided with at least one watertight service access riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches. A gasketed cover must be securely fastened or weighted to prevent unauthorized access.

(d) A tank located in a high groundwater area must be weighted or provided with an anti buoyancy device to prevent flotation in accordance with the tank manufacturer's instructions.

(7) Absorption trenches.

(a) Absorption trenches must be constructed in accordance with the standards in this section unless otherwise authorized in this division.

(A) Minimum bottom width of trench — 24 inches.

(B) Minimum depth of trench:

(i) Equal or looped distribution — 18 inches.

(ii) Serial distribution — 24 inches.

(iii) Pressure distribution — 18 inches.

(C) Maximum depth of trench — 36 inches.

(D) Maximum length of an individual trench — 150 linear feet, unless otherwise authorized in writing by the agent.

(E) Minimum distance of undisturbed earth between trenches — 8 feet.

(b) The bottom of the trench must be level within a tolerance of plus or minus 1 inch end to end and level from side to side.

(c) When the sidewall within a trench has been smeared or compacted, sidewalls must be raked to ensure permeability.

(d) Trenches must be constructed to prevent septic tank effluent from flowing backwards from the distribution pipe to undermine the distribution box, the septic tank, or any portion of the distribution unit.

(e) Drain media must extend the full width and length of the trench to a depth of at least 12 inches with at least 6 inches of drain media under the distribution pipe and at least 2 inches over the distribution pipe.

(f) Before backfilling the trench, the drain media must be covered with filter fabric, untreated building paper, or other material approved by the agent.

(g) If trenches are installed in sandy loam or coarser soils, filter fabric or other nondegradable material approved by the agent must be used to cover the drain media.

(8) Trench backfill.

(a) The installer must backfill the system. Backfill must be carefully placed to prevent damage to the system.

(b) A minimum of 6 inches of backfill is required; in serial systems 12 inches is required.

(c) Backfill must be free of large stones, frozen clumps of earth, masonry, stumps, waste construction materials, or other materials that could damage the system.

(9) Header pipe. Header pipe must be watertight, have a minimum diameter of 3 inches, and be bedded on undisturbed earth. Where distribution boxes or drop boxes are used, the header pipe between the box and the distribution pipe must be at least 4 feet in length and be installed level.

(10) Distribution pipe.

(a) Distribution pipes must have a minimum diameter of 3 inches.

(b) Each disposal trench must have distribution piping that is centered in the trench and laid level within a tolerance of plus or minus 1 inch.

(c) Distribution pipe must comply with standards in OAR 340-073-0060(4).

(d) All perforated pipe must be installed with centerline markings up.

(11) Effluent sewer. The effluent sewer must extend at least 5 feet beyond the septic tank before connecting to the distribution unit. It must be installed with a minimum fall of 4 inches per 100 feet and at least 2 inches of fall from one end of the pipe to the other. In addition, there must be a minimum difference of 8 inches between the invert of the septic tank outlet and either the invert of the header to the distribution pipe of the highest lateral in a serial distribution field or the invert of the header pipe to the distribution pipes of an equal distribution absorption field. A minimum 18-gauge, green-jacketed tracer wire or green color-coded metallic tape must be placed above the effluent sewer pipe.

(12) Curtain drain construction. Unless otherwise authorized by the agent, curtain drains must comply with the following requirements.

(a) Ground slope must be at least 3 percent, or other landform features such as an escarpment must allow for effective drainage.

(b) The curtain drain must extend at least 6 inches into the layer that limits effective soil depth or to a depth adequate to effectively dewater the site.

(c) Trench width must be a minimum of 12 inches.

(d) Perforated pipe must have a minimum diameter of 4 inches and must meet the requirements in OAR 340-073-0060(4).

(e) Perforated pipe must be installed at least 2 inches above the bottom and along the full length of the trench and must be covered by a minimum of 10 inches of drain media.

(f) The perforated pipe must be installed on a uniform grade of 0.2 to 0.4 feet of fall per 100 feet.

(g) The curtain drain must be filled with drain media to within 12 inches of the ground surface.

(h) Outlet pipe must be rigid, smooth-wall, solid PVC pipe meeting or exceeding ASTM Standard D-3034 with a minimum diameter of 4 inches. A flap gate or rodent guard must be installed.

(i) Filter fabric must be placed over the drain media.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0260

Alternative Systems, General

(1) Application requirements. The requirements in this division and OAR chapter 340, division 073 for siting, construction, and maintenance of standard subsurface systems apply to alternative systems unless the standards for alternative systems in this division provide otherwise.

(2) Periodic inspections.

(a) Agents may perform periodic inspections of installed alternative systems. System owners must pay the inspection fee in OAR 340-071-0140(3)(j) for the inspection upon billing by the agent.

(b) The agent must prepare a report of each inspection listing system deficiencies, corrections required, and timetables for correction, and will provide a copy to the system owner. The agent may follow up as necessary to ensure proper corrections.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

ADMINISTRATIVE RULES

340-071-0265

Capping Fills

(1) Criteria for approval. Each site approved for a capping fill system must meet all the following conditions.

(a) Slope does not exceed 12 percent.

(b) Temporary water table is not closer than 18 inches to the ground surface at anytime during the year. A 6-inch minimum separation must be maintained between the bottom of the absorption trench and the temporary water table.

(c) Where a permanent water table is present, a minimum 4-foot separation must be maintained between the bottom of the absorption trench and the water table.

(d) Except as provided in subsection (e) of this section, where material with rapid or very rapid permeability is present, a minimum 18-inch separation must be maintained between the bottom of the absorption trench and soil with rapid or very rapid permeability.

(e) Sites may be approved with no separation between the bottom of the absorption trenches and soil with rapid or very rapid permeability (as defined in OAR 340-071-0100(151)(a) or (b)), and absorption trenches may be placed into such soil if any of the following conditions occur.

(A) A confining layer occurs between the bottom of absorption trenches and the temporary groundwater table and a minimum 6-inch separation is maintained between the bottom of absorption trenches and the top of the confining layer.

(B) A layer of non-gravelly (less than 15 percent gravel) soil with sandy loam or finer texture at least 18 inches thick occurs between the bottom of the absorption trenches and the groundwater table.

(C) The projected daily sewage flow does not exceed a loading rate of 450 gallons per acre per day.

(f) Effective soil depth is 18 inches or more below the natural soil surface.

(g) Soil texture from the ground surface to the layer that limits effective soil depth is no finer than silty clay loam.

(h) A minimum 6-inch separation is maintained between the bottom of the absorption trench and the layer that limits effective soil depth.

(i) The system can be sized according to effective soil depth in Table 4.

(2) Installation requirements. The cap must be constructed in accordance with the permit. Unless otherwise required by the agent, construction must follow this sequence.

(a) The soil must be examined and approved by the agent before placement of the cap. The texture of the soil used for the cap must be the same textural class as or one textural class finer than the natural topsoil unless otherwise allowed in this division.

(b) Construction of capping fills must occur between June 1 and October 1 unless otherwise allowed by the agent. The upper 18 inches of natural soil must not be saturated or have a moisture content that causes loss of soil structure and porosity when worked.

(c) The absorption area and the borrow site must be scarified to destroy the vegetative mat.

(d) The system must be installed as specified in the construction-installation permit with a minimum 10-foot separation between the edge of the fill and the absorption facility.

(e) Filter fabric must be used between the drain media and the soil cap, unless otherwise authorized by the agent.

(f) Fill must be applied to the fill site and worked in so that the two contact layers, native soil and fill, are mixed. Fill material must be evenly graded to a final depth of 10 inches over the drain media for an equal system or 16 inches over the drain media for a serial system to allow for appropriate settled depths. Both initial cap and repair cap may be constructed at the same time.

(g) The site must be landscaped according to permit conditions and be protected from livestock, automotive traffic, and other activity that could damage the system.

(3) Required inspections. Unless waived by the agent, the following inspections must be performed for each capping fill installed.

(a) Inspection of both the absorption area and borrow material before cap construction for scarification, soil texture, and moisture content.

(b) Precover inspection of the installed absorption facility.

(c) Inspection after the cap is placed to determine adequate contact between fill material and native soil (no obvious contact zone visible), adequate depth of material, and uniform distribution of fill material.

(d) Final inspection after landscaping or other erosion control measures are established.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0270

Evapotranspiration-Absorption (ETA) Systems

(1) Criteria for approval. ETA systems may be approved only for waste flows that do not exceed 600 gallons per day of residential strength wastewater. Installation permits may be issued for ETA systems on sites that meet all of the following conditions.

(a) The soil has moist matrix values and chromas greater than 2 within the first 12 inches of the soil profile.

(b) Mean annual precipitation does not exceed 25 inches.

(c) At least 30 inches of moderately well to well-drained soil is present and the subsoil at a depth of 12 inches and below is fine textured.

(d) Slope is not less than 6 percent or more than 15 percent. Exposure may be considered.

(2) Criteria for system design. ETA bed design must satisfy the following criteria.

(a) Beds must be sized using a minimum 850 square feet of bottom surface area per 150 gallons of projected daily sewage flow in areas where annual precipitation is 15 to 25 inches, or 600 square feet of bottom surface area per 150 gallons of projected daily sewage flow in areas where annual precipitation is less than 15 inches.

(b) Beds must be installed not less than 12 inches or deeper than 24 inches into natural fine textured soil on the downhill side and not more than 36 inches deep on the uphill side.

(c) At least one distribution pipe must be placed in each bed.

(d) The surface must be seeded according to permit conditions.

(e) The bottom of the system must be at least 6 inches above the layer that limits effective soil depth.

(f) Laterals in the system may not be further than 10 feet apart and not further than 5 feet from the side of the excavated bed or trench.

(g) The bed or trench must be within 2 inches of level.

(h) A minimum of 12 inches of drain media must be installed in the trench. (i) Filter fabric or material approved by the agent must cover the drain media before the system is covered with soil.

(j) The system must be covered with soil approved by the agent. The soil cover depth must be at least 12 inches.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0275

Pressurized Distribution Systems

(1) Pressurized distribution systems receiving residential strength wastewater may be permitted on any site meeting the requirements for installation of a standard onsite systems and on other sites where this method of effluent distribution is preferable and the site conditions in this rule can be met.

(2) Except as allowed in OAR 340-071-0220(1)(d), pressurized distribution systems must be used where depth to soil with rapid or very rapid permeability as defined in OAR 340-071-0100(151)(a) and (b) is less than 36 inches and the minimum separation distance between the bottom of the absorption trench and such soil is less than 18 inches.

(3) Pressurized distribution systems installed in soil with rapid or very rapid permeability as defined in OAR 340-071-0100(151)(a) and (b) in areas with permanent water tables may not discharge more than 450 gallons of effluent per 1/2 acre per day except where:

(a) Groundwater is degraded and designated as a non-developable resource by the Oregon Water Resources Department; or

(b) A detailed hydrogeological study discloses loading rates exceeding 450 gallons per 1/2 acre per day would not increase the nitrate-nitrogen concentration in the groundwater beneath the site or at any down gradient location to above 5 mg/L.

(4) Materials and construction.

(a) General.

(A) All materials used in pressurized systems must be structurally sound, durable, and capable of withstanding normal stresses incidental to installation and operation.

(B) Pump wiring must comply with applicable building, electrical, or other codes. An electrical permit and inspection from the Department of

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Consumer and Business Services, Building Codes Division or the municipality with jurisdiction is required for pump wiring installation.

(C) After January 1, 2006, a single compartment dosing septic tank may not be used in a system with pressurized distribution laterals unless the tank is partitioned with a flow-through below the tank's lowest liquid level. The flow through port must be at 65 to 75 percent of the minimum liquid level and be at least 4" in diameter.

(b) Pressurized distribution piping. Piping, valves, and fittings for pressurized systems must meet the following minimum requirements.

(A) All pressure transport, manifold, lateral piping, and fittings must meet the requirements in OAR 340-073-0060(3).

(B) Pressure transport piping must be uniformly supported along the trench bottom. The agent may require the piping to be bedded in sand or other material approved by the agent. A minimum 18 gauge, green-jacketed tracer wire or green color-coded metallic locate tape must be placed above piping.

(C) Orifices must be located on top of the pipe, except as noted in paragraph 4(b)(I) of this section.

(D) The ends of lateral piping must be constructed with long sweep elbows or an equivalent method to bring the end of the pipe to finished grade. The ends of the pipe must be provided with threaded plugs, caps, or other devices acceptable to the agent to allow for access and flushing of the lateral.

(E) All joints in the manifold, lateral piping, and fittings must be solvent-welded using the appropriate joint compound for the pipe material. Pressure transport piping may be solvent-welded or rubber-ring jointed.

(F) A shut off valve must be placed on the pressure transport pipe in or near the dosing tank when appropriate.

(G) A check valve must be placed between the pump and the shut off valve when appropriate.

(H) All orifices must be covered by a protective, durable, noncorrosive orifice shield designed to keep orifices from being blocked by drain media or other system components. The shields or piping must be removable for access to the orifices.

(I) The agent may specify alternate orifice orientation and valve arrangements for conditions such as extended freezing temperatures, temporary or seasonal use, or effluent characteristics.

(J) Where the operation of a pump could result in siphonage of effluent to below the normal off level of the pump, an anti-siphon measure in the form of a non-discharging valve designed for the specific purpose must be used. The anti-siphon valve must be installed and operated in accordance with manufacturer's specifications.

(c) Absorption trench sizing and construction.

(A) A system using absorption trenches must be designed and sized in accordance with the requirements of OAR 340-071-0220(2).

(B) Absorption trenches must be constructed using the specifications for the standard disposal trench unless otherwise authorized by the agent.

(C) The trench must contain drain media at least 12 inches deep, with at least 6 inches of media under the pressure distribution laterals and sufficient media above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(D) The top of the drain media must be covered with filter fabric or other nondegradable material permeable to fluids that will not allow passage of soil particles coarser than very fine sand. In unstable soils, sidewall lining may be required.

(d) Seepage bed construction.

(A) Seepage beds may be used instead of absorption trenches in soil as defined in OAR 340-071-0100(151)(b) if flows do not exceed 600 gpd.

(B) The effective seepage area must be based on the bottom area of the seepage bed. The area must be at least 200 square feet per 150 gallons per day waste flow.

(C) Beds must be installed at least 18 inches deep (12 inches with a capping fill) but not deeper than 36 inches into the natural soil. The seepage bed bottom must be level.

(D) The top of the drain media must be covered with filter fabric or other nondegradable material that is permeable to fluids but will not allow passage of soil particles coarser than very fine sand.

(E) The bed must contain drain media at least 12 inches deep with at least 6 inches of media under the pressure distribution laterals and sufficient media above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(F) Pressurized distribution piping must be horizontally spaced not more than 4 feet apart and not more than 2 feet away from the seepage bed

sidewall. At least 2 parallel pressurized distribution pipes must be placed in the seepage bed.

(G) A minimum of 10 feet of undisturbed earth must be maintained between seepage beds.

(5) Hydraulic design criteria. Pressurized distribution systems must be designed for appropriate head and capacity.

(a) Head calculations must include maximum static lift, pipe friction, and orifice head requirements.

(A) Static lift where pumps are used must be measured from the minimum dosing tank level to the level of the perforated distribution piping.

(B) Pipe friction must be based upon a Hazen Williams coefficient of smoothness of 150. All pressure piping and fittings on laterals must have a minimum diameter of 2 inches unless submitted plans and specifications show a smaller diameter pipe is adequate.

(C) A minimum head of 5 feet at the remotest orifice and no more than a 10 percent flow variation between the nearest and remotest orifice in an individual unit are required.

(b) The capacity of a pressurized distribution system refers to the rate of flow given in gallons per minute (gpm).

(A) Lateral piping must have discharge orifices drilled a minimum diameter of 1/8 inch and evenly spaced no more than 24 inches apart in coarse textured soils or no more than 4 feet apart in finer textured soils.

(B) The system must be dosed at a rate not to exceed 20 percent of the projected daily sewage flow.

(C) The effect of back drainage of the total volume of effluent within the pressure distribution system must be evaluated for its impact upon the dosing tank and system operation.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.775 & 468.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0280

Seepage Trench System

(1) Criteria for approval. Construction permits may be issued for seepage trench systems on lots created before January 1, 1974, for sites that meet all the following conditions.

(a) Groundwater will not be degraded.

(b) Lot or parcel size will not accommodate standard subsurface system disposal trenches with a projected flow of 450 gpd.

(c) All other requirements for standard subsurface systems can be met.

(2) Design criteria.

(a) The maximum depth allowed for a seepage trench is 42 inches.

(b) The seepage trench system must be sized according to the following formula: length of seepage trench = 4 x (length of standard disposal trench) divided by (3 + 2D), where D = depth of drain media below distribution pipe in feet. Maximum depth of drain media (D) is 2 feet.

(c) The projected daily sewage flow is limited to a maximum of 450 gallons.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0285

Redundant Systems

(1) Criteria for approval. Construction permits may be issued for redundant absorption field systems to serve single family dwellings on sites that meet both of the following conditions.

(a) The lot or parcel was created before January 1, 1974.

(b) The lot or parcel size will not accommodate a standard system.

(2) Design criteria:

(a) Each redundant absorption system must contain two complete absorption fields.

(b) Each absorption field must be large enough to accommodate the projected daily sewage flow from the dwelling.

(c) A minimum separation of 10 feet (12 feet center to center) must be maintained between absorption trenches designed to operate simultaneously, and a minimum separation of 4 feet (6 feet center to center) must be maintained between adjacent absorption trenches.

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(d) The system must be designed to alternate between the absorption fields with the use of a diversion valve or other method approved by the agent.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0290

Conventional Sand Filter Systems

(1) Criteria for approval. Construction of conventional sand filter systems may be approved for single family dwellings or commercial facilities.

(2) Sites approved for sand filter systems. Sand filters may be permitted on any site meeting requirements for standard onsite systems in OAR 340-071-0220 or for pressurized distribution systems in OAR 340-071-0275 if site conditions in this section can be met.

(a) Separation from the temporary groundwater table must satisfy the requirements in this subsection.

(A) The high level attained by a temporary groundwater table is:

(i) Twelve inches or more below ground surface where:

(I) The ground slope does not exceed 12 percent;

(II) Equal distribution methods are achieved by gravity or the use of either a hydrosplitter or pressurized distribution method; and

(III) A capping fill is placed in accordance with OAR 340-071-0265(2) and 340-071-0265(3)(a) through (c).

(ii) Eighteen inches or more below ground surface where equal distribution methods are achieved by gravity or through the use of a hydrosplitter or pressurized distribution. (iii) Twenty-four inches or more below ground surface where serial distribution methods are used.

(B) Methods used in OAR 340-071-0315 for tile dewatering systems may be used to achieve separation distances from temporary groundwater.

(C) Absorption trenches may not be installed deeper than the highest level of the temporary water table. The minimum backfill depth within the absorption trenches is 6 inches for trenches using equal distribution methods and 12 inches for trenches using serial distribution.

(b) Separation from the permanent groundwater table must satisfy the requirements in this subsection.

(A) The highest level attained by a permanent water table does not exceed the minimum separation distance from the bottom of the absorption area as follows:

(i) For gravel and Soil Group A: sand, loamy sand, sandy loam – 24 inches;

(ii) For Soil Group B: loam, silt loam, sandy clay loam, clay loam – 18 inches;

(iii) For Soil Group C: silty clay loam, silty clay, clay, sandy clay – 12 inches.

(B) Shallow absorption trenches placed not less than 12 inches into the original soil profile may be used with a capping fill to achieve separation distances from permanent groundwater. The fill must be placed in accordance with OAR 340-071-0265(2) and 340-071-0265(3)(a) through (c).

(C) Methods used in OAR 340-071-0315 for tile dewatering systems may be used to achieve separation distances from permanent groundwater.

(c) Sand filter systems installed in soils with rapid or very rapid permeability in areas with permanent water tables may not discharge more than 450 gallons of effluent per 1/2 acre per day except where:

(A) Groundwater is degraded and designated as a nondevelopable resource by the Oregon Water Resources Department; or

(B) A detailed hydrogeological study determines loading rates exceeding 450 gallons per 1/2 acre per day would not increase nitrate-nitrogen concentration in the groundwater beneath the site or any downgradient location to above 5 mg/L.

(d) Sand filter systems may be installed in soils, fractured bedrock, or saprolite diggable with a backhoe if, in the judgment of the agent, the soils, fractured bedrock, or saprolite is permeable to the extent that effluent will absorb adequately and not hinder the performance of the filter or absorption field. The agent may require that an absorption test be conducted to determine the permeability of the bedrock or saprolite. Test methods must be acceptable to the department.

(A) Where ground slope does not exceed 12 percent, a capping fill, 12-inch deep trench may be installed in accordance with OAR 340-071-0265, except that when installed in fractured bedrock or saprolite, the cap material must be Soil Group B.

(B) Where ground slope exceeds 12 percent but is not greater than 30 percent, a standard 24-inch deep trench may be installed.

(e) A sand filter absorption facility may be installed on slopes of 30 percent or less if other conditions in this section are satisfied.

(f) An absorption facility following a sand filter may be installed on slopes above 30 percent and up to 45 percent where:

(A) Projected daily flow does not exceed 450 gallons and the installation is sized in accordance with sand filter absorption area criteria;

(B) The soil is diggable with a backhoe to a depth of at least 36 inches and 12 inches below the bottom of the trench; and

(C) The temporary water table is at least 30 inches below the ground surface and 6 inches below the bottom of the trench.

(g) Setbacks in **Table 1** can be met, except the minimum separation distance between the sewage absorption area and surface waters must be at least 50 feet.

(3) Absorption trenches. Absorption trenches for sand filter absorption facilities must satisfy the requirements in this section.

(a) The minimum length of a standard absorption trench per 150 gallons of projected daily sewage flow is:

(A) For gravel and Soil Group A: sand, loamy sand, sandy loam — 35 linear feet;

(B) For Soil Group B: loam, silt loam, sandy clay loam, clay loam — 45 linear feet;

(C) For Soil Group C: silty clay loam, silty clay, sandy clay, clay — 50 linear feet;

(D) For permeable saprolite or fractured bedrock — 50 linear feet;

(E) For high shrink-swell clays (Vertisols) — 75 linear feet.

(b) On lots created before January 1, 1974, that do not have sufficient, suitable area for an absorption facility sized in accordance with this section, the agent may allow seepage trenches if:

(A) The design criteria and limitations in OAR 340-071-0280(2) are met;

(B) The soil is not a high shrink-swell clay;

(C) The temporary water table is at least 30 inches below the ground surface; and

(D) All other requirements of this rule are met.

(c) Trench designs in Vertisols.

(A) Absorption trenches in Vertisols must contain 24 inches of drain media and 24 inches of soil backfill in areas with an annual rainfall of 25 inches or less, minimum slopes of 5 percent, and a temporary water table at least 48 inches below the ground surface.

(B) Seepage trenches in Vertisols containing less than 24 inches of drain media may be used if designed in accordance with the criteria and limitations in OAR 340-071-0280 in areas with an annual rainfall of 25 inches or less, minimum slopes of 5 percent, and a temporary water table at least 48 inches below the ground surface.

(4) Sand filter without a bottom. Sites may use a conventional sand filter without a bottom if the site meets the criteria in this section and section (3) of this rule.

(a) Saprolite; fractured bedrock; gravel; or soil textures of sand, loamy sand, or sandy loam occur in a continuous section at least 2 feet thick in contact with and below the bottom of the sand filter.

(b) The agent determines the saprolite, fractured bedrock, gravel, or soil is permeable over the basal area to the extent that effluent will absorb adequately and not hinder the performance of the filter. The agent may require that an absorption test be conducted to determine the permeability of the basal area. Test methods must be acceptable to the department.

(c) The application rate is based on the design sewage flow in OAR 340-071-0220(2)(a) and the basal area of the sand.

(d) The water table is at least 24 inches below the ground surface throughout the year, and a minimum 24-inch separation is maintained between a water table and the bottom of the sand filter.

(5) Materials and construction.

(a) All materials used in sand filter system construction must be structurally sound, durable, and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear must be readily accessible for repair and replacement.

(b) All filter containers must be placed over a stable, level base.

(c) In a gravity-operated distribution system, the invert elevation of the outlet end of the underdrain pipe must be at or above the final settled ground elevation of the highest absorption trench.

(d) Piping and fittings for the sand filter distribution system must comply with the requirements for pressure distribution systems in OAR 340-071-0275.

ADMINISTRATIVE RULES

(e) Septic tanks, dosing tanks, and other components must comply with the requirements in OAR 340-071-0220 unless this rule specifies different requirements.

(f) The design and construction requirements in OAR 340-071-0295 must be met.

(g) A bottomless sand filter unit does not require a minimum 10-foot separation between the original and replacement unit.

(6) Gravelless absorption method.

(a) Absorption trenches following a sand filter may be constructed without the use of drain media if they meet the criteria in this section.

(A) Absorption trenches must be 12 inches wide by 10 inches deep and incorporate pressurized distribution and a chamber constructed of half sections of 12-inch diameter plastic irrigation pipes (PIP).

(B) Trenches must be level end to end and across their width.

(C) The agent may allow trenches on minimum 3-foot centers maintaining at least 2 feet of undisturbed earth between parallel trench sidewalls.

(D) Pressurized distribution piping must meet the requirements of OAR 340-071-0275(4)(b), except that orifice shields are not required.

(E) Distribution piping must be perforated with 1/8 inch diameter orifices on maximum 2-foot centers at the 12 o'clock position. The hydraulic design must provide at least a 2-foot residual head at the distal orifice.

(F) The chambers must have an adequate footing to support the soil cover and all normal activity and at a minimum must be constructed of 12-inch PIP rated at 43 pounds per square inch and meeting the appendix standards of ASTM D-2241. Each line must be equipped with a minimum 6-inch diameter inspection port.

(b) Except as noted in subsection (a) of this section, all construction and siting criteria for conventional sand filter systems in this division must be met. This includes but is not limited to the absorption field sizing for sand filter systems in OAR 340-071-0290(3) and area sizing for an initial and replacement absorption facility meeting standard trench separations in OAR 340-071-0220(7)(a)(E). Plans must verify that a system can be installed on the parcel that will meet the requirements in OAR 340-071-0290(3) and 340-071-0220(7)(a)(E) and all other applicable rules before a gravelless absorption method is approved.

(c) A gravelless absorption method may be used wherever this division allows a standard or alternative-type absorption trench for sand filter systems, except in Vertisols.

(d) A method to prevent burrowing animals from entering the chamber must be provided in areas where this is likely to occur.

(7) Operation and maintenance. Owners of conventional and other sand filter systems must ensure the sand filter and all other components of the system are continuously operated and timely maintained in accordance with the requirements on the Certificate of Satisfactory Completion and this rule.

(a) Owners of conventional and other sand filter systems serving single family dwellings with wastewater not exceeding residential strength must comply with the operation and maintenance requirements in this section. The owner of a sand filter system must inspect the septic tank and other components of the system at least every three years for sludge accumulation, pump calibration, and cleaning of the laterals. The septic tank must be pumped when there is an accumulation of floating scum less than 3 inches above the bottom of the outlet tee or an accumulation of sludge less than 6 inches below the bottom of the outlet tee. A dosing septic tank must be pumped according to manufacturer's specifications. Pump calibration, cleaning of the laterals, and other maintenance must be completed as necessary.

(b) Owners of and maintenance providers for conventional and other sand filter systems serving commercial facilities must operate and maintain the sand filter system in accordance with the requirements described for recirculating gravel filters in OAR 340-071-0302(4), (5), and (6).

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.775 & 454.780

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05, Renumbered from 340-071-0305

340-071-0295

Conventional Sand Filter Design and Construction

(1) Criteria for sizing. Systems must be sized based on quantities of sewage flow in accordance with OAR 340-071-0220(2)(a).

(2) Minimum filter area:

(a) A sand filter proposed to serve a single family dwelling must have an effective medium sand surface area of at least 360 square feet. If the design sewage flow exceeds 450 gallons per day, the medium sand surface area must be determined with the following equation: Area = projected daily sewage flow divided by 1.25 gallons per square foot.

(b) Sand filter influent may not exceed concentrations of 300 mg/L BOD5, 150 mg/L TSS, or 25 mg/L oil and grease.

(3) Design criteria.

(a) The interior base of the filter container must be level or constructed at a grade of 1 percent or less to the underdrain piping elevation.

(b) Except for sand filters without a bottom, underdrain piping must meet the requirements in OAR 340-073-0060(2) and must be installed in the interior of the filter container at the lowest elevation. The piping must be level or on a grade of 1 percent or less to the point of passage through the filter container. The pipe perforations or slots must be oriented in the upright or sideways position.

(c) The base of the filter container with the underdrain piping in place must be covered with a minimum of 6 inches of drain media or underdrain media. Unless waived by the agent, the underdrain media proposed for a sand filter must be sieved to determine conformance with the criteria in OAR 340-071-0100(173) and a report of the analysis must be provided to the agent. Where underdrain media is used, the underdrain piping must be enveloped in an amount and depth of drain media to prevent migration of the underdrain media to the pipe perforations.

(d) Where drain media is used at the base of the filter, it must be covered by a layer of filter fabric meeting the specifications in OAR 340-073-0041. Where underdrain media is used, filter fabric is not required.

(e) A minimum of 24 inches of approved sand filter media must be installed over the filter fabric or underdrain media. The sand filter media must be damp at the time of installation. The top surface of the media must be level. Unless waived by the agent, the sand filter media proposed for each sand filter must be sieve-tested to determine conformance with the criteria in OAR 340-071-0100(127), and a report of the analysis must be provided to the agent.

(f) A minimum of 3 inches of clean drain or underdrain media is required below the distribution laterals, and sufficient media is required above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(g) A pressurized distribution system meeting the requirements of OAR 340-071-0275(4) and (5) must be constructed as described in subsection (f) of this section.

(A) Distribution laterals must be spaced a maximum of 30 inches center to center. Orifices must be spaced no more than 30 inches apart.

(B) The ends of the distribution laterals must be designed and constructed to allow flushing of the piping, collectively or individually, using a corrosion-resistant and accessible valve or threaded endcap. The flushed effluent may be discharged to the septic tank or into the sand filter.

(C) The diameters of the distribution manifold and laterals must be at least 1/2 inch in diameter.

(D) A sand filter must be dosed at a rate not to exceed 10 percent of the projected daily sewage flow.

(h) The top of the media in which the pressure distribution system is installed must be covered with filter fabric meeting the specifications in OAR 340-073-0041.

(i) The top of the sand filter area must be backfilled with a soil cover free of rock, vegetation, wood waste, and other materials that may harm the filter. The soil cover must have a textural class no finer than loam unless otherwise authorized by the agent. The soil cover must be at least 6 inches and no more than 12 inches deep.

(j) All piping passing through the sand filter container must be watertight.

(4) Container design and construction.

(a) A reinforced concrete container with watertight walls and floors must be used where watertightness is necessary to prevent groundwater from infiltrating into the filter or to prevent the effluent from exfiltrating from the filter except as otherwise allowed in this division or OAR chapter 340, division 073. The container structure may require a building permit for construction.

(b) The container may be constructed of materials other than concrete where equivalent function, workmanship, watertightness, and at least a 20-year service life can be documented.

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(A) Flexible membrane liner (FML) materials must have properties at least equivalent to 30 mil unreinforced polyvinyl chloride (PVC) described in OAR 340-073-0085. For FML materials to be approved for installation:

(i) Field repair instructions and materials must be provided to the purchaser with the liner; and

(ii) The final materials must have factory-fabricated boots suitable for field bonding onto the liner to facilitate the passage of piping through the liner in a waterproof manner.

(B) Where accepted for use, flexible sheet membrane liners must be installed in accordance with OAR 340-073-0085.

(C) The backfill around the container must be no steeper than a 3:1 slope (3 feet for every vertical foot) unless otherwise authorized by the agent.

(5) Internal pump option. Where a pump is used to discharge effluent from a sand filter to another treatment unit, a distribution unit, or an absorption facility, the design and construction of the filter may include an internal pump station if the following conditions are met.

(a) The location, design, and construction of the pump station must not conflict with design, construction, and operation of the sand filter system.

(b) The design and construction of the pump, discharge plumbing, controls, and alarm must meet the requirements in OAR 340-073-0055 except subsections (4)(d) and (4)(h).

(c) The pump and related apparatus must be housed in a corrosion-resistant vault designed to withstand stresses and prevent the migration of drain media, sand, or underdrain media to its interior. The vault must have a durable, affixed floor. The vault must provide watertight access to finished grade with a diameter equal to that of the vault and designed to receive treated effluent from the bottom of the sand filter.

(d) The depth of underdrain media and the operating level of the pump cycle and alarm may not allow effluent to come within 2 inches of the bottom of the sand filter media. The pump off-level may be no lower than the invert of the perforations of the underdrain piping.

(e) The internal sand filter pump must be electrically linked to the sand filter dosing apparatus to prevent effluent from entering the sand filter if the internal sand filter pump fails.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.775 & 454.780

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef.

8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97;

DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0302

Recirculating Gravel Filter (RGF)

(1) Siting and absorption area construction criteria.

(a) RGFs approved for treatment standard 1 may be sited and sized as follows.

(A) In areas with a temporary water table, in accordance with specifications for sand filters in areas with temporary groundwater in OAR 340-071-0290.

(B) In areas with permanent groundwater, where 4 feet of separation can be maintained between the bottom of the trench and groundwater and the other criteria in OAR 340-071-0290 can be met.

(C) On sites meeting criteria for standard onsite systems in OAR 340-071-0220 or for pressurized systems in OAR 340-071-0275.

(b) RGFs used in conjunction with approved disinfection and approved nitrogen reduction processes and expected to meet treatment standard 2 may be sited and sized as follows.

(A) On sites meeting the criteria for treatment standard 1 in subsection (a) of this section.

(B) In areas with a permanent water table, in accordance with specifications for sand filters in areas with a permanent water table in OAR 340-071-0290.

(c) Any type of absorption area permitted for a sand filter system, including the gravel-less absorption method, may be permitted for an RGF system.

(2) Design criteria.

(a) Filter design and dosing.

(A) The basal or bottom area of the filter must be sized based on a maximum organic load. For residential strength wastewater that has been pretreated through a septic tank, the maximum hydraulic load allowable is 5 gal/ft²/day.

(B) For BOD₅ waste strengths stronger than residential strength wastewater but not exceeding 400 mg/L, the filter size must be increased proportionately.

(C) Higher strength wastewaters must be pretreated or will require special consideration. In no case may the concentration of greases and oil applied exceed 30 mg/L.

(b) Filter media.

(A) Where CBOD₅ removal must be at least 85 percent based upon the raw sewage concentration applied to the septic tank and nitrification of wastewater is necessary, a filter media must consist of 3 feet of very fine washed gravel, 100 percent passing a 3/8-inch sieve with an effective size between 3 and 5 millimeters and a uniformity coefficient of 2 or less. Washed means that negligible fines (less than 1.0 percent) pass a No. 10 sieve.

(B) Where additional removal of BOD₅ and denitrification is intended or required, a treatment media may consist of 2 feet of very coarse washed sand, 100 percent passing a 3/8-inch sieve with an effective size between 1.5 and 2.5 millimeters and a uniformity coefficient of 2 or less. Washed means that negligible fines (less than 4.0 percent) pass the No. 100 sieve.

(C) Sieves of 3/8 inch, 1/4 inch, and Nos. 4, 6, 8, 10, 50, and 100 must be used in gradation analysis.

(D) The permittee must provide fresh samples of the intended media for each project before shipment to the project site. A laboratory gradation analysis must be performed and the gradation data plotted on semi-log paper as a gradation curve. Lab data, gradation curve, and a 5-pound sample of the media must be submitted to the agent for approval. Only approved media may be used.

(c) Filter media must be overlain by a 3-inch bed of 1/2-inch to 3/4-inch washed gravel. The media and gravel may only lightly cover the distribution piping. Unless otherwise authorized, each orifice must be covered by an orifice shield to prevent aerial spray drift.

(d) Filter dosing must use a low pressure distribution piping system operating under adequate head to pressurize the system. The operating head must be a minimum of 5 feet at the remotest orifice and have no more than 10 percent flow variation between the nearest and remotest orifice in an individual unit. Each lateral pipe end must terminate with a screwed plug or cap accessible for removal and flushing. Wherever practical, a valved backflush system must be installed to flush groups of laterals back to a septic tank or elsewhere.

(e) Pressure-distribution piping must be spaced 2 feet center to center in a parallel grid. Orifice spacing must be every 2 feet on laterals. Piping grid edges should be within 1 foot of the filter basal edge.

(f) Filter media must be underlain by a 6-inch bed of a 1/2 to 3/4-inch washed gravel underdrain media. No filter fabric may cover the underdrain media.

(g) Perforated collection pipes must meet requirements in OAR 340-073-0060(2) and be bedded in the underdrain media. Pipes must be at least 4 inches in diameter with no filter fabric wrap. At least 15 lineal feet of collection pipe is required for each 225 square feet of filter basal area.

(h) The filter container must be watertight to suit the design conditions. Underflow must be contained. Groundwater must be excluded. A concrete container may be used. Other materials may be used if equivalent function, workmanship, watertightness, and at least a 20-year service life can be expected.

(3) Recirculation/dilution tank.

(a) A recirculation tank receives septic tank effluent and underflow from the filter. A pumping system at this tank delivers flow to the filter dose piping network according to a project design. The recirculation tank volume measured from tank floor to tank soffit must be at least equal to the projected daily sewage flow volume.

(b) The recirculation ratio at design flow must be at least 4. Recirculation ratio is the daily volume of recycle divided by design daily volume of the wastewater. A fabricated "T" or "Splitter T" float valve located in the recirculation tank must be used whenever possible. Minimum recirculation tank liquid volume must be at least 80 percent of the gross tank volume when a float valve is used. Alternatively, where required and reasonable, a splitter basin using orifice or weir control may be used to divide underflow 20 percent to the absorption field and 80 percent to recycle on a daily basis. This alternative must use orifice control wherever possible. Minimum recirculation tank liquid volume must be at least 50 percent of the required tank volume when a splitter basin is used.

(c) Evaluation of and design for overflow and surge control at the recirculation tank must be included in the design plans.

(d) An audible or visual high water alarm must be included in the recirculation tank immediately below the overflow level. A latching electrical relay must retain the audible or visual alarm until acknowledged by a site attendant.

ADMINISTRATIVE RULES

(e) Parallel pump start/stop electric controls (usually floats) must be installed to correct any unforeseen high liquid level event and keep sewage contained. This pump start function precludes overflow and must operate in parallel with the start/stop function of a timer and must not interfere with or depend upon a timer position.

(f) All areas of the filter must be wetted 48 times a day or every 30 minutes to achieve the recirculation ratio of at least 4 unless otherwise authorized by the agent.

(g) Testing must demonstrate the recirculation tank is watertight. Testing must be witnessed by the designer. Test protocol must be included in the design plans.

(h) Access onto the filter must be restricted by a fence or other effective means. Surface water entry onto the filter must be prevented by design and construction.

(i) Access openings to the recirculation tank must be provided at each end. Larger tanks must have additional openings. The smallest dimension of any access must be 18 inches. Larger openings must be provided if partially obstructed with piping or other objects. Provisions must be made to remove dregs (settleable solids). Pumps must be readily removable and replaceable without demolition of piping or other components.

(4) Operation and Maintenance standards. The owner of an onsite system using an RGF must ensure the RGF and all other components of the onsite system are properly operated and timely maintained or decommissioned.

(5) Operation and maintenance manual. The designer of an RGF system must ensure that comprehensive and detailed operation and maintenance instructions are provided to the onsite system owner at the time of installation. The instructions must emphasize operating and maintaining the entire system within the parameter ranges for which it is designed. The information must be presented in a manner that can be easily understood by the owner and include at a minimum:

(a) As-built plans with the name and contact number of the installer;

(b) A description of how the process functions, including diagrams illustrating basic system design and flow path;

(c) A maintenance schedule for all critical components;

(d) Requirements and recommended procedures for periodic removal of residuals from the system;

(e) A detailed procedure for visually evaluating the function of system components;

(f) A description of olfactory and visual techniques for confirming correct process parameters and system performance;

(g) A recommended method for collecting and transporting effluent samples;

(h) Safety concerns that may need to be addressed; and

(i) Emergency contact numbers for maintenance providers and pumpers.

(6) Service contracts.

(a) The owner of an RGF system must maintain a contract with a maintenance provider certified by the manufacturer to serve and maintain the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned. A single service contract and maintenance provider for both the RGF and the other components is preferable to multiple contracts for maintenance providers.

(b) The service contract must provide the following.

(A) Provide for a minimum of four inspection and service visits by a maintenance provider scheduled once every six months over the two-year period to inspect, adjust, and service the RGF.

(B) Provide for an RGF-effluent quality inspection by a maintenance provider consisting of but not limited to a visual assessment for color, turbidity, and scum overflow; an olfactory assessment for odor; and any other performance assessment or operational diagnosis, which may include sampling of treated effluent (post-disinfection if disinfection is used) necessary to determine or ensure proper operation of the facility.

(C) Include a clause stating that the maintenance provider must notify the system owner in writing about any improper system function that cannot be remedied during the time of inspection and include an estimated date of correction.

(D) Include other information and conditions of the agreement such as:

(i) Owner's name and address;

(ii) Property address and legal description;

(iii) Permit requirements;

(iv) Contact information for the owner, maintenance provider, and agent;

(v) Details of service to be provided, including the service required in this section;

(vi) Schedule of maintenance provider duties;

(vii) Cost and length of service contract and time period covered;

(viii) Details of any warranty; and

(ix) Owner's responsibilities under the contract for routine operation of the onsite system.

(c) Maintenance providers. A maintenance provider under a contract required in this section must comply with the following requirements.

(A) A maintenance provider must observe and record conditions in the drainfield during all operation and maintenance activities for the system and report those observations to the system owner. System owners must report evidence of any system failures to the agent and take appropriate action approved by the agent to correct the problem. Any repair or alteration must comply with OAR 340-071-0215, 340-071-0210, and other applicable requirements in this division.

(B) Maintenance providers must maintain accurate records of their service contracts, customers, performance data, and time lines for renewing the contracts. These records must be available for inspection upon request by the agent.

(C) Within 30 days of their termination or expiration, maintenance providers must notify the agent of service contracts that are terminated or not renewed.

(D) Maintenance providers must make emergency service available within 48 hours of a service request.

(E) The maintenance provider must submit the annual report required in OAR 340-071-0130(17)(a) and the annual evaluation fee in OAR 340-071-0140(3)(k)(B) for each system under contract to be serviced by the maintenance provider.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.780, 468B.050 & 468B.055

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0310

Steep Slope Systems

(1) General conditions for approval. Construction-installation permits may be issued for steep slope systems serving single-family dwellings on slopes in excess of 30 percent if all the following requirements can be met.

(a) Slope does not exceed 45 percent.

(b) The soil is well-drained with no evidence of saturation to a depth of 60 inches.

(c) The soil has a minimum effective soil depth of 60 inches.

(2) Construction requirements.

(a) Seepage trenches must be installed at a minimum depth of 30 inches and a maximum depth of 36 inches below the natural soil surface on the downhill side of the trench and must contain a minimum of 18 inches of drain media and 12 inches of native soil backfill.

(b) The system must be sized at a minimum of 75 linear feet per 150 gallons projected daily sewage flow.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0315

Tile Dewatering System

(1) General conditions for approval. Construction permits may be issued for tile dewatering systems if the following requirements can be met.

(a) The site has a natural outlet that will allow a field tile installed on a proper grade around the proposed absorption facility to daylight above annual high water.

(b) Soils are silty clay loam or coarser textured and drainable.

(c) Soils must have a minimum effective soil depth of at least 30 inches in soils with temporary groundwater and at least 72 inches in soils with permanent groundwater unless otherwise authorized by the agent.

(d) Slope does not exceed 3 percent.

(e) All other requirements for the system, except depth to groundwater, can be met. After the field collection drainage tile is installed, the groundwater levels must conform to the requirements of OAR 340-071-0220(1), 340-071-0265(1), 340-071-0290(2), 340-071-0302(1), or 340-071-0345(8).

(2) Construction requirements.

(a) Field collection drainage tile must be installed on a uniform grade of 0.2 to 0.4 feet of fall per 100 feet. The tile drainage trench must be con-

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structed to the minimum depth required in the approved site evaluation report.

(b) A field collection drainage tile trench must be constructed at least 12 inches wide.

(c) Maximum drainage tile spacing must be 70 feet center to center.

(d) The minimum horizontal separation distance between the drainage tile and absorption facility must be 20 feet.

(e) Field collection drainage tile must be rigid, smooth-wall, perforated pipe or other pipe material approved by the agent with a minimum diameter of 4 inches.

(f) Field collection drainage tile must be enveloped in clean drain media or underdrain media to within 30 inches of the soil surface in soils with permanent groundwater or to within 12 inches of the soil surface in soils with temporary groundwater. Drain media must be covered with filter fabric, treated building paper, or other nondegradable material approved by the agent.

(g) Outlet tile must be rigid, smooth-wall, solid PVC pipe meeting or exceeding ASTM Standard D-3034 with a minimum diameter of 4 inches. A flap gate or rodent guard may be required by the agent.

(h) A silt trap with a 12-inch minimum diameter must be installed between the field collection drainage tile and the outlet pipe unless otherwise authorized by the agent. The bottom of the silt trap must be at least 12 inches below the invert of the drainage pipe outlet.

(i) The discharge pipe and tile drainage system are integral parts of the system but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds, or other surface waterbodies.

(j) Before issuing a final site evaluation report approving the site, the agent may require demonstration that a proposed tile dewatering site can be effectively drained.

(k) The absorption facility must use equal or pressurized distribution.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0320

Split Waste Method

Criteria for approval. In a split waste method, wastes may be disposed of as follows.

(1) Black wastes may be disposed of by use of nonwater-carried plumbing units such as recirculating oil flush toilets or compost toilets approved by the State Building Codes Division.

(2) Gray water may be disposed of by discharge to:

(a) An existing onsite system which is not failing;

(b) A new onsite system with a soil absorption facility 2/3rds normal size if a full-size initial absorption area and replacement absorption area of equal size are available; or

(c) A public sewerage system.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.610, 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0325

Gray Water Waste Disposal Sumps

(1) Criteria for approval.

(a) Hand-carried gray water may be disposed of in gray water waste disposal sumps that serve facilities, including but not limited to recreation parks, camp sites, or construction sites, if the projected daily gray water flow does not exceed 10 gallons per unit. Gray water or other sewage may not be piped to the gray water waste disposal sump. Where projected daily sewage flow exceeds 10 gallons per unit, gray water must be disposed of in facilities meeting requirements of OAR 340-071-0320(2).

(b) Gray water sumps may be used where the agent determines they will not create a nuisance or public health hazard.

(c) Up to four gray water waste disposal sumps may be constructed on the same property and at the same time for each construction permit. The sumps must meet minimum separation distances in **Table 8**.

(2) In campgrounds or other public use areas, gray water waste disposal sumps must be identified as "sink waste disposal" by placard or sign in letters at least 3 inches in height and in a color contrasting with the background.

(3) Design and construction details for the gray water waste disposal sumps must be submitted with the permit application. At a minimum, the sump design concepts must include a receiving chamber with screen, set-

ting chamber with tee fitting that extends about a third of the depth of the clear zone, and an absorption facility. The absorption facility may be a shallow seepage chamber or absorption trench, depending on site conditions or other considerations.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.610, 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0330

Nonwater-Carried Systems

(1) A person may not cause or allow the installation, placement, or use of a nonwater-carried waste disposal facility without a letter of authorization or permit from the agent, except in accordance with this section.

(a) Temporary-use pit privies used on farms for farm labor do not require agent approval.

(b) A sewage disposal service business licensed under OAR 340-071-0600 may install portable toilets without written approval of the agent if all other requirements of this rule except **Table 8** setbacks are met.

(2) Nonwater-carried waste disposal facilities may be approved for temporary or limited-use areas, including but not limited to recreation parks, camp sites, farm labor camps, or construction sites, if:

(a) All liquid wastes can be handled in a manner to prevent a public health hazard and to protect public waters; and

(b) The separation distances in **Table 8** can be met.

(3) Construction. Nonwater-carried waste disposal facilities must be constructed in accordance with OAR 340-073-0065 through 340-073-0075.

(4) Maintenance. Nonwater-carried waste disposal facilities must be maintained to prevent health hazards and pollution of public waters.

(5) General. A person may not place water-carried sewage in nonwater-carried waste disposal facilities. The contents of nonwater-carried waste disposal facilities must be removed by a licensed sewage disposal service with a pumper license and taken to an authorized treatment site.

(6) Pit privy.

(a) Unsealed earth-pit type privies may be approved where the highest level attained by groundwater is not closer than 4 feet below the bottom of the privy pit.

(b) The privy must be constructed to prevent surface water from running into the pit.

(c) When the pit becomes filled to within 16 inches of the ground surface, a new pit must be excavated and the old pit backfilled with at least 2 feet of earth.

(7) A person may not cause or allow the installation or use of a portable toilet unless the pumping or cleaning of the portable toilet is covered by a valid and effective contract with a pumping service licensed under OAR 340-071-0600. Each portable toilet must display the name of the pumping service responsible for servicing.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0335

Cesspools and Seepage Pits

(1) A person may not construct new cesspool sewage disposal systems in Oregon.

(2) Seepage pit sewage disposal systems may be used only to serve existing sewage loads and replace existing failing seepage pit and cesspool systems on lots that are too small to accommodate a standard system or other alternative onsite system. A construction permit allowing replacement of the failing system may not be issued if a sewerage system is both legally and physically available as described in OAR 340-071-0160(4)(f).

(3) Construction requirements.

(a) Each seepage pit must be installed in a location to facilitate future connection to a sewerage system when such facilities become available.

(b) Maximum depth of seepage pits is 35 feet below ground surface.

(c) The seepage pit depth must terminate at least 4 feet above the water table.

(4) Notwithstanding the permit duration specified in OAR 340-071-0160(5), a permit issued pursuant to this rule may be effective for a period of less than one year from the date of issue if specified by the agent.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 21-1981(Temp), f. & ef. 9-1-81; DEQ 6-1982(Temp), f. & ef. 3-19-82; DEQ 8-1982, f. & ef. 4-20-82; DEQ 1-1985(Temp), f. & ef.

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1-2-85; DEQ 2-1985, f. & ef. 2-1-85; DEQ 8-1986(Temp), f. & ef. 4-29-86; DEQ 16-1986, f. & ef. 9-16-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0340 Holding Tanks

(1) Criteria for approval. Except as provided in section (5) of this rule, installation of a holding tank system requires a construction-installation or WPCF permit. A construction-installation permit may be issued for sites that meet all the following conditions.

(a) Permanent use.

(A) The site cannot be approved for installation of a standard subsurface system.

(B) No community or areawide sewerage system is available or expected to be available within five years.

(C) The tank is intended to serve a small industrial or commercial building or an occasional use facility such as a county fair or a rodeo.

(D) Unless otherwise allowed by the department, the projected daily sewage flow is not more than 200 gallons.

(E) Setbacks required for septic tanks can be met.

(b) Temporary use: A holding tank may be installed in an area under the control of a city or other legal entity authorized to construct, operate, and maintain a community or area-wide sewerage system if:

(A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application; and

(B) The proposed holding tank complies with other applicable requirements in OAR chapter 340, divisions 071 and 073.

(2) Operations and maintenance. At all times the holding tank is being used, the owner of the tank must maintain a service contract with a sewage disposal service licensed under OAR 340-071-0600 to provide for regular inspection and pumping of the holding tank.

(3) Design and construction requirements. Except as provided in section (5) of this rule, holding tanks must comply with the following requirements.

(a) Plans and specifications for each holding tank proposed to be installed must be submitted to the agent for review and approval.

(b) Each tank must:

(A) Have a minimum liquid capacity of 1,500 gallons;

(B) Comply with tank standards in OAR 340-073-0025;

(C) Be located and designed to facilitate removal of contents by pumping

(D) Be equipped with both an audible and a visual alarm placed in locations acceptable to the agent to indicate when the tank is 75 percent full. Only the audible alarm may be user cancelable;

(E) Have no overflow vent at an elevation lower than the overflow level of the lowest fixture served; and

(F) Be designed for antibuoyancy if test hole examination or other observations indicate seasonally high groundwater may float the tank when empty.

(4) Special requirements. The application for a holding tank permit must include:

(a) A copy of a contract with a licensed sewage disposal service that requires the tank to be pumped periodically at regular intervals or as needed and the contents treated in a manner and at a facility approved by the agent; and

(b) Evidence that the owner or operator of the proposed treatment facility will accept the pumpings for treatment.

(5) Portable holding tanks may be temporarily placed at sites having limited duration events such as county fairs or construction projects or at temporary restaurants if the following requirements are met.

(a) The tanks must be owned and serviced by a licensed sewage disposal service with sewage pumping equipment having a 550-gallon or larger tank and meeting all other requirements in OAR 340-071-0600(11).

(b) Tank placement and use must comply with all local planning, building, and health requirements.

(c) Only domestic sewage may be discharged into the tank.

(d) The tank must be maintained in a sanitary manner to prevent a health hazard or nuisance.

(e) The tank must not be buried.

(f) A person may not use the tank to serve a dwelling, recreation vehicle, or any other structure having sleeping accommodations, except that a portable holding tank may be used temporarily to serve a contractor's job shack or night watchman's trailer.

(g) The tank must meet the following standards.

(A) The tank must be watertight with no overflow vent lower than the overflow level of the lowest fixture served.

(B) Tank capacity may not exceed 1,000 gallons unless otherwise authorized by the agent.

(C) The tank must be structurally sound and made of durable, noncorrosive materials.

(D) The tank must be designed and constructed to provide a secure, watertight connection of the building sewer pipe.

(E) The tank must be marked with the name and phone number of the licensed sewage disposal service responsible for maintaining the tank.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 13-1997(Temp), f. & cert. ef. 6-23-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0345

Alternative Treatment Technologies (ATTs)

(1) Criteria for approval. Construction-installation permits may be issued for onsite systems incorporating alternative treatment technologies (ATTs) for single family dwellings and commercial facilities if the following criteria are met.

(a) The department has listed the ATT, including brand and model or type where applicable, for use in onsite systems pursuant to section (2) of this rule.

(b) The ATT meets the performance and model selection criteria specified for the proposed use in section (4) of this rule.

(c) The site meets the appropriate siting criteria in section (8) of this rule, and the agent has approved the site.

(d) The owner of the property served by the onsite system incorporating the ATT has a written service contract as required in section (14) of this rule.

(2) ATT listing and delisting.

(a) The department will maintain a list of ATTs that meet the performance requirements in section (3) of this rule.

(b) Any person may submit an application for listing an ATT. The application must include:

(A) Documentation that the ATT meets the performance requirements in section (3) of this rule;

(B) Documentation that the ATT has been certified by NSF International as a class 1 or equivalent residential wastewater treatment system;

(C) A guide for inspecting the ATT installation;

(D) A plan for training agents on inspection of the ATT and training and certifying system installers on installation of the ATT;

(E) A plan for training and certifying O&M maintenance providers on system maintenance for the ATT;

(F) Documentation that the ATT complies with sections (5)-(7) and (9) of this rule; and

(G) The innovative or alternative technology or material review fee in OAR 340-071-0140.

(c) The department will approve applications to list ATTs that the department determines meet the performance requirements in section (3) of this rule under normal operating conditions. ATTs will be listed by brand and model or type for the treatment standards they achieve.

(d) The department may approve ATTs that vary from standards in OAR chapter 340, division 073.

(e) The department may remove ATTs from the list if it determines the requirements for approval in subsection (c) of this section are no longer satisfied or if:

(A) The percent or more of installed systems under 10 years of age fail;

(B) NSF International certification of the ATT as a class 1 or equivalent residential wastewater treatment system is not current; or

(C) The manufacturer goes out of business.

(f) Any person adversely affected by the department's listing or delisting decision may appeal that decision through the contested case hearing procedures in ORS Chapter 183 and OAR chapter 340, division 011.

(3) Performance testing and standards for listing ATTs.

(a) Product testing. ATTs must be tested according to the product standards and testing protocol established by the NSF International Standard No. 40 Residential Wastewater Treatment Systems, July 2000, or another NSF protocol approved by the department. Testing for the fecal coliform and total nitrogen parameter must include the collection and analysis of

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influent and effluent grab samples at a minimum frequency of three days per week and the same duration (26 consecutive weeks) and hydraulic loadings (design and stress loadings) as the NSF sample collection requirements for the BOD₅, CBOD₅, and TSS parameters. The testing must be performed by NSF or a testing facility acceptable to NSF. Data from systems studied under the La Pine National Demonstration Project may be used to demonstrate TN + fecal coliform removal.

(b) Product performance. An ATT must produce effluent quality equal to or better than treatment standard 1 or 2 specified in this subsection.

(A) Treatment standard 1 means a 30-day average of less than 20 mg/L of biochemical oxygen demand (BOD) (5 day BOD₅) and 20 mg/L of total suspended solids (TSS). A 30-day average of less than 17 mg/L of carbonaceous biochemical oxygen demand (5 day CBOD₅) will be accepted in lieu of the BOD₅ value when data are submitted in the course of testing and reporting protocols specified in subsection (a) of this section.

(B) Treatment standard 2 means a 30-day average of less than 20 mg/L of biochemical oxygen demand (BOD) (5 day BOD₅) and 20 mg/L of total suspended solids (TSS), a 30-day geometric mean of less than 400 fecal coliform per 100 milliliters, and a 30-day average of 30 mg/L of Total Nitrogen (TN). Nonchlorinating disinfection units with performance demonstrated through NSF Standard No. 46 testing protocol or another NSF or Environmental Technology Verification (ETV) protocol approved by the department may be used in conjunction with other technology to meet the fecal standards. A 30-day average of less than 17 mg/L of carbonaceous biochemical oxygen demand (5 day CBOD₅) will be accepted in lieu of the BOD₅ value when data are submitted in the course of testing and reporting protocols specified in subsection (a) of this section.

(4) ATT model type and size selection. The model, type, and size of the ATT proposed for a system must be consistent with manufacturer recommendations and match the daily design wastewater flow anticipated from the dwelling or facility.

(5) Access ports.

(a) At a minimum, the ATT must have ground-level access ports sized and located to facilitate installation, removal, sampling, examination, maintenance, and servicing of components or compartments that require routine maintenance or inspection. Access ports must facilitate:

(A) Visually inspecting and removing mechanical or electrical components;

(B) Removing components that require periodic cleaning or replacement;

(C) Visually inspecting and collecting samples; and

(D) Removing (manual or pumping) accumulated residuals.

(b) Access ports must be protected against unauthorized intrusion. Acceptable protective measures include but are not limited to padlocks or covers that can be removed only with tools.

(6) Malfunction, failure sensing, and signaling equipment.

(a) The system must be designed to prevent the passage of untreated waste into the absorption field if the plant malfunctions.

(b) The ATT must possess a mechanism or process capable of detecting:

(A) Failure of electrical and mechanical components that are critical to the treatment process; and

(B) High liquid level conditions above the normal operating specifications.

(c) The ATT must possess a mechanism or process capable of notifying the system owner of failures. The mechanism must have circuits separate from pump circuits and deliver a visible and audible signal.

(A) The visual alarm signal must be conspicuous at a distance of 50 feet from the system and its appurtenances.

(B) The audible alarm signal strength must be between 70 and 90 dbA at 5 feet and discernible at a distance of 50 feet from the system and its appurtenances.

(C) The visual and auditory signals must continue to function in the event of electrical, mechanical equipment, or hydraulic malfunction of the system. The audible signal may be disabled for service as long as the visual signal remains active while cause for the alarm is identified and alleviated.

(d) A clearly visible label or plate with instructions for obtaining service must be permanently located near the failure signal.

(7) Data plate.

(a) The ATT must have permanent and legible data plates located on:

(A) The front of the electrical control box if the ATT has an electrical control box or panel; and

(B) The tank, aeration equipment assembly, or riser at a location accessed during maintenance cycles and inspections.

(b) Each data plate must include:

(A) Manufacturer's name and address;

(B) Model number;

(C) Serial number (required on one data plate only);

(D) Rated daily hydraulic capacity of the system; and

(E) The performance expectations as determined by performance testing and evaluation.

(8) Siting and absorption area construction criteria.

(a) ATTs approved for treatment standard 1 may be sited and sized as follows.

(A) In areas with a temporary water table, in accordance with specifications for sand filters in areas with temporary groundwater in OAR 340-071-0290.

(B) In areas with permanent groundwater, where 4 feet of separation can be maintained between the bottom of the trench and groundwater and the other criteria in OAR 340-071-0290 can be met.

(C) On sites meeting criteria for standard onsite systems in OAR 340-071-0220 or for pressurized systems in OAR 340-071-0275.

(b) ATTs used in conjunction with approved disinfection and approved nitrogen reduction processes and approved for treatment standard 2 may be sited and sized as follows.

(A) On sites meeting the criteria for treatment standard 1 in subsection (a) of this section.

(B) In areas with a permanent water table, in accordance with specifications for sand filters in areas with a permanent water table in OAR 340-071-0290.

(c) Any type of absorption area permitted for a sand filter system, including the gravel-less absorption method, may be permitted for an ATT system.

(9) Limited warranty. The ATT manufacturer must:

(a) Warrant all components of the ATT to be free from defects in material and workmanship for a minimum of two years from the date of installation; and

(b) Fulfill the terms of the warranty by repairing or exchanging any components that the manufacturer determines may be defective.

(10) Installation. ATTs must be installed in accordance with the manufacturer's instructions and this division. The installer must be certified by the ATT manufacturer to install the system and provide written certification to the agent that the ATT component was installed in accordance with the manufacturer's instructions and this rule.

(11) Sampling ports. A sampling port must be designed, constructed, and installed to provide easy access for collecting a free falling or undisturbed sample from the effluent stream. The sampling port may be located within the ATT or other system component (such as a pump chamber) if the wastewater stream being sampled is representative of the effluent stream from the ATT.

(12) Operation and maintenance standards. The owner of an ATT system must ensure the ATT and all components of the onsite system are properly operated and timely maintained or decommissioned and the effluent standards in section (3) of this rule are met.

(13) Owner's manual. The designer of each onsite system using an ATT must provide a comprehensive owner's manual prepared by the manufacturer or designer to the system owner, manufacturer's representative, installer, and if requested, the agent before or at the time of installation. The manual may be a collection of individual system component manuals and must include information on system specifications, system installation, operation and maintenance, and troubleshooting and repair. The information must be presented in a manner that can be easily understood by the owner.

(14) Service contracts.

(a) The owner of an ATT system must maintain a contract with a maintenance provider certified by the manufacturer to serve and maintain the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned. A single service contract and maintenance provider for both the ATT and the other components is preferable to multiple contracts for maintenance providers.

(b) The service contract must provide the following.

(A) Provide for a minimum of four inspection and service visits by a maintenance provider scheduled once every six months over the two-year period to inspect, adjust, and service the ATT.

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(B) Provide for an ATT-effluent quality inspection by a maintenance provider consisting of but not limited to a visual assessment for color, turbidity, and scum overflow; an olfactory assessment for odor; and any other performance assessment or operational diagnosis, which may include sampling of treated effluent (post-disinfection if disinfection is used) necessary to determine or ensure proper operation of the facility.

(C) Include a clause stating that the maintenance provider must notify the system owner in writing about any improper system function that cannot be remedied during the time of inspection and include an estimated date of correction.

(D) Include other information and conditions of the agreement such as:

- (i) Owner's name and address;
- (ii) Property address and legal description;
- (iii) Permit requirements;
- (iv) Contact information for the owner, maintenance provider, and agent;
- (v) Details of service to be provided, including the service required in this section;
- (vi) Schedule of maintenance provider duties;
- (vii) Cost and length of service contract and time period covered;
- (viii) Details of any warranty; and
- (ix) Owner's responsibilities under the contract for routine operation of the onsite system.

(c) Maintenance providers. A maintenance provider under a contract required in this section must comply with the following requirements.

(A) A maintenance provider must observe and record conditions in the drainfield during all operation and maintenance activities for the ATT and other system components and report those observations to the system owner. System owners must report evidence of any system failures to the agent and take appropriate action approved by the agent to correct the problem. Any repair or alteration must comply with OAR 340-071-0215, 340-071-0210, and other applicable requirements in this division.

(B) Maintenance providers must maintain accurate records of their service contracts, customers, performance data, and time lines for renewing the contracts. These records must be available for inspection upon request by the agent.

(C) Within 30 days of their termination or expiration, maintenance providers must notify the agent of service contracts that are terminated or not renewed.

(D) Maintenance providers must make emergency service available within 48 hours of a service request.

(E) The maintenance provider must submit the annual report required in OAR 340-071-0130(17)(a) and the annual evaluation fee in OAR 340-071-0140(3)(k)(B) for each system under contract to be serviced by the maintenance provider.

(F) A maintenance provider must be certified by the manufacturer to provide service on an ATT.

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

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0360

Absorption Trenches in Sapolite

(1) General conditions for approval. An onsite system construction-installation permit may be issued for a single family dwelling on a site with soil shallow to sapolite if requirements in either subsection (a) or (b) of this section can be met.

(a) If slope does not exceed 30 percent:

(A) The sapolite is sufficiently weathered so that it can be textured, crushed, or broken with hand pressure to a depth of 24 inches and can be dug from a test pit wall with a spade or other hand tool to a depth of 48 inches; and

(B) Clay films or iron coatings with moist values of 5 or less and moist chromas of 4 or more, organic coatings with moist values of 3 or less and moist chromas of 2 or more, or both occur on fracture surfaces of the sapolite to a depth of 48 inches.

(b) If slope exceeds 30 percent but not 45 percent:

(A) The sapolite is sufficiently weathered so that it can be textured, crushed, or broken with hand pressure to a depth of 24 inches and can be dug

from a test pit wall with a spade or other hand tool to a depth of 60 inches; and

(B) Clay films or iron coatings with moist values of 5 or less and moist chromas of 4 or more, organic coatings with moist values of 3 or less and moist chromas of 2 or more, or both occur on fracture surfaces of the sapolite to a depth of 60 inches.

(c) For sapolite derived from granite or other deposits where clay films or iron coatings are not present, a soil absorption test and the degree of consolidation may be used to predict hydraulic conductivity of the sapolite. Agents may approve sites where conductivity is sufficiently high to ensure adequate drainage. Test methods must be acceptable to the department.

(2) Construction Requirements.

(a) Standard absorption trenches must be installed where slope does not exceed 30 percent.

(A) The trenches must be installed at a minimum depth of 24 inches and a maximum depth of 30 inches below the natural soil surface and contain 12 inches of filter material and a minimum of 12 inches of native soil backfill.

(B) The trenches must be sized at a minimum of 100 linear feet per 150 gallons projected daily sewage flow.

(b) Seepage trenches must be installed where slope exceeds 30 percent but not 45 percent.

(A) Seepage trenches must be installed at a minimum depth of 30 inches and at a maximum depth of 36 inches below the natural soil surface and contain a minimum of 18 inches of filter material and 12 inches of native soil backfill.

(B) Seepage trenches must be sized at a minimum of 75 linear feet per 150 gallons of projected daily sewage flow.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0400

Geographic Area Special Considerations.

(1) River Road — Santa Clara Area, Lane County.

(a) Within the areas described in subsection (b) of this section, an agent may approve sites or issue construction-installation permits for new onsite wastewater treatment systems if both of the following conditions are met.

(A) The lot and proposed system comply with all rules in effect at the time the site is approved or the permit is issued.

(B) The system alone or in combination with other new sources will not contribute more than 16.7 pounds of nitrate-nitrogen per acre per year to the local groundwater. To ensure compliance, the applicant must own or control adequate land through easements or equivalent.

(b) Subsection (a) of this section applies to all of the following area generally known as River Road -- Santa Clara and defined by the boundary submitted by the Board of County Commissioners for Lane County. The area is bounded on the south by the City of Eugene, on the west by the Southern Pacific Railroad, on the north by Beacon Drive, and on the east by the Willamette River and includes all or portions of T16S, R4W, Sections 33, 34, 35, 36; T17S, R4W, Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25; and T17S, R1E, Sections 6, 7, 18, Willamette Meridian.

(c) Appropriate local agencies within this area may petition the commission to repeal or modify this rule. Such petition must provide reasonable evidence either that development using onsite wastewater treatment systems will not cause unacceptable degradation of groundwater quality or surface water quality or that degradation of groundwater or surface water quality will not occur as a result of the modification or repeal requested.

(d) This section does not apply to any construction-installation permit application based on a site approval issued by the agent pursuant to ORS 454.755(1)(b) before March 20, 1981.

(2) General North Florence Aquifer, North Florence Dunal Aquifer Area, Lane County.

(a) Within the area described in subsection (b) of this section, an agent may approve sites or issue construction-installation permits for new onsite systems under either of the following circumstances.

(A) The lot and proposed system comply with all rules in effect at the time the site is approved or the permit is issued.

(B) The lot and proposed system comply with paragraph (A) of this subsection except for the projected daily sewage loading rates, and the agent determines the system in combination with all other previously approved systems owned or legally controlled by the applicant will not contribute to the local groundwater more than 58 pounds of nitrate-nitrogen per year per acre owned or controlled by the applicant.

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(b) Subsection (a) of this section applies to the following area designated the General North Florence Aquifer of the North Florence Dunal Area and defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study. The area is bounded on the west by the Pacific Ocean; on the southwest and south by the Siuslaw River; on the east by the North Fork of the Siuslaw River and the ridge line at the approximate elevation of four hundred (400) feet above mean sea level directly east of Munsel Lake, Clear Lake, and Collard Lake; and on the north by Mercer Lake, Mercer Creek, Sutton Lake, and Sutton Creek and includes all or portions of T17S, R12W, Sections 27, 28, 33, 34, 35, 36, and T18S, T12W, sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27; W.M., Lane County, except that portion defined as the Clear Lake Watershed, which is the area beginning at a point known as Tank One, located in Section One, Township 18 South, Range 12 West, of the Willamette Meridian, Lane County, Oregon: run thence S. 67° 50' 51.5" E. 97.80 ft. to the True Point of Beginning; run thence S. 05° 40' 43.0" W. 1960.62 ft. to a point; run thence S. 04° 58' 45.4" E. 1301.91 ft. to a point; run thence S. 52° 44' 01.0" W. 231.21 ft. to a point; run thence S. 15° 20' 45.4" E. 774.62 ft. to a point; run thence S. 31° 44' 14.0" W. 520.89 ft. to a point; run thence S. 00° 24' 43.9" W. 834.02 ft. to a point; run thence S. 07° 49' 01.8" W. 1191.07 ft. to a point; run thence S. 50° 26' 06.3" W. 731.61 ft. to a point; run thence S. 02° 51' 10.5" W. 301.37 ft. to a point; run thence 36° 37' 58.2" W. 918.41 ft. to a point; run thence S. 47° 12' 26.3" W. 1321.86 ft. to a point; run thence S. 72° 58' 54.2" W. 498.84 ft. to a point; run thence S. 85° 44' 21.3" W. 955.64 ft. to a point; Which is N. 11° 39' 16.9" W. 5434.90 ft. from a point known as Green Two (located in Section 13 in said Township and Range); run thence N. 58° 09' 44.1" W. 1630.28 ft. to a point; run thence N. 25° 23' 10.1" W. 1978.00 ft. to a point; run thence N. 16° 34' 21.0" W. 1731.95 ft. to a point; run thence N. 06° 13' 18.0" W. 747.40 ft. to a point; run thence N. 03° 50' 32.8" E. 671.51 ft. to a point; run thence N. 59° 33' 18.9" E. 1117.02 ft. to a point; run thence N. 59° 50' 06.0" E. 1894.56 ft. to a point; run thence N. 48° 28' 40.0" E. 897.56 ft. to a point; run thence N. 31° 29' 50.7" E. 920.64 ft. to a point; run thence N. 19° 46' 39.6" E. 1524.95 ft. to a point; run thence S. 76° 05' 37.1" E. 748.95 ft. to a point; run thence S. 57° 33' 30.2" E. 445.53 ft. to a point; run thence S. 78° 27' 44.9" E. 394.98 ft. to a point; run thence S. 61° 55' 39.0" E. 323.00 ft. to a point; run thence N. 89° 04' 46.8" E. 249.03 ft. to a point; run thence S. 67° 43' 17.4" E. 245.31 ft. to a point; run thence S. 79° 55' 09.8" E. 45.71 ft. to a point; run thence S. 83° 59' 27.6" E. 95.52 ft. to a point; run thence N. 42° 02' 57.2" E. 68.68 ft. to a point; run thence S. 80° 41' 24.2" E. 61.81 ft. to a point; run thence S. 10° 47' 03.5" E. 128.27 ft. to the True Point of Beginning; and containing all or portions of T17S, R12W, Sections 35 and 36; and T18S, R12W, Sections 1, 2, 11 and 12; W.M., Lane County.

(3) Lands overlaying the Alsea Dunal Aquifer.

(a) Within the area set forth in subsection (c) of this section, the agent may approve a site or issue a permit to construct a single onsite system on lots that were lots of record before January 1, 1981, or on lots in partitions or subdivisions that have received preliminary planning, zoning, and onsite wastewater treatment system approval before January 1, 1981, if one of the following can be met.

(A) At the time the site is approved or the permit is issued, the lot complies with OAR 340-071-0100 through 340-071-0360 and 340-071-0410 through 340-071-0520.

(B) The site meets all of the following conditions when a pressurized seepage bed is used.

(i) Groundwater levels are not closer than 4 feet from the ground surface or closer than 3 feet from the bottom of the seepage bed.

(ii) The seepage bed is constructed in accordance with OAR 340-071-0275(4) and (5).

(iii) The seepage bed is sized on the basis of 200 square feet of bottom area per 150 gallons projected daily sewage flow.

(iv) Projected daily sewage flows are limited to 375 gallons per lot, except for lots approved in a site evaluation for a larger flow.

(v) All setbacks identified in Table 1 can be met, except that lots of record before May 1, 1973, must maintain a minimum 50-foot separation to public surface waters.

(vi) Sufficient area exists on the lot to install a seepage bed and a replacement seepage bed, or the area reserved for replacement is waived pursuant to the exception in OAR 340-071-0150(4)(a)(C).

(C) The site meets all of the following conditions when a conventional sand filter without a bottom is used.

(i) Groundwater levels are not closer than 1 foot from the ground surface and not closer than 1 foot from the bottom of the sand filter.

(ii) Sewage flows are limited to 375 gallons per day per lot, except for lots approved in a site evaluation for larger flows.

(iii) The sand filter is sized at 1 square foot of bottom area for each gallon of projected daily sewage flow.

(iv) The conventional sand filter without a bottom is constructed in accordance with OAR 340-071-0295(3).

(v) All setbacks identified in Table 1 can be met, except that lots of record before May 1, 1973, must maintain a minimum 50 feet separation to public surface waters.

(vi) Sufficient area exists on the lot to install an initial and replacement bottomless conventional sand filter, or the area for replacement is not required under OAR 340-071-0150(4)(a)(C).

(b) An agent may approve a site or issue a construction-installation permit for a new onsite system within the area set forth in subsection (c) of this section on lots created on or after January 1, 1981, if all rules in this division can be met.

(c) The Alsea Dunal Aquifer is defined as all the land bounded on the East by Highway 101, on the west by the Pacific Ocean, and from Driftwood Beach Wayside South to the southern tip of the Alsea Bay Spit.

(d) If groundwater monitoring in the Alsea Dunal Aquifer indicates unacceptable levels of degradation or if development of the aquifer as a source of drinking water is necessary or desirable, sewage collection and off-site treatment facilities must be installed unless further study demonstrates that such facilities are not necessary or effective to protect the beneficial use.

(4) Christmas Valley Townsite, Lake County.

(a) Within the area set forth in subsection (b) of this section, the agent may consider the shallow groundwater table, if present, in the same manner as a temporary water table when issuing site evaluation reports and construction-installation permits.

(b) The Christmas Valley Townsite is defined as all land within the Christmas Valley Townsite plat located within Sections 9, 10, 11, 14, 15 and 16 of Township 27 South, Range 17 East, Willamette Meridian, in Lake County.

(5) Clatsop Plains Aquifer, Clatsop County. The Clatsop Plains Groundwater Protection Plan, prepared by R.W. Beck and Associates and adopted by Clatsop County, provides a basis for continued use of onsite wastewater treatment systems while protecting the quality of groundwater for future water supplies. For the plan to be successful, the following components must be accomplished.

(a) By January 1, 1983, Clatsop County must identify and set aside aquifer reserve areas for future water supply development containing a minimum of 2-1/2 square miles. The reserve areas must be controlled so that the potential for groundwater contamination from nitrogen and other possible pollutants is kept to a minimum;

(b) The agent may approve sites and issue construction permits for new onsite systems within the area generally known as the Clatsop Plains as described in subsection (c) of this section if the conditions in paragraph (A) and paragraph (B), (C), or (D) of this subsection are met.

(A) The lot or parcel was created in compliance with the appropriate comprehensive plan for Gearhart (adopted by County Ordinance 80-3), Seaside (adopted by County Ordinance 80-10), Warrenton (adopted by County Ordinance 82-15), or Clatsop County (adopted through Ordinance No. 79-10).

(B) The lot or parcel does not violate any rule of this division.

(C) Lot or parcel does not violate the department's Water Quality Management Plan or any rule in this division, except that the projected maximum sewage loading rate may exceed the ratio of 450 gallons per 1/2 acre per day. In this case, the onsite system must be either a sand filter system or a pressurized distribution system with a design sewage flow not to exceed 450 gallons per day.

(D) Use of standard onsite systems to serve single family dwellings within planned developments or clustered-lot subdivisions complies with the following requirements.

(i) The planned development or clustered-lot subdivision is not located within Gearhart, Seaside, Warrenton, or their urban growth boundaries.

(ii) The lots do not violate any rule of this division, except the projected maximum sewage loading rate may exceed the ratio of 450 gallons per acre per day.

(iii) The department is provided satisfactory evidence through a detailed groundwater study that the use of standard systems will not constitute a greater threat to groundwater quality than would occur with the use of sand filter systems or pressurized distribution systems.

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(c) The area generally known as Clatsop Plains is bounded by the Columbia River to the North; the Pacific Ocean to the west; the Necanicum River, Neawanna Creek, and County Road 157 on the south; and the Carnahan Ditch-Skipanon River and the foothills of the Coast Range to the east.

(6) Within areas east of the Cascade Range where the annual precipitation does not exceed 20 inches, the agent may issue a construction-installation permit authorizing installation of a standard system to serve a single family dwelling if the requirements in subsections (a) and (b) of this section are met.

(a) Minimum site criteria.

(A) The parcel or lot is 10 acres or larger.

(B) The slope gradient does not exceed 30 percent.

(C) The soils are diggable with a backhoe to a depth of at least 24 inches.

(D) The site complies with the provisions of OAR 340-071-0220(1)(b), (f), (g), (h), (i), and (j).

(b) Minimum construction requirements.

(A) The system must contain at least 225 linear feet of absorption trench for projected sewage flows not exceeding 450 gallons per day. Larger sewage flows must be sized on the basis of 75 linear feet per each 150 gallons of projected flow.

(B) The system must be constructed and backfilled in compliance with OAR 340-071-0220(3), (4), (5), (7), (8), (9), (10), (11), and (12).

(c) The owner or owner's authorized representative may submit a single application to the agent for both a site evaluation report and a construction-installation permit. Such application must be submitted in accordance with OAR 340-071-0160 or 340-071-0162 and include the applicable evaluation and permit fees in OAR 340-071-0140.

(d) The agent may waive the pre-cover inspection for a system installed pursuant to this section if the system installer submits the following information to the agent at the time construction of the system is complete:

(A) A detailed, accurate as-built plan of the constructed system;

(B) A list of all material used in the construction of the system; and

(C) A written certification on a form acceptable to the department that the construction was in accordance with the permit and rules in this division and OAR chapter 340, division 73.

(e) The Agent may waive the site evaluation for a single family dwelling if the requirements in this subsection are met. These conditions are set forth in an addendum to the memorandum of agreement (contract) between the County and the department.

(A) Minimum site criteria.

(i) The lot or parcel is 80 acres or larger.

(ii) The separation distance between the proposed onsite system and the nearest dwelling not served by the proposed system is at least 1/4 mile.

(iii) The nearest property line to the proposed system is at least 100 feet; the nearest domestic water source is at least 200 feet; and the nearest public surface water is at least 200 feet.

(iv) In the opinion of the agent, topographical and soils information submitted with the application, including but not limited to slope, terrain, landform, and rock outcrops, demonstrates that the property can be approved for an onsite system in accordance with this division.

(B) Minimum construction requirements.

(i) Sizing requirements of Tables 4 and 5 must be followed as closely as possible. In all cases the system must contain at least 225 linear feet of absorption trench for projected sewage flows not exceeding 450 gallons per day. Larger sewage flows must be sized on the basis of 75 linear feet per each 150 gallons of projected flow.

(ii) The system must be constructed and backfilled as closely as possible to the requirements in OAR 340-071-0220. The agent may waive watertight testing of tanks in the system.

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

Stat. Auth.: ORS 183.335, 454.625, 468.020, 468B.010 & 468B.020

Stats. Implemented: ORS 454.610 & 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 17-1981, f. & ef. 7-10-81; DEQ 2-1982, f. & ef. 1-28-82; DEQ 16-1982, f. & ef. 8-31-82; DEQ 20-1982, f. & ef. 10-19-82; DEQ 3-1983, f. & ef. 4-18-83; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 20-1996(Temp), f. & cert. ef. 10-14-96; DEQ 4-1997, f. & cert. ef. 3-7-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0410

Rural Area Consideration

An agent may approve design and construction of standard and alternative systems that depart from any standard in OAR 340-071-0220(1)(a) through (i) in designated rural zones if the following requirements are met.

(1) The county designates specific rural zoning classifications for this rule.

(2) The county designates a minimum parcel size of at least 10 acres.

(3) The parcel as proposed or existing is at least 10 acres and does not have an accessible area approvable for a standard onsite system.

(4) The permit is for an onsite system designed to serve a single family dwelling or a commercial facility allowed in the zone with a flow no greater than 600 gpd.

(5) The onsite system will not create a public health hazard or pollute public waters.

(6) Requiring strict compliance with standards in OAR 340-071-0220(1)(a) through (i) would in the judgment of the agent be unreasonable, burdensome, or impractical.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0415

For Cause Variances

(1) An applicant may request variances from any rule or standard in this division.

(2) Variances. Variance officers appointed by the director may, after a public hearing, grant variances from any rule in this division to permit applicants.

(3) To grant a variance, the variance officer must find that:

(a) Strict compliance with the rule or standard is inappropriate; or

(b) Special physical conditions render strict compliance unreasonable, burdensome, or impractical.

(4) Applications.

(a) A separate application for each site considered for a variance must be submitted to the department or contract county as appropriate.

(b) Each application must be signed by the owner of the property served by the system and include:

(A) A site evaluation report, unless waived by the variance officer;

(B) Plans and specifications for the proposed system;

(C) The variance from onsite system rule fee in OAR 340-071-0140;

and

(D) Other information the variance officer determines is necessary for a decision.

(5) An applicant for a variance is not required to pay the application fee if at the time of filing the applicant:

(a) Is 65 years of age or older;

(b) Is a resident of Oregon;

(c) Has an annual household income, as defined in ORS 310.630, of \$15,000 or less; and

(d) Has not previously applied for a variance under this section.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.657, 454.660 & 454.662

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0420

Hardship Variances

(1) In cases of extreme and unusual hardship, the commission may, after a public hearing, grant hardship variances from rules or standards in this division to applicants for onsite permits.

(2) Applications.

(a) Applicants must submit applications for hardship variances to the department.

(b) The application must document that:

(A) A for cause variance under 340-071-0415 has been denied; and

(B) An extreme or unusual hardship exists.

(3) The commission may consider the following factors in reviewing an application for a variance based on hardship:

(a) Applicant's advanced age or poor health;

(b) Applicant's need to care for aged, incapacitated, or disabled relatives; and

(c) Environmental impacts from the variance.

(4) Hardship variances granted by the commission may include conditions such as:

ADMINISTRATIVE RULES

- (a) Limiting permits to the life of the applicant;
 - (b) Limiting the number of permanent residents using the system; and
 - (c) Use of experimental systems for specified periods of time.
- (5) The department will strive to aid and accommodate the needs of applicants for hardship variances.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.657

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0425

Variance Officers

(1) To qualify for appointment as a variance officer, an individual must:

(a) Have the equivalent of five years of full time experience in onsite wastewater treatment methods since January 1, 1974; three years must have been in Oregon; and

(b) Have attended a seminar, workshop, or short course pertaining to soils and their relationship to onsite wastewater treatment.

(2) Contract counties may request appointment of county staff as variance officers.

Stat. Auth.: ORS 454.625

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81 ; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0430

Variance Hearings and Decisions

(1) A variance officer must hold a public information hearing on each variance application for a for cause or hardship variance within 30 days after receipt of a completed application.

(2) The hearing must be held in the county where the property described in the application is located.

(3) The applicant must demonstrate the variance is warranted.

(4) The variance officer must visit the site of the proposed system before conducting the hearing.

(5) The variance officer or, for hardship variances, the commission must grant or deny the variance within 45 days after the hearing is completed. A decision to grant a variance must include the specifications and conditions of the variance and the location of the onsite system.

(6) Except for hardship variances under OAR 340-071-0420, variances run with the land.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0435

Variance Permit Issuance, Inspections, Certificate of Satisfactory Completion

(1) The variance officer or, for hardship variances, the department must notify the appropriate agent in writing of each variance granted.

(2) Agents must issue system construction-installation permits, perform inspections, and issue Certificates of Satisfactory Completion for systems that comply with the conditions of a variance decision.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0440

Variance Appeals

(1) Any person adversely affected by a variance officer's approval of a variance under OAR 340-071-0415 or 340-071-0420 may appeal that decision to the commission in accordance with ORS 454.660(1).

(2) Any person adversely affected by the denial of a variance under OAR 340-071-0415 or 340-071-0420 or by the commission's approval of a hardship variance under OAR 340-071-0420 may appeal that decision to a circuit court in accordance with ORS 183.484.

Stat. Auth.: ORS 454.625

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0445

Variance Administrative Review

The department may review all records and files of variance officers to determine compliance with these rules.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.660

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0460

Moratorium Areas

(1) In accordance with ORS 454.685, whenever the commission finds that construction of subsurface, non-water-carried, or alternative onsite systems should be limited or prohibited in an area, it must issue an order limiting or prohibiting such construction.

(2) The order may be issued only after public hearing for which more than 30 days notice is given to interested persons in the affected areas.

(3) In issuing the order, the commission must consider the factors for the proposed area in ORS 454.685.

(4) A permit or site evaluation report may not be issued for construction of a new or expanded system in violation of any order of the commission issued pursuant to this rule.

Stat. Auth.: ORS 183.335, 454.625, 468.020, 468B.010 & 468B.020

Stats. Implemented: ORS 454.685

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 16-1982, f. & ef. 8-31-82; DEQ 3-1983, f. & ef. 4-18-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 20-1996(Temp), f. & cert. ef. 10-14-96; DEQ 4-1997, f. & cert. ef. 3-7-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0500

Community Systems

(1) A person may not construct a community system without a permit.

(2) Plans for all community systems must describe the system and how it is to be operated, maintained, and financed.

(3) Community systems must satisfy the siting criteria in this division for standard or alternative systems.

(4) Operation responsibility. Municipalities, homeowner associations, or associations of unit owners must operate and maintain community systems including inspections annually or as required by a permit, Certificate of Satisfactory Completion, or these rules.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0520

Large Systems

Unless otherwise authorized by the department, large systems must comply with the following requirements.

(1) Large system absorption facilities must be designed with distribution to the cells by means of pumps or siphons.

(2) The absorption area must be divided into relatively equal units. Each unit may receive no more than 1300 gallons of effluent per day.

(3) The replacement (repair) absorption area must be divided into relatively equal units, with a replacement absorption area unit located adjacent to an initial absorption area unit.

(4) Effluent distribution must alternate between the absorption area units.

(5) Each system must have at least two pumps or siphons.

(6) The applicant must provide a written assessment of the impact of the proposed system upon the quality of public waters and public health, prepared by a registered geologist, a certified engineering geologist qualified as a hydrogeologist, or a subordinate under the direction of either, except as specifically exempted in ORS 672.535.

(7) The owners of all new and existing large systems must register those systems with the department as Underground Injection Control (UIC) systems in accordance with OAR chapter 340, division 044. Large systems receiving domestic waste are regulated under this division. Drainfields receiving nondomestic waste are also regulated under the UIC rules.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95 ; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0600

Sewage Disposal Service Licenses

(1) License required. A person may not perform sewage disposal services or advertise or represent himself as being in the business of performing such services without a valid license issued by the department to perform those services. A separate license is required for each business, organization, or other person conducting sewage disposal services.

(2) Types of licenses. The department may issue three types of sewage disposal service licenses.

(a) Installer license. An installer license is required for any person to construct or install onsite systems or parts of onsite systems or to perform

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the grading, excavating, or earth-moving work associated with the construction or installation of onsite systems.

(b) Pumper license. A pumper license is required for any person to pump out or clean onsite systems, including portable toilets or any part thereof, and to dispose of the material derived from the pumping out or cleaning of onsite systems or portable toilets.

(c) Installer/pumper license. The combined installer/pumper license authorizes a person to perform the work authorized by the installer and the pumper licenses.

(3) Duration of license. The duration of a sewage disposal service license may not exceed three years following the date of issuance. The department may issue licenses for periods of less than three years to stagger expiration dates. The department will provide licensees written notice of the expiration date assigned and date application for renewal is due.

(4) Certification requirement.

(a) By March 1, 2006, each business with an installer or installer/pumper license must identify at least one person certified under OAR 340-071-0650 who will supervise installation of onsite systems for the licensee.

(b) After March 1, 2006, applicants must submit evidence of the certification required by this section to the department with their application.

(5) New, renewal, and reinstatement licenses. Persons applying for new, renewal, or reinstatement of existing licenses must submit the following to the department for each license.

(a) A complete license application form.

(b) Evidence of a surety bond or equivalent security approved by the department in the penal sum of \$15,000 for each installer or installer/pumper license or \$5000 for each pumper license and evidence that the security or bond will be continued through the license cycle and satisfies all other requirements of section (7) of this rule.

(c) The applicable license fee in OAR 340-071-0140(7).

(d) Evidence of certification as required in section (4) of this rule.

(e) For pumper licenses:

(A) A completed Sewage Pumping Equipment Description/Inspection form documenting inspection by an agent of all pumping equipment to be used for work under the license; and

(B) Upon request by the department, summary origin-destination pumping information for pumping services.

(6) Transfer or amendment of license. The department may amend or transfer a valid sewage disposal service license to reflect changes in business name, ownership, or entity (e.g., from individual to partnership or corporation). Persons applying for a license transfer or amendment must submit the following to the department:

(a) A complete application to transfer or amend the license with the applicable license fee in OAR 340-071-0140;

(b) A rider to an existing bond or a new form of security as required in subsection (5)(b) of this rule;

(c) The valid sewage disposal service license (not suspended, revoked, or expired) being transferred or amended;

(d) For business name changes, a new Sewage Pumping Equipment Description/Inspection form for each vehicle to be used for work under the license; and

(e) For installer licenses, evidence of certification as required in section (4) of this rule.

(7) Security requirements.

(a) Security required by this rule may be any of the following.

(A) A surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the department. The bond must be issued by a surety company licensed by the Insurance Commissioner of Oregon. A surety bond must require at least 45 days notice to the department before cancellation is effective and must otherwise remain in effect for at least two years following termination of the sewage disposal service license, except as provided in subsection (c) of this section.

(B) An insured savings account irrevocably assigned to the department with interest earned by such account made payable to the depositor.

(C) Negotiable securities of a character approved by the State Treasurer irrevocably assigned to the department with interest earned on deposited securities made payable to the depositor.

(b) Any deposit of cash or negotiable securities under ORS 454.705 must remain in effect for at least 2 years following termination of the sewage disposal service license except as provided in subsection (c) of this section. A claim against such security deposits must be submitted in writing to the department with an authenticated copy of:

(A) The court judgment or order requiring payment of the claim; or

(B) Written authority by the depositor for the department to pay the claim.

(c) When proceedings under ORS 454.705 have been commenced while the security required is in effect, such security must be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

(8) Licensee responsibilities. Each licensee:

(a) Is responsible for violations of any statute, rule, or order of the commission or department pertaining to his licensed business.

(b) Is responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to the license privileges.

(c) Before completing licensed services, must deliver to each person for whom he performs such services, written notice of:

(A) The rights of the recipient included in ORS 454.705(2); and

(B) The name and address of the surety company that has executed the bond required by ORS 454.705(1); or

(C) A statement that the licensee has deposited cash or negotiable securities for the benefit of the department to compensate any person injured by failure of the licensee to comply with ORS 454.605 to 454.745 and rules of this division.

(d) Inform the department of changes that affect the license, such as changes in the business, ownership, or entity (e.g., changes from individual to partnership or corporation).

(9) Misuse of license.

(a) A sewage disposal service licensee may not allow anyone to perform sewage disposal services under its license except employees of the licensee.

(b) A licensee may not:

(A) Display or cause or permit to be displayed any license that is fictitious, revoked, suspended, or fraudulently altered;

(B) Fail or refuse to surrender to the department any license that has been suspended or revoked.

(C) Give false or fictitious information or knowingly conceal a material fact or otherwise commit a fraud in any license application or any other activities associated with the license.

(10) Denial, suspension, or revocation of licenses.

(a) The department may refuse to grant, renew, or reinstate or may suspend or revoke any sewage disposal service license in accordance with procedures in ORS 183.310 to ORS 183.540 if it finds:

(A) A material misrepresentation or false statement in connection with a license application;

(B) Failure to comply with any provisions of ORS 454.605 through 454.785, the rules of the commission, or an order of the commission or department;

(C) Failure to maintain in effect at all times the required bond or other approved equivalent security in the full amount specified in these rules; or

(D) Nonpayment by drawee of any instrument tendered by the applicant as payment of a license fee.

(b) Whenever a license is suspended or revoked or expires, the licensee must remove the license from display and remove all department-issued labels from equipment used for work under the license. Within 14 days after suspension or revocation, the licensee must surrender the suspended or revoked license and certify in writing to the department that all department-issued labels have been removed from all equipment.

(c) A sewage disposal service business may not be considered for relicensure for a period of at least 1 year after revocation of its license.

(d) A suspended license may be reinstated if:

(A) The licensee submits to the department a complete application for reinstatement of license accompanied by the applicable license fee in OAR 340-071-0140;

(B) The grounds for suspension have been corrected; and

(C) The original license would not have otherwise expired.

(11) Requirements for pumping vehicles and equipment. A licensee who pumps onsite systems must ensure that all pumping vehicles and equipment comply with the following requirements.

(a) Tanks used for pumping or transporting septage must:

(A) Have a liquid capacity of at least 550 gallons, except that tanks for equipment used exclusively for pumping chemical toilets not exceeding 80 gallons capacity must have a liquid capacity of at least 150 gallons;

(B) Be of watertight metal construction;

(C) Be fully enclosed; and

(D) Have suitable covers to prevent spillage.

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(b) Vehicles used for pumping or transporting septage must be equipped with either a vacuum or other type of pump that is self-priming and will not allow seepage from the diaphragm or other packing glands.

(c) The sewage hose on vehicles must be drained, capped, and stored in a manner that will not create a public health hazard or nuisance.

(d) The discharge nozzle must be:

(A) Provided with either a camlock quick coupling or threaded screw cap;

(B) Sealed by threaded cap or quick coupling when not in use;

(C) Located to minimize flow or drip onto any portion of the vehicle;

(D) Protected from accidental damage or breakage.

(e) Pumping equipment must not have spreader gates unless permitted to land apply alkaline-stabilized septage in accordance with chapter 340, division 050.

(f) Each vehicle must at all times be supplied with a pressurized wash-water tank, disinfectant, and implements for cleanup.

(g) Except as specified in subsection (h) of this section or otherwise authorized in writing by the agent, pumping equipment must be used exclusively for pumping sewage disposal facilities.

(h) The following may be pumped or serviced using pumping equipment without written authorization, whether or not they are connected to an onsite system or a centralized community sewer system: pump stations, lift stations, food grease tanks, vaults or tanks used for domestic sewage not contaminated with industrial or hazardous waste, and spills and backups of uncontaminated domestic sewage.

(i) Chemical toilet pumping equipment may not be used for any other purpose if the pump tank has a liquid capacity of less than 550 gallons.

(j) Equipment must be maintained in a reasonably clean condition at all times and must be operated in a manner that does not create a public health hazard or nuisance.

(12) Vehicle identification. The onsite sewage disposal services licensee must identify vehicles as follows.

(a) The licensee's name or assumed business name must be displayed on both sides of the vehicle or the attached tank and on both sides of a tank trailer.

(A) Letters must be at least 3 inches high unless otherwise authorized by the department.

(B) Letters must be in a color contrasting with the background.

(b) Tank capacity must be printed on both sides of the tank.

(A) Letters must be at least 3 inches high unless otherwise authorized by the department.

(B) Letters must be in a color contrasting with the background.

(c) Labels issued by the department for each current license period must be displayed at all times at the front and rear and on each side of the vehicle. Labels must be returned to the department when a vehicle is no longer being used in conjunction with pumping under a sewage disposal service license.

(13) Septage management requirements. The licensee and all persons managing septage:

(a) Must avoid spilling sewage or septage during pumping, cleaning, or transport and must immediately clean up any spill and disinfect the spill area.

(b) Must dispose of septage and sewage only in disposal facilities approved by the department.

(c) At all times during pumping, transport, or disposal of septage, must possess origin-destination records for sewage disposal services rendered.

(d) Must maintain on file for at least 3 years complete origin-destination records for sewage disposal services rendered. The records must be made available for review upon the request of the department. Origin-destination records must include the following information for each pumping, transport, and disposal occurrence:

(A) Source of septage, including name and address;

(B) Specific type of material pumped;

(C) Quantity of material pumped;

(D) Name and location of disposal site where septage was deposited;

(E) Quantity of material deposited; and

(F) The license numbers or vehicle numbers assigned by the licensee for all vehicles or trailers used for pumping, transport, and disposal.

(f) Must transport septage in a manner that will not create a public health hazard or nuisance.

(g) Must possess a current septage management plan approved by the department. The plan must be kept current, with any revisions approved by the department before implementation.

(h) Must comply with the approved septage management plan and the septage management plan approval letter issued by the department.

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

Stat. Auth.: ORS 454.615, 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.625 & 468.020

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 32-1981(Temp), f. & ef. 12-8-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 10-1996(Temp), f. & cert. ef. 7-16-96; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-071-0650

Training and Certification Requirements for System Installers and Maintenance Providers

(1) Certification required. After March 1, 2006, under this rule:

(a) A person who supervises or is responsible for construction or installation of onsite systems must be a certified installer unless the person is the permittee for construction or installation of the system or the permittee's regular employee.

(b) A maintenance provider who inspects, maintains, or certifies or supervises maintenance on onsite systems using alternative treatment technologies, recirculating gravel filters, or commercial sand filters must be certified as a maintenance provider unless the maintenance provider owns the system being serviced and has received training from the manufacturer on proper maintenance of the system.

(2) Training and certification programs. The department may enter interagency agreements to provide a program to train and certify onsite system installers, maintenance providers, and other onsite maintenance providers as described in this rule.

(3) Initial training and certification.

(a) Each initial training course for certification must provide the minimum training described in this section. One day of training equals 8 hours including a total of 30 minutes of break time and a 1-hour lunch.

(b) Course instructors must have academic credentials or field experience in the course discipline and experience as instructors.

(c) Installer training.

(A) The training course for installers must include at least 8 hours of lectures, demonstrations, hands-on training, course review, and exam. The department encourages use of audiovisual materials to complement lectures where appropriate.

(B) Installer training must at a minimum adequately address the following topics:

(i) Working knowledge of onsite rules.

(ii) Working understanding of permits.

(iii) Basic math skills.

(iv) Technical drawing.

(v) Field layout of onsite system.

(vi) Installation requirements.

(vii) Job safety practices.

(d) Maintenance provider training.

(A) The training course for maintenance providers must include at least 8 hours of lectures, demonstrations, hands-on training, course review, and exam. The department encourages use of audiovisual materials to complement lectures where appropriate.

(B) Maintenance provider training must adequately address the following topics:

(i) Working knowledge of onsite rules.

(ii) Working understanding of permits.

(iii) Basic math skills.

(iv) Technical drawing.

(v) Onsite system processes.

(vi) System operation and maintenance.

(vii) Job safety practices.

(4) Examinations and certification.

(a) The training provider must administer an open book examination to persons seeking certification. A person seeking initial certification in a discipline must complete the initial training and pass the examination for that discipline, except that installers certified by the department before December 31, 2003, are not required to take the examination.

(b) Each examination must be approved by the department and include questions that adequately cover the topics in the training course for that discipline. Applicants must answer 70 percent correctly to pass.

(c) The training provider must issue a certification to each person who completes the training course and passes the required examination.

(d) Each certification must include the following:

(A) A unique certificate number.

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- (B) Full name of the person certified.
- (C) Dates of the training course.
- (D) Date of the examination.
- (E) An expiration date three years after the certification issuance date.
- (F) The name, address, and telephone number of the training provider

that issued the certificate.

(G) A statement that the person receiving the certification has completed the requisite training and examination for the discipline certified.

(f) Certified persons must have proof of certification at the location where they are conducting work requiring certification.

(5) Recertification.

(a) For each discipline, the training provider or department must review and approve continuing education courses and other training for recertification. Training approved for each discipline must cover topics related to that discipline, including the topics addressed in section (1) of this rule.

(b) For each discipline, the training provider must extend recertification to each certified person who completes 18 hours of approved continuing education following his most recent certification and to each formerly certified person who completes these requirements within six months after his certification expires.

(6) Suspension or revocation of certification.

(a) The department may suspend or revoke the certification of any person for the following reasons:

(A) Performing work requiring certification at a job site without physically possessing a current certification.

(B) Permitting the duplication or use of one's own certification by another.

(C) Obtaining certification from a person not accredited to provide the certification.

(D) Violation of requirements in this division.

(E) Failure to pay civil penalties assessed for violations of this division.

(b) The department must notify the person whose certification is being revoked or suspended of the reasons for the action and any conditions that must be met before the certification will be reinstated.

(c) A person may appeal a suspension or revocation by requesting a contested case hearing in accordance with OAR chapter 340, division 11.

(d) A person whose certification has been revoked may not be recertified and may not apply for a new certification for twelve months after the revocation date or under exceptional circumstances as approved by the department.

Stat. Auth.: ORS 454.615, 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.625 & 468.020

Hist.: DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0025

Tank Construction

The following construction and manufacturing requirements apply to all septic tanks, holding tanks, dosing tanks, multiple-compartment combination septic and dosing tanks, and dosing septic tanks manufactured for use in Oregon unless specifically exempted by OAR chapter 340, divisions 071 or 073.

(1) Compartments. Tanks may have single or multiple compartments.

(a) Single-compartment tanks and multiple-compartment tanks must meet or exceed the minimum volume requirements described in OAR chapter 340, divisions 071 and 073.

(b) Multiple-compartment tanks must comply with the following requirements:

(A) The liquid capacity of the first compartment must be at least 2/3 of the total required liquid capacity, as measured from the invert elevation of the first compartment's outlet Tee fitting;

(B) A compartment may not have an inside horizontal dimension of less than 24 inches.

(c) The liquid depth of any compartment must be at least 30 inches. Liquid depths greater than 72 inches may not be considered in determining the working liquid capacity unless the tank has a capacity greater than 3,000 gallons.

(2) Service access manhole. All tanks must have at least one service access manhole measuring at least 18 inches across its shortest dimension in each compartment.

(3) Watertightness. After installation, all tanks must be watertight. The installer must test each tank for watertightness by filling the tank to a point at least 2 inches above the point of riser connection to the top of the tank. During the test there may be no more than a one gallon leakage over a 24

hour period. The tank manufacturer must deliver watertight tanks and should test each tank for watertightness before the tank is shipped from the manufacturing plant.

(4) If the tank manufacturer does not fully assemble the tank, as with a two-piece concrete tank, the manufacturer must provide the bonding and sealing agents and an instruction manual for assembling the tank.

(5) Structure: All tanks must be able to support an earth load of at least 300 pounds per square foot when the maximum coverage does not exceed 3 feet. Tanks installed with more than 3 feet of cover must be reinforced to support the additional load. Lateral load must be 62.4 pcf of equivalent fluid pressure (EFP). Tanks must be able to withstand long-term external hydrostatic loads in addition to soil loads. Internal hydrostatic pressures must be omitted to allow for septage pumping during critical groundwater conditions. A 2,500 pound wheel load concentrated over the critical elements of the tank shall also be considered.

(6) Service access riser and cover. All tanks must be manufactured to accommodate installation of a watertight service access riser above one service access manhole. The riser must have a minimum nominal diameter of 20 inches when tank burial depths do not exceed 36 inches. Tanks designed for burial depths deeper than 36 inches must also be designed to accommodate installation of a 30-inch minimum diameter service access riser above each service access manhole. A gasketed riser cover must be provided and securely fastened or weighted to prevent unauthorized access.

(7) Inlet and outlet Tee fittings.

(a) The inlet and outlet Tee fittings must be of Schedule 40 P.V.C. plastic, Schedule 40 ABS plastic, or other equally durable materials approved by the department with a minimum diameter of 4 inches.

(b) The distance between the inlet and outlet Tee fittings in a single-compartment tank must at least equal the liquid depth of the tank.

(c) The inlet and outlet Tee fittings in a single compartment tank, where applicable, must be located at opposite ends of the tank. The inlet Tee fitting must be readily accessible by way of a watertight, 8-inch minimum diameter riser (with cover) and access hole positioned directly above the inlet Tee. The fittings must be attached in a watertight manner acceptable to the department.

(d) The inlet fitting in all single-compartment tanks, except dosing tanks, and in each compartment of multiple-compartment tanks, must be a "sanitary tee" extending at least 6 inches above and at least 12 inches below the normal high and low liquid levels, respectively.

(e) The outlet Tee fitting, holes, or ports provided in a vault or outlet effluent filter must be positioned to withdraw effluent horizontally from the clear zone at an elevation measured from the inside bottom of the tank to 65 to 75 percent of the lowest operating liquid depth. The net area of the ports must be at least 6 square inches. The outlet fitting in single-compartment tanks and in each compartment of multiple-compartment tanks must extend at least 6 inches above the highest normal liquid depth to provide scum storage. When the single-compartment tank is used as a holding tank, dosing septic tank, or dosing tank, the outlet Tee fitting must be provided with a watertight plug or omitted. The outlet Tee fitting may also be plugged or omitted in the last compartment of a multiple-compartment tank when a pump or siphon is placed in that last compartment.

(f) Ventilation must be provided through the fittings by means of a 2-inch minimum space between the top of the inlet Tee fittings and the adjacent tank surfaces.

(g) The invert of the inlet fitting must be at least 1 inch and preferably 3 inches above the invert of the outlet fitting or the highest normal liquid level.

(h) A convenient means of monitoring sludge and scum accumulation must be provided, with access extending to ground level.

(i) The tank manufacturer must provide with each Tee fitting an appropriate coupler that will provide a watertight connection between the fittings and the building and effluent sewer pipes.

(8) At least 10% of the inside volume of a tank must be above the highest normal liquid level to provide scum storage and reserve.

(9) Except as provided in OAR 340-073-0026, tanks shall be constructed of concrete, fiberglass, or other noncorrosive materials approved by the department:

(a) Precast concrete tanks must have a minimum wall, compartment, and bottom thickness of 2-1/2 inches and must be adequately reinforced. The top must be at least 4 inches thick.

(b) Cast-in-place tanks must be designed by a civil or structural engineer to the requirements of these rules, and the tank construction must be certified by the designer or qualified representative. A structural permit from

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the Building Codes Division or the municipality with jurisdiction (as defined in 455.010(4)) may be required when cast-in-place concrete tanks are used.

(c) Tanks made of other corrosion resistant materials must be constructed to provide structural integrity to meet the requirements of sections (3), (4), and (5) of this rule.

(10) All prefabricated tanks must be marked on the uppermost tank surface over the outlet with the liquid capacity of the tank, the burial depth limit, date of manufacture, and either the manufacturer's full business name or the number assigned by the department.

(11) Each commercial manufacturer of prefabricated tanks must provide two complete sets of plans and specifications, prepared by a registered professional engineer licensed to practice in Oregon, to the department for review and approval. Plans submittal must include the structural analysis, calculation of total gallons, operating gallons, gallons per inch, and buoyancy, including predetermined countermeasures.

(12) Each commercial manufacturer of pre-fabricated tanks must provide the department with written certification that tanks for use in onsite systems in the State of Oregon will comply with all requirements of this rule.

(13) An installation manual, on waterproof paper or placed within a weather-resistant container, must be provided by the manufacturer with each tank distributed. The manual must describe proper installation of the tank, riser(s) and lid, pipe connections, watertight testing procedures, backfill, and any special precautions or limitations.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0026

Septic Tanks

(1) Septic tanks must be constructed of concrete, fiberglass, steel, or other non-corrosive materials approved by the department.

(2) Steel septic tanks must be manufactured with 12-gauge or thicker steel. They must be coated inside and out with asphalt or other protective coatings that meet the American National Standards Institute UL 70 standard, Sections 25 through 43, or other coatings of equal or better performance approved by the department.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0030

Dosing Septic Tank

(1) A dosing septic tank may discharge effluent with a pump or dosing siphon from the clear zone at the outlet end of the tank. These may be considered for installations where the design flow does not exceed 600 gallons per day.

(2) Special Configuration:

(a) The minimum total primary volume of the tank must be 1,100 gallons for flows less than or equal to 450 gallons per day and 1,500 gallons for flows greater than 450 and up to 600 gallons per day.

(b) The submerged volume at the lowest operating liquid level must be at least 900 gallons. The remaining capacity must be used to ensure optimum surge capacity and reserve storage capacity.

(c) Liquid levels must be controlled in a manner that is consistent with pump dosing requirements described in OAR chapter 340, divisions 071 and 073.;

(d) All apparatus must be constructed and installed to facilitate ease of service without having to alter any other component.

(e) The installation manual described in OAR 340-073-0025(13) must include additional information about siphon selection, installation of the pump or siphon vault and screen, pump control and alarm levels, and the watertight pass-through methods for electrical wiring and pipe.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0035

Distribution Boxes

(1) Distribution boxes must be constructed of concrete, fiberglass, or other materials acceptable to the department.

(2) Distribution boxes must be constructed of durable, watertight materials resistant to deterioration and be designed to accommodate watertight connections for the effluent sewer and header pipes. The top, walls, and

bottom of concrete distribution boxes must be at least 1-1/2 inches thick. All distribution boxes must be able to support an earth load of at least 200 pounds per square foot.

(3) The invert elevation of all outlets must be the same and must be at least 2 inches below the inlet invert.

(4) Each distribution box must be provided with a sump extending at least 2 inches below the invert of the outlets unless otherwise authorized by the department.

(5) Distribution box covers must be marked with the manufacturer's full business name or number assigned by the department.

(6) Each manufacturer must provide the department with complete, detailed plans and specifications of the distribution box and must certify, in writing, that distribution boxes manufactured for use in onsite sewage systems in Oregon will comply with all requirements of this rule. Plans and specifications must be prepared under the supervision of and designed by a professional engineer licensed in accordance with ORS chapter 672.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0040

Drop Boxes

(1) Drop boxes must be constructed of concrete, fiberglass, or other materials acceptable to the department.

(2) Drop boxes must be constructed of durable, watertight materials resistant to deterioration and be designed to accommodate watertight connections for the effluent sewer and header pipes. The top, walls, and bottom of concrete drop boxes must be at least 1-1/2 inches thick. All drop boxes must be able to support an earth load of at least 200 pounds per square foot.

(3) The inverts of the inlet and overflow port must be at the same elevation. The invert of the header pipe port(s) leading to the absorption trench(es) must be 6 inches below the inlet invert.

(4) Drop box covers must be marked with the manufacturer's full business name or number assigned by the department.

(5) Each manufacturer must provide the department with complete, detailed plans and specifications of the drop box and must certify, in writing, that drop boxes manufactured for use in onsite systems in Oregon will comply with all requirements of this rule. Plans and specifications must be prepared under the supervision of and designed by a professional engineer licensed in accordance with ORS Chapter 672.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0041

Filter Fabric

Except as otherwise allowed by the department, filter fabric used as a barrier between the lower lens of drain media and the medium sand in a conventional sand filter system must meet the following specifications:

(1) Material synthetic fabric, either spunbonded or woven.

(2) Burst strength not less than 25 psi.

(3) Air permeability not less than 500 cfm per sq. ft.

(4) Water flow rate not less than 500 gpm per sq. ft. at 3 inches of head.

(5) Hydrophilic surface reaction to water.

(6) Equivalent opening size of 70 to 100 sieve.

(7) Chemical properties:

(a) Nonbiodegradable.

(b) Resistant to acids and alkalis within a pH range of 4 to 10.

(c) Resistant to common solvents.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 15-1986, f. & ef. 8-6-86; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0045

Diversion Valves

(1) Diversion valves must be constructed of material that is durable, corrosion-resistant, watertight, and designed to accommodate the inlet and outlet pipes in a secure and watertight manner.

(2) Diversion valves must be constructed with access to finished grade and large enough to provide for ease of operation and service of valve.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

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340-073-0050

Dosing Tanks

(1) Dosing tanks must meet the standards described in OAR 340-073-0025, except as otherwise allowed in this rule.

(2) Each dosing tank employing one or more pumps must have a minimum liquid capacity equal to the projected daily sewage flow for flows up to 1,200 gallons per day. The department will determine tank sizing for dosing tanks with projected daily sewage flows greater than 1,200 gallons per day. The liquid capacity of dosing tanks must be as measured from the invert elevation of the inlet fitting.

(3) Each dosing tank must be provided with a service access manhole having a minimum horizontal measurement of 18 inches.

(4) Each dosing tank proposed to serve a commercial facility containing more than one pump or siphon must be provided with at least one service access manhole that provides adequate space to construct, install, service, and operate the equipment in accordance with the requirements of OAR chapter 340, divisions 071 and 073.

(5) The installation manual described in OAR 340-073-0025(13) must include additional information about siphon selection, installation of the pump or siphon screen, pump control and alarm levels, and the watertight pass-through methods for electric wiring and pipe.

(6) Dosing tanks with siphons must be designed and sized for each specific project. The tank manufacturer must specify the type or model of siphon, screen, and related apparatus that are compatible with each dosing tank.

(7) The inlet fitting must extend below the lowest operating level of the pump or siphon.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0055

Dosing Assemblies: Effluent Pumps, Controls and Alarms, and Dosing Siphons

(1) Design and equipment must emphasize ease of maintenance, longevity, and reliability of components and must be proven suitable by operational experience, test, or analysis acceptable to the department.

(2) Easy means of electrical and plumbing disconnect must be provided. All apparatus must be constructed and installed to facilitate ease of service without having to alter any other component.

(3) Component materials must be durable and corrosion-resistant such as Type 316 stainless steel, suitable plastics, or 85-5-5-5 bronze.

(4) Pumps, Siphons, Controls, and Alarms. All pumps, siphons, controls and related apparatus must be field tested under working conditions and found to operate and perform satisfactorily. Electrical components used in onsite systems must comply with applicable requirements of the State of Oregon Electrical Code and the standards in this section.

(a) Motors must be continuous-duty with overload protection.

(b) Pumps must have durable impellers of bronze, cast iron, or other materials approved by the department.

(c) Submersible pumps must be provided with an easy, readily accessible means of electrical and plumbing disconnect and a noncorrosive lifting device as a means of removal for servicing.

(d) Except where specifically authorized in writing by the agent, the pump or siphon must be placed within a corrosion-resistant screen or vault with a filtering device that extends into or above the tank's service access manhole. The screen or filtering device must have at least 12 square feet of surface area, with 1/8-inch openings. In lieu of the screen, the agent may allow other methods with equal or better performance in preventing the passage of suspended solids to the pump or siphon.

(e) Pumps must be automatically controlled by float switches with a minimum rating of 12 amps at 115 volts A.C. or by a department-approved, equally reliable switching mechanism. Except as otherwise required in this division, the switches must be installed so that no more than 20% of the projected daily sewage flow is discharged each cycle. The pump "off" level must be set to maintain the liquid level above the top of the pump or to the designer and pump manufacturer's specifications.

(f) An audible and visual high water level alarm with manual silence switch must be located in or near the building served by the pump. Only the audible alarm may be user-cancelable. The switching mechanism within a dosing tank or chamber controlling the high water level alarm must be located so that at time of activation the tank has a remaining volume equal to 1/3

or more of the system's design flow, as measured below the invert of the inlet, for effluent storage. The alarm and pump must be on separate circuits. Commercial applications using duplex pumps are not subject to the 1/3 storage reserve requirement.

(g) When a system has more than one pump, the department may require the pumps to be wired into the electrical control panel to function alternately after each pumping cycle. If either pump should fail, the other pump will continue to function while the high water level alarm activates. A cycle counter must be installed in the electrical control panel for each pump.

(h) All pump installations must be designed with adequate sludge storage volume below the effluent intake level of the pump.

(i) All commercial systems with a design flow greater than 600 gallons must be constructed in duplex (two or more alternating pumps) unless otherwise authorized in writing by the department. Controls must be provided such that an alarm will signal when one of the pumps malfunctions.

(j) All pumps serving commercial systems must be operated through a pre-manufactured electrical control panel. A means of monitoring pump performance through the use of elapsed-time meters and cycle counters is required.

(k) Where multiple pumps are operated in series, an electrical control panel must be installed to prevent the operation of a pump or pumps preceding a station that experiences a high level alarm event.

(5) Dosing Siphons. Dosing siphons used in onsite systems must comply with the following minimum requirements.

(a) The siphon must be constructed of corrosion-resistant materials.

(b) The siphon must be installed within a compatible tank in accordance with the siphon manufacturer's recommendations.

(c) The siphon manufacturer must provide installation and maintenance instructions to the owner.

(d) The installation must include a device that tracks the operation of the siphon by measuring cycle events and records them by means of an event counter mounted within the dwelling or structure served.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 23-1981(Temp), f. & ef. 9-2-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0056

Effluent Filters

Effluent filters used in onsite systems must meet the following criteria.

(1) Filters must be of durable, resilient, corrosion resistant, non-degradable materials resistant to deformation under normal operating conditions.

(2) Filters must be designed to prevent the escape of sludge or scum during normal operation and in the event of a malfunction, including filter clogging.

(3) The filter must retain all particles greater than 1/8 inch.

(4) The filter assembly must baffle the sludge and scum layers to prevent the escape of gross solids during sludge bulking or gas ebullition.

(5) Filters must be designed and positioned to allow for easy, trouble-free removal from and reinstallation to the screen apparatus from the assembly.

(6) The assembly must be capable of withstanding stresses placed upon it by installation, operation, and service.

(7) The assembly in the septic tank must perform as a conventional tank outlet that meets the requirements of OAR 340-073-0025(6) when the filter is removed.

(8) The filter must be designed to handle the flow of the system it is to serve without excessive maintenance. For a single family dwelling, maintenance is considered "excessive" when the filter requires service or cleaning more than one time per year. Service must be performed each time the tank is pumped and in accordance with the manufacturer's specifications.

(9) To obtain department approval, the manufacturer of an effluent filter must provide the department with the necessary technical data to show that the design and materials comply with this rule. The manufacturer must provide an operation and maintenance manual with each unit distributed.

(10) Effluent filter units external to the tank must be watertight.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0060

Pipe Materials and Construction

(1) Effluent Sewer Pipe: The effluent sewer must be constructed with materials in conformance with state building sewer standards. The effluent

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sewer pipe must have a minimum diameter of 3 inches. When the septic tank is fitted with an effluent filter, the minimum nominal diameter of piping may be reduced to 1-1/4 inches.

(2) Underdrain pipe. Underdrain pipe must meet or exceed the requirements for Class 125 PVC pressure pipe as identified in **ASTM Specification D 2241**. The pipe and fittings must be marked as required by ASTM Specification D 2241. The underdrain pipe must be perforated in accordance with subsection (4)(d) of this rule or with 1/4-inch slots cut halfway through the pipe at 4 inches center to center.

(3) Polyvinyl chloride (PVC) pressure transport pipe, pressure manifolds, and pressure lateral pipe and fittings must meet or exceed the current requirements for Class 160 PVC 1120 pressure pipe as identified in ASTM Specification D 2241. The pipe and fittings must be marked as required by ASTM Specification D 2241. For pipe diameters of 1 inch or less, the minimum pressure rating is 200 pounds per square inch (psi). For pipe diameters greater than 1 inch, the minimum pressure rating is 160 psi.

(4) Distribution and Header Pipe and Fittings.

(a) Polyethylene distribution pipe in 10 foot lengths and header pipe in lengths of 10 feet or greater must meet the current ASTM Specification F 405. Pipe and fittings must also pass a deflection test withstanding 350 pounds per foot without cracking or collapsing using the method in ASTM 2412. Pipe used in absorption facilities must be heavy duty. Markings must meet requirements in ASTM F 405.

(b) Polyvinyl chloride (PVC) distribution and header pipe and fittings must meet the most current **ASTM Specification D 2729**. Pipe and fittings must pass a deflection test withstanding 350 pounds per foot without cracking or collapsing using the method found in ASTM 2412. Markings must meet requirements in ASTM Specification D 2729.

(c) Polyethylene smooth wall distribution and header pipe in 10-foot length and fittings must meet the most current ASTM Specification F 810. Pipe and fittings must also pass a deflection test of 350 pounds per foot without cracking or collapsing by using the method found in ASTM 2412. Markings shall meet the requirements in **ASTM Specification F 810, Section 9**.

(d) The three types of plastic pipe described above must have two rows of holes spaced 120 degrees apart and 60 degrees on either side of a center line. For distribution pipe, a line of contrasting color must be provided on the outside of the pipe along the line furthest away and parallel to the two rows of perforations. Durable ink markings must cover at least 50% of the pipe. Markings may consist of a solid line, letters, or a combination of the two. Intervals between markings must not exceed 12 inches. The holes of each row may not be more than 5 inches on center and must have a minimum diameter of 1/2 inch.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 9-1982, f. & ef. 6-16-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0065

Privies and Portable Toilet Shelters

(1) Privies and portable toilet shelters must comply with the following general requirements.

(a) Structures must be free of hostile surface features, such as exposed nail points, sharp edges, and rough or broken boards, and must provide privacy and protection from the elements.

(b) Building ventilation must be equally divided between the bottom and top halves of the room and must be adequate to allow for the free escape of gases and odors. All vents must be screened with 16 mesh screen of durable material.

(c) Buildings must be of fly-tight construction and must have self-closing doors with an inside latch.

(d) Pits, tanks, or vaults must be vented to the outside atmosphere by a flue or vent stack having a minimum inside diameter of 4 inches. Vents must extend at least 12 inches above the roof.

(e) Interior floors, walls, ceilings, partitions, and doors must be finished with readily cleanable, impervious materials resistant to wastes, cleansers, and chemicals. Floors and risers must be constructed of impervious material and prevent entry of vermin.

(2) Portable Toilet Shelters. Portable toilet shelters may be prefabricated, skid mounted, or mobile. In addition to the requirements in section (1) of this rule, portable toilet shelters must:

(a) Provide at least 1 square foot of screened ventilation to the outside atmosphere for each seat;

(b) Provide at least 9 square feet of floor space for each seat;

(c) Be furnished with a toilet tissue holder for each seat;

(d) Be located in areas readily accessible to users and to pumping and cleaning services; and

(e) Provide separate compartments with doors and partitions or walls of sufficient height to insure privacy in multiple-unit shelters except that separate compartments are not required for urinals.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0070

Unsealed Earth Pits for Privies

(1) The pit must be constructed with material and in a manner to prevent rapid deterioration, provide adequate capacity, and facilitate maintenance under ordinary use.

(2) Unless otherwise approved by the agent, the pit must provide a capacity of 50 cubic feet for each seat installed in the privy building and must be at least 5 feet deep. The area within 16 inches of the surface grade may not be counted as part of the 50 cubic-foot capacity.

(3) Pit cribbing must fit firmly and be in uniform contact with the earth walls on all sides and must rise at least 6 inches above the original ground line and descend to the full depth of the pit. Pit cribbing below the soil line may be omitted in rock formations.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0075

Self-Contained Nonwater-Carried Toilet Facilities

(1) General Standards. All self-contained, nonwater-carried toilet facilities must comply with the following requirements.

(a) They must have water-tight chambers constructed of reinforced concrete, plastic, fiberglass, metal, or other material of acceptable durability and corrosion resistance, approved by the department, and designed to facilitate the removal of the wastes.

(b) Black wastes must be stored in an appropriate chamber until removal for final treatment elsewhere. Wastes must be removed from the chamber whenever necessary to prevent overflow.

(c) Chemicals containing heavy metals such as copper, cadmium, and zinc, must not be used in self-contained toilet facilities.

(d) All surfaces subject to soiling must be impervious, easily cleanable, and readily accessible.

(2) Vault Toilet Facilities.

(a) The capacity of vaults must be at least 350 gallons or, in places of employment, 100 gallons per seat.

(b) Caustic must be added routinely to vault chambers to control odors.

(3) Chemical Toilet Facilities.

(a) Toilet bowls must be constructed of stainless steel, plastic, fiberglass, ceramic, or other material approved by the department.

(b) Waste passages must have smooth surfaces and be free of obstructions, recesses, or cross braces that would restrict or interfere with flow of black wastes.

(c) Biocides and oxidants must be added to waste detention chambers at rates and intervals recommended by the chemical manufacturer and approved by the department.

(d) Chambers and receptacles must provide a minimum storage capacity of 50 gallons per seat.

(e) Portable shelters housing chemical toilets must display the business name of the licensed sewage disposal service that is responsible for servicing them.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

340-073-0080

Construction of Gray Water Waste Disposal Sumps

A gray water waste disposal sump must consist of a receiving chamber, settling chamber, and either a seepage chamber or absorption trench.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.610, 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 16-1986, f. & ef. 9-16-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

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340-073-0085

Flexible Membrane Liners for Sand Filters Treating Septic Tank Effluent

(1) Unsupported polyvinyl chloride (PVC) must have the following properties (Property — Test Method).

- (a) Thickness — ASTM D1593, Para 9.1.3, 30 mil, minimum
- (b) Specific Gravity (minimum) — ASTM D792, Method A
- (c) Minimum Tensile Properties (each direction) — ASTM D882
- (A) Breaking Factor (pounds/inch width) — Method A or B (1 inch wide), 69
- (B) Elongation at Break (percent) — Method A or B, 300
- (C) Modulus (force) at 100% Elongation (pounds/inch width) — Method A or B, 27

(d) Tear Resistance (pounds, minimum) — ASTM D1004, Die C, 8
(e) Low Temperature — ASTM D1790, -20° F
(f) Dimensional Stability (each direction, percent change maximum) — ASTM D1204, 212° F, 15 min., ±5

- (g) Water Extraction — ASTM D1239, 0.35% max
- (h) Volatile Loss — ASTM D1203, Method A, 0.7% max
- (i) Resistance to Soil Burial (percent change maximum in original value) — ASTM D3083:

- (A) Breaking Factor, -5
- (B) Elongation at Break, -20
- (C) Modulus at 100% Elongation, ±10.
- (j) Bonded Seam Strength (factory seam, breaking factor, ppi width) — ASTM D3083, 55.2

- (k) Hydrostatic Resistance — ASTM D751, Method A, 82.
- (2) Installation Standards.

(a) Patches, repairs, and seams must have the same physical properties as the parent material.

- (b) Site considerations and preparation.

(A) The supporting surface slopes and foundation to accept the liner must be stable and structurally sound with appropriate compaction. Particular attention must be paid to the potential of sink hole development and differential settlement.

(B) Soil stabilizers such as cementations or chemical binding agents may not adversely affect the membrane; cementations and chemical binding agents may be potentially abrasive agents.

(c) Only fully buried membrane liner installation may be considered to avoid weathering.

(d) Unreinforced liners have high elongation and can conform to irregular surfaces and follow settlements within limits. Unreasonable strain reduces effective thickness and may reduce life expectancy by lessening the chemical resistance of the thinner (stretched) material. Every effort must be made to minimize the strain (or elongation) anywhere in the flexible membrane liner.

- (e) Construction and installation.
- (A) Surface condition.

(i) Preparation of earth subgrade. The prepared subgrade must be of soil types no larger than Unified Soil Classification System (USCS sand (SP) to a minimum of 4 inches below the surface and free from loose earth, rock, fractured stone, debris, cobbles, rubbish and roots. The surface of the completed subgrade must be properly compacted, smooth, uniform, and free from sudden changes in grade. Importing suitable soil may be required.

(ii) Maintenance of subgrade. The earth subgrade must be maintained in a smooth, uniform, and compacted condition during installation of the lining.

- (B) Climatic conditions.

(i) Temperature. Placing liner outside the desirable temperature range must be avoided. The desirable temperature range for membrane installation is 42° F. to 78° F. Lower or higher temperatures may have an adverse effect on transportation, storage, field handling, and placement, seaming, and backfilling; and attaching boots and patches may be difficult.

(ii) Wind. Placing the liner in high wind must be avoided. Wind may have an adverse effect on liner installation such as interfering with liner placement. Mechanical damage may result. Cleanliness of areas for boot connection and patching may not be possible. Alignment of seams and cleanliness may not be possible.

(iii) Precipitation. Seaming, patching, and attaching “boots” must be done under dry conditions. When field seaming is adversely affected by moisture, portable protective structures and other methods must be used to maintain a dry sealing surface. Proper surface preparation for bonding boots and patches may not be possible.

(C) Structures. Where penetrations are necessary, liners must be attached to pipes with a mechanical type seal supplemented by a chemical-compatible caulking or adhesives to effect a liquid-tight seal. Maximum compaction must be provided in the area adjacent to pipes to compensate for any settlement.

- (D) Liner Placement.

(i) Size. The final cut size of the liner must be carefully determined and ordered to generously fit the container geometry without field seaming or excess straining of the liner material.

(ii) Transportation, handling, and storage. Transportation, handling, and storage procedures must be planned to prevent material damage. Material must be stored in a secured area and protected from adverse weather.

(iii) Site inspection. A site inspection must be carried out by the agent and the installer before liner installation to verify surface conditions and other conditions important to installation.

(iv) Deployment. Panels must be positioned to minimize handling. Seaming should not be necessary. Bridging or stressed conditions must be avoided with proper slack allowances for shrinkage. The liner must be secured to prevent movement and promptly backfilled.

(v) Anchoring trenches. The liner edges must be secured frequently in a backfilled trench.

(vi) Field seaming. Field seaming, if absolutely necessary, must be attempted only when weather conditions are favorable. The contact surfaces of the materials must be clean of dirt, dust, moisture, or other foreign materials. The contact surfaces must be aligned with sufficient overlap and bonded in accordance with the suppliers recommended procedures. Wrinkles must be smoothed out and seams must be inspected by nondestructive testing techniques to verify their integrity. As seaming occurs during installation, the field seams must be inspected continuously, and any faulty area repaired immediately.

(vii) Field repairs. Traffic on the lined area must be minimized. Any necessary repairs to the liner must be patched using the same lining material and following the recommended procedure of the supplier.

(viii) Final inspection and acceptance. Completed liner installations must be visually checked for punctures, rips, tears, and seam discontinuities before placement of any backfill. At this time the installer must also manually check all factory and field seams with an appropriate tool. In lieu of or in addition to manual checking seams, either of the following tests may be performed:

(I) Wet Test. The lined basin must be flooded with water to the 1-foot level after inlets and outlets have been plugged. There may not be any loss of water in a 24 hour test period.

(II) Air Lance Test. All bonded seams must be checked using a minimum 50 PSI (gauge) air supply directed through a 3/16 inch (typical) nozzle held not more than 2 inches from the seam edge and directed at the seam edge. Riffles indicate unbonded areas within the seam or other undesirable seam construction.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615 & 454.780
Hist.: DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05

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Adm. Order No.: DEQ 12-2004
Filed with Sec. of State: 12-27-2004
Certified to be Effective: 12-27-04
Notice Publication Date: 8-1-04
Rules Amended: 340-150-0250

Subject: Amends a rule from the tanks program (OAR 340-150-0250) regarding the expedited enforcement process to provide that all Class II violations related to underground storage tanks (UST) are assigned a field penalty amount of \$50 rather than assigning some violations a penalty of \$75. The amendment would also allow some Class I UST violations to be handled via the expedited enforcement process.

Rules Coordinator: Roberta Young—(503) 229-6408

340-150-0250 Expedited Enforcement Process

(1) Nothing in this rule shall affect the department's use of OAR chapter 340, division 12 “Enforcement Procedures and Civil Penalties” for compliance with the UST regulations, except as specifically noted. Nothing in this rule requires the department to use the expedited enforcement process for any particular violation. The field penalty amounts assigned in section

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(4) of this rule are only applicable to actions taken by the department under this rule.

(2) An owner and permittee is excluded from participation in the expedited enforcement process if:

(a) The total field penalty amount for all violations identified during a single inspection or file review would exceed \$300;

(b) The department has issued a field penalty or civil penalty to the owner or permittee for the same violation at the same UST facility within the previous three years; or

(c) At its discretion, the department determines that an owner and permittee is not eligible for the expedited process. This determination will be done on a case by case basis. (One example may be when an owner and permittee of multiple UST facilities has received multiple field citations for the same or similar violations, but has not made corrections at all facilities.)

(3) For any owner and permittee with documented violations or conditions that exclude participation in the expedited enforcement process as provided in section (2) of this rule, the department will take appropriate enforcement action in accordance with OAR chapter 340, division 12.

(4) The following field penalties will be assessed for those documented violations or conditions cited using the expedited enforcement process under this rule, in lieu of the enforcement process in OAR chapter 340, division 12:

(a) A class I UST violation listed in OAR 340-12-0067(1): \$100;

(b) A class II UST violation listed in OAR 340-012-0067(2): \$50; and

(c) A class III violation listed in OAR 340-012-0067(3) when an owner or permittee has received prior notice of the violation through a field citation and has not corrected the violation: \$50.

(5) An owner or permittee issued a field citation has 30 calendar days from the date of issuance to submit payment for the total field penalty amount. Payment is deemed submitted when received by the department. A check or money order in the amount of the field penalty must be submitted to: Department of Environmental Quality — Business Office, 811 SW Sixth Avenue, Portland, OR 97204. Participation in the expedited enforcement process is voluntary — by submitting payment, the owner and permittee agree to accept the field citation as the final order by the commission and to waive any right to an appeal or any other judicial review of the determination of violation, compliance schedule or assessment of the field penalty in the field citation.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.835

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 12-2004, f. & cert. ef. 12-27-04

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Adm. Order No.: DEQ 1-2005

Filed with Sec. of State: 1-4-2005

Certified to be Effective: 1-4-05

Notice Publication Date: 12-1-03

Rules Amended: 340-200-0040, 340-204-0010, 340-204-0030, 340-204-0040, 340-224-0060, 340-224-0070, 340-225-0020, 340-225-0045, 340-225-0090, 340-240-0030, 340-240-0100, 340-240-0110, 340-240-0120, 340-240-0130, 340-240-0140, 340-240-0150, 340-240-0180, 340-240-0190, 340-240-0210, 340-240-0220, 340-240-0230

Rules Repealed: 340-240-0200, 340-240-0240, 340-240-0270

Subject: The Oregon Department of Environmental Quality (DEQ) is proposing to revise the PM10 attainment plan and establish a PM10 maintenance plan for the Medford-Ashland Air Quality Maintenance Area (AQMA). The combined attainment and maintenance plan will demonstrate that the AQMA has met, and will continue to meet, National Ambient Air Quality Standards (NAAQS) for PM10 through at least the year 2015. The Department is also proposing amendments to air quality rules affecting new and expanding major industrial sources in the AQMA. The plan and supporting rule amendments will be presented for adoption to the Environmental Quality Commission (EQC) as an amendment to the State Implementation Plan (SIP), as required by the Clean Air Act (amends OAR 340-200-0040). If approved by the EQC, DEQ will submit the plans to the Environmental Protection Agency (EPA) for approval with a request that the legal status of the AQMA be revised from nonattainment to attainment for PM10.

Rules Coordinator: Roberta Young—(503) 229-6408

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-11-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05

340-204-0010

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division. Definitions of boundaries in this rule also apply to OAR 340 Division 200 through 268 and throughout the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040.

(1) "AQCR" means Air Quality Control Region.

(2) "AQMA" means Air Quality Maintenance Area.

(3) "CO" means Carbon Monoxide.

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(4) "CBD" means Central Business District.

(5) "Criteria Pollutant" means any of the six pollutants set out by the Clean Air Act (sulfur oxides, particulate matter, ozone, carbon monoxide, nitrogen dioxide, and lead) for which the EPA has promulgated standards in 40 CFR 50.4 through 50.12 (July, 1993).

(6) "Eugene-Springfield UGA" means the area within the bounds beginning at the Willamette River at a point due east from the intersection of East Beacon Road and River Loop No.1; thence southerly along the Willamette River to the intersection with Belt Line Road; thence easterly along Belt Line Road approximately one-half mile to the intersection with Delta Highway; thence northwesterly and then northerly along Delta Highway and on a line north from the Delta Highway to the intersection with the McKenzie River; thence generally southerly and easterly along the McKenzie River approximately eleven miles to the intersection with Marcola Road; thence southwesterly along Marcola Road to the intersection with 42nd Street; thence southerly along 42nd Street to the intersection with the northern branch of US Highway 126; thence easterly along US Highway 126 to the intersection with 52nd Street; thence north along 52nd Street to the intersection with High Banks Road; thence easterly along High Banks Road to the intersection with 58th Street; thence south along 58th Street to the intersection with Thurston Road; thence easterly along Thurston Road to the intersection with the western boundary of Section 36, T17S, R2W; thence south to the southwest corner of Section 36, T17S, R2W; thence west to the Springfield City Limits; thence following the Springfield City Limits southwesterly to the intersection with the western boundary of Section 2, T18S, R2W; thence on a line southwest to the Private Logging Road approximately one-half mile away; thence southeasterly along the Private Logging Road to the intersection with Wallace Creek; thence southwesterly along Wallace Creek to the confluence with the Middle Fork of the Willamette River; thence generally northwesterly along the Middle Fork of the Willamette River approximately seven and one-half miles to the intersection with the northern boundary of Section 11, T18S, R3W; thence west to the northwest corner of Section 10, T18S, R3W; thence south to the intersection with 30th Avenue; thence westerly along 30th Avenue to the intersection with the Eugene City Limits; thence following the Eugene City Limits first southerly then westerly then northerly and finally westerly to the intersection with the northern boundary of Section 5, T18S, R4W; thence west to the intersection with Greenhill Road; thence north along Greenhill Road to the intersection with Barger Drive; thence east along Barger Drive to the intersection with the Eugene City Limits (Ohio Street); thence following the Eugene City Limits first north then east then north then east then south then east to the intersection with Jansen Drive; thence east along Jansen Drive to the intersection with Belt Line Road; thence northeasterly along Belt Line Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection with Clear Lake Road; thence west along Clear Lake Road to the intersection with the western boundary of Section 9, T17S, R4W; thence north to the intersection with Airport Road; thence east along Airport Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection East Enid Road; thence east along East Enid Road to the intersection with Prairie Road; thence southerly along Prairie Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with the Southern Pacific Railroad Line; thence southeasterly along the Southern Pacific Railroad Line to the intersection with Irving Road; thence east along Irving Road to the intersection with Kalmia Road; thence northerly along Kalmia Road to the intersection with Hyacinth Road; thence northerly along Hyacinth Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with Spring Creek; thence northerly along Spring Creek to the intersection with River Road; thence northerly along River Road to the intersection with East Beacon Drive; thence following East Beacon Drive first east then south then east to the intersection with River Loop No.1; thence on a line due east to the Willamette River and the point of beginning.

(7) "Grants Pass CBD" means the area within the City of Grants Pass enclosed by "B" Street on the north, 8th Street to the east, "M" Street on the south, and 5th Street to the west.

(8) Grants Pass Control Area means the area of the state beginning at the northeast corner of Section 35, T35S, R5W; thence south to the southeast corner of Section 11, T37S, R5W; thence west to the southwest corner of Section 9, T37S, R6W; thence north to the northwest corner of Section 33, T35S, R6W; thence east to the point of beginning.

(9) "Grants Pass UGB" as shown on the Plan and Zoning maps for the City of Grants Pass as of Feb. 1, 1988 is the area within the bounds beginning at the NW corner of Sec. 7, T36S, R5W; thence south to the SW cor-

ner of Sec. 7; thence west along the southern boundary of Sec. 12, T36S, R5W approx. 2000 feet; thence south approx. 100 feet to the northern right of way of the Southern Pacific Railroad Line (SPRR Line); thence southeasterly along said right of way approx. 800 feet; thence south approx. 400 feet; thence west approx. 1100 feet; thence south approx. 700 feet to the intersection with the Hillside Canal; thence west approx. 100 feet; thence south approx. 550 feet to the intersection with Upper River Road; thence southeasterly along Upper River Road and continuing east along Old Upper River Road approx. 700 feet; thence south approx. 1550 feet; thence west approx. 350 feet; thence south approx. 250 feet; thence west approx. 1000 feet; thence south approx. 600 feet to the north end of Roguela Lane; thence east approx. 400 feet; thence south approx. 1400 feet to the intersection with Lower River Road; thence west along Lower River Road approx. 1400 feet; thence south approx. 1350 feet; thence west approx. 25 feet; thence south approx. 1200 feet to the south bank of the Rogue River; thence northwesterly along said bank approx. 2800 feet; thence on a line southwesterly and parallel to Parkhill Place approx. 600 feet; thence northwesterly at a 90 degree angle approximately 300 feet to the intersection with Parkhill Place; thence southwesterly along Parkhill Place approx. 250 feet; thence on a line southeasterly forming a 90 degree angle approximately 300 feet to a point even with Leonard Road; thence west approx. 1500 feet along Leonard Road; thence north approx. 200 feet; thence west to the west side of Schroeder Lane; thence north approx. 150 feet; thence west approx. 200 feet; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 450 feet; thence north approx. 300 feet; thence east approx. 150 feet; thence north approx. 400 feet; thence west approx. 500 feet; thence south approx. 300 feet; thence west to the intersection with Coutant Lane; thence south along Coutant Lane to the intersection with Leonard Road; thence west along Leonard Road to the intersection with Buena Vista Lane; thence north along the west side of Buena Vista Lane approx. 200 feet; thence west approx. 150 feet; thence north approx. 150 feet; thence west approx. 200 feet; thence north approx. 400 feet; thence west approx. 600 feet to the intersection with the western boundary of Sec. 23, T36S, R6W; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 300 feet; thence north approx. 600 feet to the intersection with Darneille Lane; thence northwesterly along Darneille Lane approx. 200 feet; thence west approx. 300 feet; thence south approx. 600 feet to the intersection with Leonard Road; thence west along Leonard Road approx. 700 feet; thence south approx. 1350 feet; thence east approx. 1400 feet to the intersection with Darneille Lane; thence south along Darneille Lane approx. 600 feet; thence west approx. 300 feet; thence south to the intersection with Redwood Avenue; thence east along Redwood Avenue to the intersection with Hubbard Lane and the western boundary of Sec. 23, T36S, R6W; thence south along Hubbard Lane approx. 1850 feet; thence west approx. 1350 feet; thence south to the south side of U.S. Highway 199; thence westerly along U.S. 199 approx. 1600 feet to the intersection with the north-south midpoint of Sec. 27, T36S, R6W; thence south approx. 2200 feet; thence east approx. 1400 feet; thence north approx. 1000 feet; thence east approx. 300 feet; thence north approx. 250 feet to the intersection with the Highline Canal; thence northerly along the Highline Canal approx. 900 feet; thence east to the intersection with Hubbard Lane; thence north along Hubbard Lane approximately 600 feet; thence east approx. 200 feet; thence north approx. 400 feet to a point even with Canal Avenue; thence east approx. 550 feet; thence north to the south side of U.S. 199; thence easterly along the southern edge of U.S. 199 to the intersection with Willow Lane; thence south along Willow Lane to the intersection with Demaray Drive; thence easterly along Demaray Drive and continuing along the southern edge of U.S. 199 to the intersection with Dowell Road; thence south along Dowell Road approx. 550 feet; thence easterly approx. 750 feet; thence north to the intersection with the South Canal; thence easterly along the South Canal to the intersection with Schutzwahl Lane; thence south approx. 1300 feet to a point even with West Harbeck Road; thence east approx. 2000 feet to the intersection with Allen Creek; thence southerly along Allen Creek approx. 1400 feet to a point even with Denton Trail to the west; thence west to the intersection with Highline Canal; thence southerly along Highline Canal to the intersection with the southern boundary of Sec. 25, T36S, R6W; thence east to the intersection with Allen Creek; thence southerly along Allen Creek to the intersection with the western boundary of Sec. 31, T36S, R5W; thence south to the SW corner of Sec. 31; thence east to the intersection with Williams Highway; thence southeasterly along Williams Highway approx. 1300 feet; thence east approx. 200 feet; thence north approx. 400 feet; thence east approx. 700 feet; thence north to the intersection with Espey Road; thence west along Espey Road approx. 150 feet; thence north approx. 600 feet; thence

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east approx. 300 feet; thence north approx. 2000 feet; thence west approx. 2100 feet; thence north approx. 1350 feet; thence east approx. 800 feet; thence north approx. 2800 feet to the east-west midline of Sec. 30, T36S, R5W; thence on a line due NE approx. 600 feet; thence north approx. 100 feet; thence east approx. 600 feet; thence north approx. 100 feet to the intersection with Highline Canal; thence easterly along Highline Canal approx. 1300 feet; thence south approx. 100 feet; thence east to the intersection with Harbeck Road; thence north along Harbeck Road to the intersection with Highline Canal; thence easterly along Highline Canal to a point approx. 250 feet beyond Skyway Road; thence south to the intersection with Skyway Road; thence east to the intersection with Highline Canal; thence southeasterly along Highline Canal approx. 1200 feet; thence on a line due SW to the intersection with Bluebell Lane; thence southerly along Bluebell Lane approx. 150 feet; thence east to the intersection with Sky Crest Drive; thence southerly along Sky Crest Drive to the intersection with Harper Loop; thence southeasterly along Harper Loop to the intersection with the east-west midline of Sec. 29, T36S, R5W; thence east approx. 400 feet; thence south approx. 1300 feet to a point even with Troll View Road to the east; thence east to the intersection with Hamilton Lane; thence north along Hamilton Lane to the intersection with the Highline Canal; thence northeasterly along the Highline Canal to the northern boundary of Sec. 28, T36S, R5W; thence east approx. 1350 feet to the transmission line; thence north to the intersection with Fruitdale Drive; thence southwesterly along Fruitdale Drive approx. 700 feet; thence north to the northern edge of U.S. 199; thence easterly along the northern edge of U.S. 199 approx. 50 feet; thence north to the north bank of the Rogue River; thence northeasterly along the north bank of the Rogue River approx. 2100 feet to a point even with Ament Road; thence north to Ament Road and following Ament Road to U.S. Interstate Highway 5 (U.S. I-5); thence continuing north to the 1200 foot contour line; thence following the 1200 foot contour line northwesterly approx. 7100 feet to the city limits and a point even with Savage Street to the west; thence north following the city limits approx. 400 feet; thence west to the intersection with Beacon Street; thence north along Beacon Street and the city limits approx. 250 feet; thence east along the city limits approx. 700 feet; thence north along the city limits approx. 2200 feet; thence southwesterly along the city limits approximately 800 feet to the intersection with the 1400 foot contour line; thence northerly and northwesterly along the 1400 foot contour line approx. 900 feet to the intersection with the northern boundary of Sec. 9, T36S, R5W; thence west along said boundary approx. 100 feet to the NW corner of Sec. 9; thence south along the western boundary of Sec. 9 approx. 700 feet; thence west approx. 1400 feet; thence north approx. 2400 feet; thence west approx. 1350 feet; thence north approx. 1100 feet to the city limits; thence following the city limits first west approx. 1550 feet, then south approx. 800 feet, then west approx. 200 feet, then south approx. 200 feet, then east approx. 200 feet, then south approx. 300 feet, and finally westerly approx. 1200 feet to the intersection with the western boundary of Sec. 5, T36S, R5W; thence south along said boundary to the northern side of Vine Avenue; thence northwesterly along the northern side of Vine Avenue approx. 3150 feet to the intersection with the west fork of Gilbert Creek; thence north to the intersection with the southern right of way of U.S. I-5; thence northwesterly along said right of way approx. 1600 feet; thence south to the intersection with Old Highland Avenue; thence northwesterly along Highland Avenue approx. 650 feet; thence west approx. 350 feet; thence south approx. 1400 feet; thence east approx. 700 feet; thence south approx. 1000 feet; thence on a line SW approx. 800 feet; thence south approx. 1400 feet to the intersection with the northern boundary of Sec. 7, T36S, R5W; thence west to the NW corner of Sec. 7, the point of beginning.

(10) Klamath Falls Control Area means the area of the state beginning at the northeast corner of Section 8, T38S, R10E, thence south to the southeast corner of Section 5, T40S, R10E; thence west to the southwest corner of Section 3, T40S, R8E; thence north to the northwest corner of Section 10, T38S, R8E; thence east to the point of beginning.

(11) "Klamath Falls UGB" means the area within the bounds beginning at the southeast corner of Section 36, Township 38 South, Range 9 East; thence northerly approximately 4500 feet; thence westerly approximately 1/4 mile; thence northerly approximately 3/4 mile into Section 25, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 24, T38S, R9E; thence westerly approximately 1/2 mile to the southeast corner of Section 23, T38S, R9E; thence northerly approximately 1/2 mile; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 14, T38S, R9E; thence generally northwestwardly along the 5000 foot elevation contour line approximately 3/4 mile;

thence westerly 1 mile; thence north to the intersection with the northern boundary of Section 15, T38S, R9E; thence west 1/4 mile along the northern boundary of Section 15, T38S, R9E; thence generally southeasterly following the 4800 foot elevation contour line around the old Oregon Institute of Technology Campus to meet with the westerly line of Old Fort Road in Section 22, T38S, R9E; thence southwesterly along the westerly line of Old Fort Road approximately 1 and 1/4 miles to Section 27, T38S, R9E; thence west approximately 1/4 mile; thence southwesterly approximately 1/2 mile to the intersection with Section 27, T38S, R9E; thence westerly approximately 1/2 mile to intersect with the Klamath Falls City Limits at the northerly line of Loma Linda Drive in Section 28, T38S, R9E; thence northwesterly along Loma Linda Drive approximately 1/4 mile; thence southwesterly approximately 1/8 mile to the Klamath Falls City Limits; thence northerly along the Klamath Falls City Limits approximately 1 mile into Section 21, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1 mile into Section 17, T38S, R9E; thence westerly approximately 3/4 mile into Section 17, T38S, R9E; thence northerly approximately 1/4 mile; thence westerly approximately 1 mile to the west boundary of Highway 97 in Section 18, T38S, R9E; thence southeasterly along the western boundary of Highway 97 approximately 1/2 mile; thence southwesterly away from Highway 97; thence southeasterly to the intersection with Klamath Falls City Limits at Front Street; thence westerly approximately 1/4 mile to the western boundary of Section 19, T38S, R9E; thence southerly approximately 1 and 1/4 miles along the western boundary of Section 19, T38S, R9E and the Klamath Falls City Limits to the south shore line of Klamath Lake; thence northwesterly along the south shore line of Klamath Lake approximately 1 and 1/4 miles across Section 25, T38S, R9E and Section 26, T38S, R9E; thence westerly approximately 1/2 mile along Section 26, T38S, R9E; thence southerly approximately 1/2 mile to Section 27, T38S, R9E to the intersection with eastern boundary of Orindale Draw, thence southerly along the eastern boundary of Orindale Draw approximately 1 and 1/4 miles into Section 35, T38S, R9E; thence southerly approximately 1/2 mile into Section 2, T39S, R8E; thence easterly approximately 1/4 mile; thence northerly approximately 1/4 mile to the southeast corner of Section 35, T38S, R8E and the Klamath Falls City Limits; thence easterly approximately 1/2 mile to the northern boundary of Section 1, T38S, R8E; thence southeasterly approximately 1/2 mile to Orindale Road; thence north 500 feet along the west side of an easement; thence easterly approximately 1 and 1/4 miles through Section 1, T38S, R8E to the western boundary of Section 6, T39S, R9E; thence southerly approximately 3/4 mile to the southwest corner of Section 6, T39S, R9E; thence easterly approximately 1/8 mile to the western boundary of Highway 97; thence southwesterly along the Highway 97 right-of-way approximately 1/4 mile; thence westerly approximately 1/2 mile to Agate Street in Section 7, T39S, R8E; thence northerly approximately 1/4 mile; thence westerly approximately 3/4 mile to Orindale Road in Section 12, T39S, R8E; thence northerly approximately 1/4 mile into Section 1, T39S, R8E; thence westerly approximately 3/4 mile to the Section 2, T39S, R8E boundary line; thence southerly approximately 3/4 mile along the Section 2, T39S, R8E boundary line to the northwest corner of Section 12, T39S, R8E; thence westerly approximately 1/8 mile into Section 11, T39S, R8E; thence southerly approximately 1/8 mile; thence northeasterly approximately 3/4 mile to the southern boundary of Section 12, T39S, R8E at Balsam Drive; thence southerly approximately 1/4 mile into Section 12, T39S, R8E; thence easterly approximately 1/4 mile to Orindale Road; thence southeasterly approximately 500 feet to Highway 66; thence southwesterly approximately 1/2 mile along the boundary of Highway 66 to Holiday Road; thence southerly approximately 1/2 mile into Section 13, T39S, R8E; thence northeasterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/4 mile along the eastern boundary of Section 13, T39S, R8E; thence westerly approximately 1/4 mile to Weyerhaeuser Road; thence northerly approximately 1/8 mile; thence easterly approximately 1/8 mile; thence northerly approximately 1/8 mile; thence westerly approximately 1/8 mile to Farrier Avenue; thence northerly approximately 1/4 mile; thence easterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/8 mile along the eastern boundary of Section 13, T39S, R8E; thence easterly approximately 1/4 mile along the northern section line of Section 18, T39S, R8E; thence southerly approximately 1/4 mile; thence easterly approximately 1/2 mile to the boundary of Highway 97; thence southerly approximately 1/3 mile to the Burlington Northern Right-of-Way; thence northeasterly approximately 1 and 1/3 miles along the high water line of the Klamath River to the Southside Bypass in Section 8, T39S, R9E; thence southeasterly along the Southside Bypass to the Southern Pacific Right-of-

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Way in Section 9, T39S, R9E; thence southerly approximately 1/2 mile along the Southern Pacific Right-of-Way; thence southwesterly approximately 1/4 mile along the Midland Highway; thence southeasterly approximately 1/4 mile to the old railroad spur; thence easterly 1/4 mile along the old railroad spur; thence southerly approximately 1/4 mile in Section 16, T39S, R9E; thence westerly approximately 1/3 mile; thence southerly approximately 1/4 mile; thence easterly approximately 1/16 mile in Section 21, T39S, R9E; thence southerly approximately 1/8 mile to the Lost River Diversion Channel; thence southeasterly approximately 1/4 mile along the northern boundary of the Lost River Diversion Channel; thence easterly approximately 3/4 mile along Joe Wright Road into Section 22, T39S, R9E; thence southeasterly approximately 1/8 mile on the eastern boundary of the Southern Pacific Right-of-Way; thence southeasterly approximately 1 mile along the western boundary of the Southern Pacific Right-of-Way across Section 22, T39S, R9E and Section 27, T39S, R9E to a point 440 yards south of the northern boundary of Section 27, T39S, R9E; thence easterly to Kingsley Field; thence southeasterly approximately 3/4 mile to the southern boundary of Section 26, T39S, R9E; thence east approximately 1/2 mile along the southern boundary of Section 26, T39S, R9E to a pond; thence north-northwesterly for 1/2 mile following the Klamath Falls City Limits; thence north 840 feet; thence east 1155 feet to Homedale Road; thence north along Homedale Road to a point 1/4 mile north of the southern boundary of Section 23, T39S, R9E; thence west 1/4 mile; thence north 1 mile to the Southside Bypass in Section 14, T39S, R9E; thence east 1/2 mile along the Southside Bypass to the eastern boundary of Section 14, T39S, R9E; thence north 1/2 mile; thence east 900 feet into Section 13, T39S, R9E; thence north 1320 feet along the USBR 1-C 1-A to the southern boundary of Section 12, T39S, R9E; thence north 500 feet to the USBR A Canal; thence southeasterly 700 feet along the southern border of the USBR A Canal back into Section 13, T39S, R9E; thence southeast 1600 feet to the northwest parcel corner of an easement for the Enterprise Irrigation District; thence east-northeast 2200 feet to the eastern boundary of Section 13, T39S, R9E; thence north to the southeast corner of Section 12, T39S, R9E; thence along the Enterprise Irrigation Canal approximately 1/2 mile to Booth Road; thence east 1/2 mile to Vale Road; thence north 1 mile to a point in Section 6, T39S, R10E that is approximately 1700 feet north of the southern boundary of Section 6, T39S, R10E; thence west approximately 500 feet; thence south approximately 850 feet; thence west approximately 200 feet; thence north approximately 900 feet; thence west approximately 1600 feet to the western boundary of Section 6, T39S, R10E; thence north approximately 1/2 mile to the southeast corner of Section 36, T38S, R9E, the point of beginning.

(12) "LaGrande UGB" means the area within the bounds beginning at the point where U.S. Interstate 84 (I-84) intersects Section 31, Township 2 South, Range 38 East; thence east along I-84 to the Union County Fairgrounds; thence north and then east on a line encompassing the Union County Fairgrounds to the intersection with Cedar Street; thence further east approximately 500 feet, encompassing two (2) residential properties; thence on a line south to the intersection with the northern bank of the Grande Ronde River; thence westerly along the northern bank of the Grande Ronde River to the intersection with the western edge of Mount Glenn Road and Riverside Park; thence north along the western edge of Mount Glenn Road and Riverside Park to the intersection with Fruitdale Road; thence east along Fruitdale Road and the northern boundary of Riverside Park to the eastern boundary of Riverside Park; thence south along the eastern boundary of Riverside Park to the north bank of the Grande Ronde River; thence on a line southeast to the intersection with the northern edge of I-84; thence easterly along the northern edge of I-84 to May Street; thence easterly along May Street to the intersection with State Highway 82; thence northeasterly along State Highway 82 to the a point approximately 1/4 mile from the eastern edge of Section 4, T3S, R38E; thence south to the intersection with Section 9, T3S, R38E, and the southern edge of Buchanan Avenue; thence west along the southern edge of Buchanan Avenue to the intersection with the northern edge of I-84; thence on a line south to the southern edge of I-84; thence southeasterly along the southern edge of I-84 approximately 2500 feet; thence on a line due west approximately 1400 feet; thence on a line due south to the intersection with the Union Pacific Railroad Line; thence southeasterly along the Union Pacific Railroad Line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with U.S. Highway 30; thence southwest along U.S. Highway 30 to the intersection with the western boundary of Section 15, T3S, R38E; thence on a line west following existing property boundaries approximately 2900 feet; thence on a line north following existing property boundaries approximately 250 feet; thence on a line east

following existing property boundaries approximately 650 feet; thence north on a line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with 20th Avenue; thence south along 20th Avenue to the intersection with Foothill Road; thence southeasterly along Foothill Road approximately 2900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line south following existing property boundaries approximately 1250 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north following existing property boundaries approximately 450 feet to the intersection with the southernmost part of the La Grande City Limits; thence westerly and northwesterly along the southernmost part of the La Grande City Limits approximately 1100 feet to the intersection with the 3000 foot elevation contour line; thence westerly following the 3000 foot elevation contour line and existing property boundaries approximately 2200 feet; thence on a line north following existing property boundaries approximately 1900 feet; thence on a line west following existing property boundaries approximately 500 feet; thence on a line north to the La Grande City Limits; thence west along the La Grande City Limits and following existing property boundaries approximately 650 feet; thence on a line south following existing property boundaries approximately 900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north to the intersection with the La Grande City Limits; thence west along the southern boundary of the La Grande City Limits to the intersection with the western boundary of the La Grande City Limits; thence north along the western boundary of the La Grande City Limits and following existing property lines approximately 500 feet; thence on a line west following existing property boundaries approximately 200 feet; thence on a line north following existing property boundaries approximately 700 feet; thence east to the first 3000 foot elevation contour line west of the La Grande City Limits; thence northerly following that 3000 foot elevation contour line to the intersection with Deal Canyon Road; thence easterly along Deal Canyon Road to the intersection with the western boundary of the La Grande City Limits; thence northerly along the western boundary of the La Grande City Limits to the intersection with U.S. Highway 30; thence northwesterly along U.S. Highway 30 and following existing property boundaries approximately 1400 feet; thence on a line west to the intersection with the western boundary of Section 6, T3S, R38E; thence north along the western boundaries of Section 6, T3S, R38E and Section 31, T2S, R38E to the point of beginning.

(13) "Lakeview UGB" means the area beginning at the corner common to sections 21, 22, 27, and 28, T39S, R20E; thence north on the section line between section 21 and 22 to the section corner common to section 15, 16, 21, and 22; thence west along the section line between section 21 and 16 to the section corner common to sections 16, 17, 20, and 21; thence north along the section line between section 16 and 17 approximately 3550 feet to the east branch of Thomas Creek; thence northwesterly along the east branch of Thomas Creek to the center line of Highway 140; thence east along the center line of Highway 140 to the section corner common to sections 8, 9, 16, and 17, T39S, R20E; thence north along the section line between sections 8 and 9 to the section corner common to sections 4, 5, 8, and 9, T39S, R20E; thence north along the section line between section 4 and 5 to the section corner common to section 4 and 5, T39S, R20E and sections 32 and 33, T38S, R20E; thence east along the section line between sections 4 and 33 to the section corner common to sections 3 and 4, T39S, R20E and sections 33 and 34, T38S, R20E; thence south along the eastern boundary of section 4 approximately 4,1318.6 feet; thence S 89 degrees, 11 minutes W 288.28 feet to the east right of way line of the old Paisley/Lakeview Highway; thence S 21 degrees, 53 minutes E along the eastern right of way of the old Paisley/Lakeview Highway 288.4 feet; thence S 78 degrees, 45 minutes W 1375 feet; thence S 3 degrees, 6 minutes, and 30 seconds W 200 feet; thence S 77 degrees, 45 minutes W 136 feet to the east right of way line of U.S. Highway 395; thence southeasterly along the east right of way line of U.S. Highway 395 53.5 feet; thence N 77 degrees, 45 minutes E 195.6 feet; thence S 38 degrees, 45 minutes E 56.8 feet; thence S 51 degrees, 15 minutes W 186.1 feet to the east right of way of U.S. Highway 395; thence southeast along the eastern right of way line of U.S. Highway 395 2310 feet; thence N 76 degrees, 19 minutes 544.7 feet; thence S 13 degrees, 23 minutes, 21 seconds E 400 feet; thence N 63 degrees, 13 minutes E 243.6 feet to the western line of the old American Forest Products Logging Road; thence southeast along the old American Forest Products Logging Road to the western line of the northeast quadrant of the northwest quadrant of section 10, T39S, R20E; thence southeast to a point on the south line of the northeast quadrant of the northwest quadrant of Section 10, T39S, R20E (this point also bears N 89

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degrees, 33 minutes E 230 feet from the center line of U.S. Highway 395); thence south on a line parallel to the east right of way line of U.S. Highway 395 to the south line of the northwest quadrant of section 10, T39S, R20E; thence south 491 feet to the east right of way of U.S. Highway 395; thence southeasterly following the east right of way of U.S. Highway 395 255 feet to the south line of the northeast quadrant of the northeast quadrant of the southwest quadrant of section 10, T39S, R20E; thence east along that south line to the center line of section 10, T39S, R20E; thence continuing east along the same south line to the eastern boundary of section 10, T39S, R20E; thence south along the eastern boundary of section 10 to the section corner common to sections 10, 11, 14, and 15, T39S, R20E; thence south along the section line between section 14 and 15 to the section corner common to sections 14, 15, 22, and 23, T39S, R20E; thence west along the section line between sections 15 and 22 to the northwest corner of the northeast quadrant of the northeast quadrant of section 22, T39S, R20E; thence south along the eastern line of the western half of the eastern half of section 22 to the southern boundary of section 22, T39S, R20E; thence west along the southern boundary of section 22 to the point of beginning.

(14) "Maintenance Area" means any area that was formerly nonattainment for a criteria pollutant but has since met EPA promulgated standards and has had a maintenance plan to stay within the standards approved by the EPA pursuant to 40 CFR 51.110 (July, 1993).

(15) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(16) "Medford-Ashland CBD" means the area beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to the intersection with Riverside Avenue (Highway 99), south on Riverside Avenue to the intersection with Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to the intersection with Central Avenue, north on Central Avenue to the intersection with Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue.

NOTE: This definition also marks the area where indirect sources are required to have indirect source construction permits in the Medford area. See OAR 340-254-0040.

(17) "Medford UGB" means the area beginning at the line separating Range 1 West and Range 2 West at a point approximately 1/4 mile south of the northwest corner of Section 31, T36S, R1W; thence west approximately 1/2 mile; thence south to the north bank of Bear Creek; thence west to the south bank of Bear Creek; thence south to the intersection with the Medford Corporate Boundary; thence following the Medford Corporate Boundary west and southwesterly to the intersection with Merriman Road; thence northwesterly along Merriman Road to the intersection with the eastern boundary of Section 10, T36S, R2W; thence south along said boundary line approximately 3/4 mile; thence west approximately 1/3 mile; thence south to the intersection with the Hopkins Canal; thence east along the Hopkins Canal approximately 200 feet; thence south to Rossanely Drive; thence east along Rossanely Drive approximately 200 feet; thence south approximately 1200 feet; thence west approximately 700 feet; thence south approximately 1400 feet; thence east approximately 1400 feet; thence

north approximately 100 feet; thence east approximately 700 feet; thence south to Finley Lane; thence west to the end of Finley Lane; thence approximately 1200 feet; thence west approximately 1300 feet; thence north approximately 150 feet; thence west approximately 500 feet; thence south to Highway 238; thence west along Highway 238 approximately 250 feet; thence south approximately 1250 feet to a point even with the end of Renault Avenue to the east; thence east approximately 2200 feet; thence south approximately 1100 feet to a point even with Sunset Court to the east; thence east to and along Sunset Court to the first (nameless) road to the south; thence approximately 850 feet; thence west approximately 600 feet; thence south to Stewart Avenue; thence west along Stewart Avenue approximately 750 feet; thence south approximately 1100 feet; thence west approximately 100 feet; thence south approximately 800 feet; thence east approximately 800 feet; thence south approximately 1000 feet; thence west approximately 350 feet to a point even with the north-south connector street between Sunset Drive and South Stage Road; thence south to and along said connecting road and continuing along South Stage Road to Fairlane Road; thence south to the end of Fairlane Road and extending beyond it approximately 250 feet; thence east approximately 250 feet; thence south approximately 250 feet to the intersection with Judy Way; thence east on Judy Way to Griffin Creek Road; thence north on Griffin Creek Road to South Stage Road; thence east on South Stage Road to Orchard Home Drive; thence north on Orchard Home Drive approximately 800 feet; thence east to Columbus Avenue; thence south along Columbus Avenue to South Stage Road; thence east along South Stage Road to the first road to the north after Sunnyview Lane; thence north approximately 300 feet; thence east approximately 300 feet; thence north approximately 700 feet; thence east to King's Highway; thence north along King's Highway to Experiment Station Road; thence east along Experiment Station Road to Marsh Lane; thence east along Marsh Lane to the northern boundary of Section 6, T38S, R1W; thence east along said boundary approximately 1100 feet; thence north approximately 1200 feet; thence east approximately 1/3 mile; thence north approximately 400 feet; thence east approximately 1000 feet to a drainage ditch; thence following the drainage ditch southeasterly approximately 500 feet; thence east to the eastern boundary of Section 31, T37S, R1W; thence south along said boundary approximately 1900 feet; thence east to and along the loop off of Rogue Valley Boulevard, following that loop to the Southern Pacific Railroad Line (SPRR); thence following SPRR approximately 500 feet; thence south to South Stage Road; thence east along South Stage Road to SPRR; thence southeasterly along SPRR to the intersection with the west fork of Bear Creek; thence northeasterly along the west fork of Bear Creek to the intersection with U.S. Highway 99; thence southeasterly along U.S. Highway 99 approximately 250 feet; thence east approximately 1600 feet; thence south to East Glenwood Road; thence east along East Glenwood Road approximately 1250 feet; thence north approximately 1/2 mile; thence west approximately 250 feet; thence north approximately 1/2 mile to the Medford City Limits; thence east along the city limits to Phoenix Road; thence south along Phoenix Road to Coal Mine Road; thence east along Coal Mine Road approximately 9/10 mile to the western boundary of Section 35, T37S, R1W; thence north to the midpoint of the western boundary of Section 35, T37S, R1W; thence west approximately 800 feet; thence north approximately 1700 feet to the intersection with Barnett Road; thence easterly along Barnett Road to the southeast corner of Section 27, T37S, R1W; thence north along the eastern boundary line of said section approximately 1/2 mile to the intersection with the 1800 foot contour line; thence east to the intersection with Cherry Lane; thence following Cherry Lane southeasterly and then northerly to the intersection with Hillcrest Road; thence east along Hillcrest Road to the southeast corner of Section 23, T37S, R1W; thence north to the northeast corner of Section 23, T37S, R1W; thence west to the midpoint of the northern boundary of Section 22; T37S, R1W; thence north to the midpoint of Section 15, T37S, R1W; thence west to the midpoint of the western boundary of Section 15, T37S, R1W; thence south along said boundary approximately 600 feet; thence west approximately 1200 feet; thence north approximately 600 feet; thence west to Foothill Road; thence north along Foothill Road to a point approximately 500 feet north of Butte Road; thence west approximately 300 feet; thence south approximately 250 feet; thence west on a line parallel to and approximately 250 feet north of Butte Road to the eastern boundary of Section 8, T37S, R1W; thence north approximately 2200 feet; thence west approximately 1800 feet; thence north approximately 2000 feet; thence west approximately 500 feet; thence north to Coker Butte Road; thence east along Coker Butte Road approximately 550 feet; thence north approximately 1250 feet; thence west to U.S. Highway 62; thence north approximately 3000 feet;

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thence east approximately 400 feet to the 1340 foot contour line; thence north approximately 800 feet; thence west approximately 200 feet; thence north approximately 250 feet to East Vilas Road; thence east along East Vilas Road approximately 450 feet; thence north approximately 2000 feet to a point approximately 150 feet north of Swanson Creek; thence east approximately 600 feet; thence north approximately 850 feet; thence west approximately 750 feet; thence north approximately 650 feet; thence west approximately 2100 feet; thence on a line southeast approximately 600 feet; thence east approximately 450 feet; thence south approximately 1600 feet; thence west approximately 2000 feet to the continuance of the private logging road north of East Vilas Road; thence south along said logging road approximately 850 feet; thence west approximately 750 feet; thence south approximately 150 feet; thence west approximately 550 feet to Peace Lane; thence north along Peace Lane approximately 100 feet; thence west approximately 350 feet; thence north approximately 950 feet; thence west approximately 1000 feet to the western boundary of Section 31, T36S, R1W; thence north approximately 1300 feet along said boundary to the point of beginning.

(18) "Nonattainment Area" means any area that has been designated as not meeting the standards established by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR 51.52 (July, 1993) for any criteria pollutant.

(19) "O3" means Ozone.

(20) "Oakridge UGB" means the area enclosed by the following: Beginning at the northwest corner of Section 17, T21S, R3E and the city limits; thence south along the western boundary of Section 17, T21S, R3E along the city limits approximately 800 feet; thence southwest following the city limits approximately 750 feet; thence west along the city limits approximately 450 feet; thence northwest along the city limits approximately 450 feet; thence on a line south along the city limits approximately 250 feet; thence on a line east along the city limits approximately 100 feet; thence southwest along the city limits approximately 200 feet; thence on a line east along the city limits approximately 400 feet; thence on a line south along the city limits to the channel of the Willamette River Middle Fork; thence south-easterly up the Willamette River Middle Fork along the city limits approximately 7200 feet; thence exiting the Willamette River Middle Fork with the city limits in a northerly manner and forming a rough semicircle with a diameter of approximately one-half mile before rejoining the Willamette River Middle Fork; thence diverging from the city limits upon rejoining the Willamette River Middle Fork and moving south-easterly approximately 5600 feet up the Willamette River Middle Fork to a point on the river even with the point where Salmon Creek Road intersects with U.S. Highway 58; thence on a line east from the channel of the Willamette River Middle Fork across the intersection of Salmon Creek Road and U.S. Highway 58 to the intersection with the Southern Pacific Railroad Line; thence northerly along the Southern Pacific Railroad Line to the intersection with the northern boundary of Section 22, T21S, R3E; thence west along the northern boundary of Section 22, T21S, R3E to the intersection with Salmon Creek Road; thence on a line north to the intersection with the Southern Pacific Railroad Line; thence east along the Southern Pacific Railroad Line approximately 600 feet; thence on a line north to the intersection with High Prairie Road; thence on a line west approximately 400 feet; thence on a line north to the intersection with the northern boundary of Section 15, T21S, R3E; thence west along the northern boundary of Section 15, T21S, R3E to the intersection with the southeastern corner of Section 9, T21S, R3E; thence north along the eastern boundary of Section 9, T21S, R3E approximately 1300 feet; thence on a line west approximately 1100 feet; thence on a line south to the intersection with West Oak Road; thence northwesterly along West Oak Road approximately 2000 feet; thence on a line south to the intersection with the northern boundary line of the city limits; thence westerly and northwesterly approximately 8000 feet along the city limits to the point of beginning.

(21) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method with the Department's Source Sampling Manual, (January, 1992).

(22) PM10:

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable water, other than combined water, with an aerodynamic diameter less than or equal to a nominal 10 microns, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 microns as measured in accordance with 40 CFR Part 50, Appendix J (July, 1993).

(23) "Portland AQMA" means the area within the bounds beginning at the point starting on the Oregon-Washington state line in the Columbia River at the confluence with the Willamette River, thence east up the Columbia River to the confluence with the Sandy River, thence southerly and easterly up the Sandy River to the point where the Sandy River intersects the Clackamas County-Multnomah County line, thence west along the Clackamas County-Multnomah County line to the point where the Clackamas County-Multnomah County line is intersected by H. Johnson Road (242nd), thence south along H. Johnson Road to the intersection with Kelso Road (Boring Highway), thence west along Kelso Road to the intersection with Deep Creek Road (232nd), thence south along Deep Creek Road to the point of intersection with Deep Creek, thence southeasterly along Deep Creek to the confluence with Clackamas River, thence easterly along the Clackamas River to the confluence with Clear Creek, thence southerly along Clear Creek to the point where Clear Creek intersects Springwater Road then to Forsythe Road, thence easterly along Forsythe Road to the intersection with Bradley Road, thence south along Bradley Road to the intersection with Redland Road, thence west along Redland Road to the intersection with Ferguson Road, thence south along Ferguson Road to the intersection with Thayler Road, thence west along Thayler Road to the intersection with Beaver Creek Road, thence southeast along Beaver Creek Road to the intersection with Henrici Road, thence west along Henrici Road to the intersection with State Highway 213 (Mollala Avenue), thence southeast along State Highway 213 to the point of intersection with Beaver Creek, thence westerly down Beaver Creek to the confluence with the Willamette River, thence southerly and westerly up the Willamette River to the point where the Willamette River intersects the Clackamas County-Yamhill County line, thence north along the Clackamas County-Yamhill County line to the point where it intersects the Washington County-Yamhill County line, thence west and north along the Washington County-Yamhill County line to the point where it is intersected by Mount Richmond Road, thence northeast along Mount Richmond Road to the intersection with Patton Valley Road, thence easterly and northerly along Patton Valley Road to the intersection with Tualatin Valley State Highway, thence northerly along Tualatin Valley State Highway to the intersection with State Highway 47, thence northerly along State Highway 47 to the intersection with Dilley Road, thence northwesterly and northerly along Dilley Road to the intersection with Stringtown Road, thence westerly and northwesterly along Stringtown Road to the intersection with Gales Creek Road, thence northwesterly along Gales Creek Road to the intersection with Timmerman Road, thence northerly along Timmerman Road to the intersection with Wilson River Highway, thence west and southwest along Wilson River Highway to the intersection with Narup Road, thence north along Narup Road to the intersection with Cedar Canyon Road, thence westerly and northerly along Cedar Canyon Road to the intersection with Banks Road, thence west along Banks Road to the intersection with Hahn Road, thence northerly and westerly along Hahn Road to the intersection with Mountindale Road, thence southeasterly along Mountindale Road to the intersection with Glencoe Road, thence east-southeasterly along Glencoe Road to the intersection with Jackson Quarry Road, thence north-northeasterly along Jackson Quarry Road to the intersection with Helvetia Road, thence easterly and southerly along Helvetia Road to the intersection with Bishop Road, thence southerly along Bishop Road to the intersection with Phillips Road, thence easterly along Phillips Road to the intersection with the Burlington Northern Railroad Track, thence north-easterly along the Burlington Northern Railroad Line to the intersection with Rock Creek Road, thence east-southeasterly along Rock Creek Road to the intersection with Old Cornelius Pass Road, thence northeasterly along Old Cornelius Pass Road to the intersection with Skyline Boulevard, thence easterly and southerly along Skyline Boulevard to the intersection with Newberry Road, thence northeasterly along Newberry Road to the intersection with State Highway 30 (St. Helens Road), thence northeast on a line over land across State Highway 30 to the Multnomah Channel, thence east-southeasterly up the Multnomah Channel to the diffidence with the Willamette River, thence north-northeasterly down the Willamette River to the confluence with the Columbia River and the Oregon-Washington state line (the point of beginning).

(24) "Portland Metropolitan Service District Boundary" or "Portland Metro" means the boundary surrounding the urban growth boundaries of

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the cities within the Greater Portland Metropolitan Area. It is defined in the Oregon Revised Statutes (ORS) 268.125 (1989).

(25) "Portland Vehicle Inspection Area" means the area of the state included within the following census tracts, block groups, and blocks as used in the 1990 Federal Census. In Multnomah County, the following tracts, block groups, and blocks are included: Tracts 1, 2, 3.01, 3.02, 4.01, 4.02, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 10, 11.01, 11.02, 12.01, 12.02, 13.01, 13.02, 14, 15, 16.01, 16.02, 17.01, 17.02, 18.01, 18.02, 19, 20, 21, 22.01, 22.02, 23.01, 23.02, 24.01, 24.02, 25.01, 25.02, 26, 27.01, 27.02, 28.01, 28.02, 29.01, 29.02, 29.03, 30, 31, 32, 33.01, 33.02, 34.01, 34.02, 35.01, 35.02, 36.01, 36.02, 36.03, 37.01, 37.02, 38.01, 38.02, 38.03, 39.01, 39.02, 40.01, 40.02, 41.01, 41.02, 42, 43, 44, 45, 46.01, 46.02, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.01, 60.02, 61, 62, 63, 64.01, 64.02, 65.01, 65.02, 66.01, 66.02, 67.01, 67.02, 68.01, 68.02, 69, 70, 71, 72.01, 72.02, 73, 74, 75, 76, 77, 78, 79, 80.01, 80.02, 81, 82.01, 82.02, 83.01, 83.02, 84, 85, 86, 87, 88, 89, 90, 91, 92.01, 92.02, 93, 94, 95, 96.01, 96.02, 97.01, 97.02, 98.01, 98.02, 99.01, 99.02, 99.03, 100, 101, 102, 103.01, 103.02, 104.02, 104.04, 104.05, 104.06, 104.07; Block Groups 1, 2 of Tract 105; Blocks 360, 361, 362 of Tract 105; that portion of Blocks 357, 399 of Tract 105 beginning at the intersection of the Oregon-Washington State Line ("State Line") and the northeast corner of Block Group 1 of Tract 105, thence east along the State Line to the intersection of the State Line and the eastern edge of Section 26, Township 1 North, Range 4 East, thence south along the section line to the centerline of State Highway 100 to the intersection of State Highway 100 and the western edge of Block Group 2 of Tract 105. In Clackamas County, the following tracts, block groups, and blocks are included: Tracts 201, 202, 203.01, 203.02, 204.01, 204.02, 205.01, 205.02, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216.01, 216.02, 217, 218, 219, 220, 221.01, 221.02, 222.02, 223, 224, 225, 226, 227.01, 227.02, 228, 229, 230, 231, 232, 233, 234.01, 234.02, 235, 236, 237; Block Groups 1, 2 of Tract 241; Block Groups 1, 2, 3, 4 of Tract 242; Block Groups 1, 2 of Tract 243.02. In Yamhill County, the following tract is included: Tract 301, except those areas in Tract 301 that lie within the Newberg City Limits defined as of July 12, 1996, and the following blocks within Tract 301: 102B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121D, 122B, 122C, 123, 126, and 127B. In Washington County the following tracts, block groups, and blocks are included: Tracts 301, 302, 303, 304.01, 304.02, 305.01, 305.02, 306, 307, 308.01, 308.02, 309, 310.03, 310.04, 310.05, 310.06, 311, 312, 313, 314.01, 314.02, 315.01, 315.04, 315.05, 315.06, 315.07, 315.08, 316.03, 316.04, 316.05, 316.06, 316.07, 317.02, 317.03, 317.04, 318.01, 318.02, 318.03, 319.01, 319.03, 319.04, 320, 321.01, 321.02, 322, 323, 324.02, 324.03, 324.04, 325, 326.01, 326.02, 328, 329, 330, 331, 332, 333; Block Groups 1, 2 of Tract 327; Block Group 1 of Tract 334; Block Group 2 of Tract 335; Block Group 1 of Tract 336. In Columbia County the following tracts, block groups, and blocks are included: Tract 9710.98; Block Groups 2, 3 of Tract 9709.98; Blocks 146B, 148, 152 of Tract 9709.98.

(26) "Rogue Basin" means the area bounded by the following line: Beginning at the NE corner of T32S, R2E, W.M., thence south along range line 2E to the SE corner of T39S; thence west along township line 39S to the NE corner of T40S, R7W; thence south to the SE corner of T40S, R7W; thence west to the SE corner of T40S, R9W; thence north on range line 9W to the NE corner of T39S, R9W; thence east to the NE corner of T39S, R8W; thence north on range line 8W to the SE corner of Section 1, T33S, R8W on the Josephine-Douglas County line; thence east on the Josephine-Douglas and Jackson-Douglas County lines to the NE corner of T32S, R1W; thence east along township line 32S to the NE corner of T32S, R2E to the point of beginning.

(27) "Salem-Kaiser Area Transportation Study" or "SKATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) with Battle Creek Road SE and Wiltsey Road, south along I-5 to the intersection with the western boundary of Section 24, T8S, R3W; thence due south on a line to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road; thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where the western boundary of Section 30, T7S, R3W intersects

the Southern Pacific Railroad Line; thence westerly along the Southern Pacific Railroad Line to the intersection with State Highway 51; thence northeasterly along State Highway 51 to the intersection with Oak Grove Road; thence northerly along Oak Grove Road to the intersection with State Highway 22; thence west on State Highway 22 to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along Deer Park Drive to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem Urban Growth Boundary (SUGB); thence following the southeast boundary of the SUGB generally southerly and westerly to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

(28) "UGA" means Urban Growth Area.

(29) "UGB" means Urban Growth Boundary.

(30) "Umpqua Basin" means the area bounded by the following line: Beginning at the SW corner of Section 2, T19S, R9W, on the Douglas-Lane County lines and extending due south to the SW corner of Section 14, T32S, R9W, on the Douglas-Curry County lines, thence easterly on the Douglas-Curry and Douglas-Josephine County lines to the intersection of the Douglas, Josephine, and Jackson County lines; thence easterly on the Douglas-Jackson County line to the intersection of the Umpqua National Forest boundary on the NW corner of Section 32, T32S, R3W; thence northerly on the Umpqua National Forest boundary to the NE corner of Section 36, T25S, R2W; thence west to the NW corner of Section 36, T25S, R4W; thence north to the Douglas-Lane County line; thence westerly on the Douglas-Lane County line to the starting point.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0500; DEQ 1-2005, f. & cert. ef. 1-4-05

340-204-0030

Designation of Nonattainment Areas

The following areas are designated as Nonattainment Areas:

(1) Carbon Monoxide Nonattainment Areas: The Salem Nonattainment Area for Carbon Monoxide is the Salem-Kaiser Area Transportation Study as defined in OAR 340-204-0010.

(2) PM10 Nonattainment Areas:

(a) The Eugene Nonattainment Area for PM10 is the Eugene-Springfield UGB as defined in OAR 340-204-0010.

(b) The LaGrande Nonattainment Area for PM10 is the LaGrande UGB as defined in OAR 340-204-0010.

(c) The Lakeview Nonattainment Area for PM10 is the Lakeview UGB as defined in OAR 340-204-0010.

(d) The Oakridge Nonattainment Area for PM10 is the Oakridge UGB as defined in OAR 340-204-0010.

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(3) Ozone Nonattainment Areas: The Salem Nonattainment Area for Ozone is the Salem-Kaiser Area Transportation Study as defined in OAR 340-204-0010.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040]

Stat. Auth.: ORS 468.020

Stat. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0520; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05

340-204-0040

Designation of Maintenance Areas

The following areas are designated as Maintenance Areas:

(1) Carbon Monoxide Maintenance Areas:

(a) The Eugene Maintenance Area for Carbon Monoxide is the Eugene-Springfield AQMA as defined in OAR 340-204-0010.

(b) The Portland Maintenance Area for Carbon Monoxide is the Portland Metropolitan Service District as referenced in OAR 340-204-0010.

(c) The Medford Carbon Monoxide Maintenance Area is the Medford UGB as defined in OAR 340-204-0010.

[NOTE: EPA maintenance plan approval and redesignation pending]

(d) The Grants Pass Carbon Monoxide Maintenance Area is the Grants Pass CBD as defined in OAR 340-204-0010.

(e) The Klamath Falls Carbon Monoxide Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010.

(2) Ozone Maintenance Areas:

(a) The Medford Maintenance Area for Ozone is the Medford-Ashland AQMA as defined in OAR 340-204-0010.

(b) The Oregon portion of the Portland — Vancouver Interstate Maintenance Area for Ozone is the Portland AQMA, as defined in OAR 340-204-0010.

(3) PM10 Maintenance Areas:

(a) The Grants Pass PM10 Maintenance Area is the Grants Pass UGB as defined in OAR 340-204-0010.

(b) The Klamath Falls PM10 Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010.

(c) The Medford-Ashland PM10 Maintenance Area is the Medford-Ashland AQMA as defined in OAR 340-204-0010.

[NOTE: EPA maintenance plan approval and redesignation pending]

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040]

Stat. Auth.: ORS 468.020

Stat. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0530; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05

340-224-0060

Requirements for Sources in Maintenance Areas

Proposed major sources and major modifications that would emit a maintenance pollutant within a designated maintenance area, including VOC or NO_x in a designated ozone maintenance area, must meet the requirements listed below:

(1) Best Available Control Technology (BACT). Except as provided in section (5) and (6) of this rule, the owner or operator must apply BACT for each maintenance pollutant emitted at a SER.

(a) For a major modification, the requirement for BACT applies only to:

(A) Each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant; and

(B) Each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, the technical and economic feasibility of retrofitting required controls may be considered, provided:

(A) The change was made in compliance with NSR requirements in effect when the change was made; and

(B) No limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) They were constructed without, or in violation of, the Department's approval.

(2) Air Quality Protection:

(a) Offsets and Net Air Quality Benefit. Except as provided in subsections (b), (c) and (d) of this section, the owner or operator must obtain offsets and demonstrate that a net air quality benefit will be achieved in the area as specified in OAR 340-225-0090.

(b) Growth Allowance. The requirements of this section may be met in whole or in part in an ozone or carbon monoxide maintenance area with an allocation by the Department from a growth allowance, if available, in accordance with the applicable maintenance plan in the SIP adopted by the Commission and approved by EPA. An allocation from a growth allowance used to meet the requirements of this section is not subject to OAR 340-225-0090. Procedures for allocating the growth allowances for the Oregon portion of the Portland-Vancouver Interstate Maintenance Area for Ozone and the Portland Maintenance Area for Carbon Monoxide are contained in OAR 340-242-0430 and 340-242-0440.

(c) In a carbon monoxide maintenance area, a proposed carbon monoxide major source or major modification is exempt from subsections (a) and (b) of this section if the owner or operator can demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m³ (8 hour average) and 2 mg/m³ (1-hour average). The demonstration must comply with the requirements of OAR 340-225-0045.

(d) In a PM10 maintenance area, a proposed PM10 major source or major modification is exempt from subsection (a) of this section if the owner or operator can demonstrate that the source or modification will not cause or contribute to an air quality impact in excess of:

(A) 120 µg/m³ (24-hour average) or 40 µg/m³ (annual average) in the Grants Pass PM10 maintenance area, or

(B) 140 µg/m³ (24-hour average) or 47 µg/m³ (annual average) in the Klamath Falls PM10 maintenance area. The demonstration must comply with the requirements of OAR 340-225-0045.

(3) The owner or operator of a source subject to this rule must provide an air quality analysis in accordance with OAR 340-225-0050(1) and (2), and 340-225-0060.

(4) Additional Requirements for Federal Major Sources: The owner or operator of a federal major source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050(3) and 340-225-0070. In addition to the provisions of this section, provisions of section 340-224-0070 also apply to federal major sources.

(5) Contingency Plan Requirements. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, this section applies in addition to other requirements of this rule until the Commission adopts a revised maintenance plan and EPA approves it as a SIP revision.

(a) The requirement for BACT in section (1) of this rule is replaced by the requirement for LAER contained in OAR 340-224-0050(1).

(b) An allocation from a growth allowance may not be used to meet the requirement for offsets in section (2) of this rule.

(c) The exemption provided in subsection (2)(c) and (2)(d) of this rule for major sources or major modifications within a carbon monoxide or PM10 maintenance area no longer applies.

(6) Medford-Ashland AQMA: Proposed major sources and major modifications that would emit PM10 within the Medford-Ashland AQMA must meet the LAER emission control technology requirements in OAR 340-224-0050.

(7) Pending Redesignation Requests. This rule does not apply to a proposed major source or major modification for which a complete application to construct was submitted to the Department before the maintenance area was redesignated from nonattainment to attainment by EPA. Such a source is subject to OAR 340-224-0050.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040]

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

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Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1935; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05

340-224-0070

Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas

Proposed new federal major sources or major modifications at federal major sources locating in areas designated attainment or unclassifiable must meet the following requirements:

(1) Best Available Control Technology (BACT). The owner or operator of the proposed major source or major modification must apply BACT for each pollutant emitted at a SER over the netting basis. In the Medford-Ashland AQMA, the owner or operator of any proposed new Federal Major PM10 source, or proposed major modification of a Federal Major PM10 source must comply with the LAER emission control technology requirement in 340-224-0050(1), and is exempt from the BACT provision of this section.

(a) For a major modification, the requirement for BACT applies only to:

(A) Each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant and

(B) Each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, any additional cost of retrofitting required controls may be considered provided:

(A) The change was made in compliance with NSR requirements in effect at the time the change was made, and

(B) No limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) They were constructed without, or in violation of, the Department's approval.

(2) Air Quality Analysis: The owner or operator of a source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050 through 340-225-0070. The owner or operator of any source subject to this rule that significantly affects air quality in a designated nonattainment or maintenance area must meet the requirements of net air quality benefit in OAR 340-225-0090.

(3) Air Quality Monitoring: The owner or operator of a source subject to this rule must conduct ambient air quality monitoring in accordance with the requirements in OAR 340-225-0050.

(4) The owner or operator of a source subject to this rule and significantly impacting a PM10 maintenance area (significant air quality impact is defined in OAR 340-200-0020), must comply with the requirements of OAR 340-224-0060(2).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 27-1992, f. & cert. ef. 11-12-92; Section (8) Renumbered from 340-020-0241; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0245; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1940; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 1-2005, f. & cert. ef. 1-4-05

340-225-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR-340-200-0020, the definition in this rule applies to this division.

(1) "Allowable Emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in 40 CFR parts 60, 61 and 63;

(b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition.

(2) "Background Light Extinction" means the reference levels (Mm-1) shown in the estimates of natural conditions as referenced in the FLAG to be representative of the PSD Class I or Class II area being evaluated.

(3) "Baseline Concentration" means:

(a) Except as provided in subsection (c), the ambient concentration level for sulfur dioxide and PM10 that existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. Actual emission increases or decreases occurring before January 1, 1978 must be included in the baseline calculation, except that actual emission increases from any source or modification on which construction commenced after January 6, 1975 must not be included in the baseline calculation;

(b) The ambient concentration level for nitrogen oxides that existed in an area during the calendar year 1988.

(c) For the area of northeastern Oregon within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests, the ambient concentration level for PM10 that existed during the calendar year 1993. The Department may allow the source to use an earlier time period if the Department determines that it is more representative of normal emissions.

(d) For PM10 in the Medford-Ashland AQMA: the ambient PM10 concentration levels that existed during the year that EPA redesignates the AQMA to attainment for PM10.

(4) "Competing PSD Increment Consuming Source Impacts" means the total modeled concentration above the modeled Baseline Concentration resulting from increased emissions of all other sources since the baseline concentration year that are within the Range of Influence of the source in question. Allowable Emissions may be used as a conservative estimate, in lieu of Actual Emissions, in this analysis.

(5) "Competing NAAQS Source Impacts" means total modeled concentration resulting from allowable emissions of all other sources that are within the Range of Influence of the source in question.

(6) "FLAG" refers to the Federal Land Managers' Air Quality Related Values Work Group Phase I Report. See 66 Federal Register 2, January 3, 2001 at 382 to 383.

(7) "General Background Concentration" means impacts from natural sources and unidentified sources that were not explicitly modeled. The Department may determine this as site-specific ambient monitoring or representative ambient monitoring from another location.

(8) "Predicted Maintenance Area Concentration" means the future year ambient concentration predicted in the applicable maintenance plan. The future year (2015) concentrations to be used for Grants Pass UGB are 89 µg/m3 (24-hour average) and 21 µg/m3 (annual average). Future year (2015) concentrations to be used for Klamath Falls UGB are 114 µg/m3 (24-hour average) and 25 µg/m3 (annual average).

(9) "Nitrogen Deposition" means the sum of anion and cation nitrogen deposition expressed in terms of the mass of total elemental nitrogen being deposited. As an example, Nitrogen Deposition for NH4NO3 is 0.3500 times the weight of NH4NO3 being deposited.

(10) "Ozone Precursor Distance" means the distance in kilometers from the nearest boundary of a designated ozone nonattainment or maintenance area within which a major new or modified source of VOC or NOx is considered to significantly affect that designated area. The determination of significance is made by either the formula method or the demonstration method.

(a) The Formula Method.

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(A) For sources with complete permit applications submitted before January 1, 2003: $D = 30 \text{ km}$

(B) For sources with complete permit applications submitted on or after January 1, 2003: $D = (Q/40) \times 30 \text{ km}$

(C) D is the Ozone Precursor Distance in kilometers. The value for D is 100 kilometers when D is calculated to exceed 100 kilometers. Q is the larger of the NO_x or VOC emissions increase from the source being evaluated in tons/year, and is quantified relative to the netting basis.

(D) If a source is located at a distance less than D from the designated area, the source is considered to have a significant effect on the designated area. If the source is located at a distance equal to or greater than D, it is not considered to have a significant effect.

(b) The Demonstration Method. An applicant may demonstrate to the Department that the source or proposed source would not significantly impact a nonattainment area or maintenance area. This demonstration may be based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors. If the Department determines that the source or proposed source would not significantly impact the nonattainment area or maintenance area under high ozone conditions, the Ozone Precursor Distance is zero kilometers.

(11) "Ozone Precursor Offsets" means the emission reductions required to offset emission increases from a major new or modified source located inside the designated nonattainment or maintenance area or within the Ozone Precursor Distance. Emission reductions must come from within the designated area or from within the Ozone Precursor Distance of the offsetting source as described in OAR 340-225-0090. The offsets determination is made by either the formula method or the demonstration method.

(a) The Formula Method.

(A) Required offsets (RO) for new or modified sources are determined as follows:

(i) For sources with complete permit applications submitted before January 1, 2003: $RO = SQ$

(ii) For sources with complete permit applications submitted on or after January 1, 2003: $RO = (SQ \text{ minus } (40/30 * SD))$

(B) Contributing sources may provide offsets (PO) calculated as follows: $PO = CQ \text{ minus } (40/30 * CD)$

(C) Multiple sources may contribute to the required offsets of a new source. For the formula method to be satisfied, total provided offsets (PO) must equal or exceed the required offset (RO).

(D) Definitions of factors used in paragraphs (A) (B) and (C) of this subsection:

(i) RO is the required offset of NO_x or VOC in tons per year as a result of the source emissions increase. If RO is calculated to be negative, RO is set to zero;

(ii) SQ is the source emissions increase of NO_x or VOC in tons per year above the netting basis;

(iii) SD is the source distance in kilometers to the nonattainment or maintenance area. SD is zero for sources located within the nonattainment or maintenance area.

(iv) PO is the provided offset from a contributing source and must be equal to or greater than zero;

(v) CQ is the contributing emissions reduction in tons per year quantified relative to contemporaneous pre-reduction actual emissions (OAR 340-268-0030(1)(b)).

(vi) CD is the contributing source distance in kilometers to the nonattainment or maintenance area. For a contributing source located within the nonattainment or maintenance area, CD equals zero.

(b) The Demonstration Method. An applicant may demonstrate to the Department using dispersion modeling or other analyses the level and location of offsets that would be sufficient to provide actual reductions in concentrations of VOC or NO_x in the designated area during high ozone conditions. The modeled reductions of ambient VOC or NO_x concentrations resulting from the emissions offset must be demonstrated over a greater area and over a greater period of time within the designated area as compared to the modeled ambient VOC or NO_x concentrations resulting from the emissions increase from the source subject to this rule. If the Department determines that the demonstration is acceptable, then the Department will approve the offsets proposed by the applicant. The demonstration method does not apply to sources located inside an ozone nonattainment area.

(12) "Range of Influence (ROI)" means:

(a) For PSD Class II and Class III areas, the Range of Influence of a competing source (in kilometers) is defined by:

(A) $ROI \text{ (km)} = Q \text{ (tons/year)} / K \text{ (tons/year km)}$.

(B) Definition of factors used in paragraph (A) of this subsection:

(i) ROI is the distance a source has an effect on an area and is compared to the distance from a potential competing source to the Significant Impact Area of a proposed new source. Maximum ROI is 50 km, however the Department may request that sources at a distance greater than 50 km be included in a competing source analysis.

(ii) Q is the emission rate of the potential competing source in tons per year.

(iii) K (tons/year km) is a pollutant specific constant as defined in the table below: [Table not printed, See Ed. Note.]

(b) For PSD Class I areas, the Range of Influence of a competing source includes emissions from all sources that occur within the modeling domain of the source being evaluated. The Department determines the modeling domain on a case-by-case basis.

(13) "Source Impact Area" means a circular area with a radius extending from the source to the largest distance to where predicted impacts from the source or modification equal or exceed the Significant Air Quality Impact levels set out in Table 1 of OAR 340 division 200. This definition only applies to PSD Class II areas and is not intended to limit the distance for PSD Class I modeling.

(14) "Sulfur Deposition" means the sum of anion and cation sulfur deposition expressed in terms of the total mass of elemental sulfur being deposited. As an example, sulfur deposition for (NH₄)₂SO₄ is 0.2427 times the weight of (NH₄)₂SO₄ being deposited.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 1-2005, f. & cert. ef. 1-4-05

340-225-0045

Requirements for Analysis in Maintenance Areas

Modeling: For determining compliance with the limits established in OAR 340-224-0060(2)(c) and (2)(d), NAAQS, and PSD Increments, the following methods must be used:

(1) A single source impact analysis is sufficient to show compliance with standards, PSD increments, and limits if modeled impacts from the source being evaluated are less than the Significant Air Quality Impact levels specified in OAR 340-200-0020, Table 1 for all maintenance pollutants.

(2) If the above requirement is not satisfied, the owner or operator of a proposed source or modification being evaluated must perform competing source modeling as follows:

(a) For demonstrating compliance with the maintenance area limits established in OAR 340-224-0060(2)(c) and (2)(d), the owner or operator of a proposed source or modification must show that modeled impacts from the proposed increased emissions plus Competing Source Impacts, plus predicted maintenance area concentration are less than the limits for all averaging times.

(b) For demonstrating compliance with the NAAQS, the owner or operator of a proposed source or modification must show that the total modeled impacts plus total Competing NAAQS Source Impacts plus General Background Concentrations are less than the NAAQS for all averaging

(c) For demonstrating compliance with the PSD Increments (as defined in OAR 340-202-0210, Table 1), the owner or operator of a proposed source or modification must show that modeled impacts from the proposed increased emissions (above the baseline concentration) plus competing PSD Increment Consuming Source Impacts (above the baseline concentration) are less than the PSD increments for all averaging times.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A, 468A.025 & 468A.035

Hist.: DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05

340-225-0090

Requirements for Demonstrating a Net Air Quality Benefit

Demonstrations of net air quality benefit for offsets must include the following:

(1) Ozone areas (VOC and NO_x emissions). For sources capable of impacting a designated ozone nonattainment or maintenance area;

(a) Offsets for VOC and NO_x are required if the source will be located within the designated area or within the Ozone Precursor Distance.

(b) The amount and location of offsets must be determined in accordance with this subsection:

(i) For new or modified sources locating within a designated nonattainment area, the offset ratio is 1.1:1. These offsets must come from within either the same designated nonattainment area as the new or modified source

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or another ozone nonattainment area (with equal or higher nonattainment classification) that contributes to a violation of the NAAQS in the same designated nonattainment area as the new or modified source.

(ii) For new or modified sources locating within a designated maintenance area, the offset ratio is 1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iii) For new or modified sources locating outside the designated area, but within the ozone precursor distance, the offset ratio is 1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iv) Offsets from outside the designated area but within the Ozone Precursor Distance must be from sources affecting the designated area in a comparable manner to the proposed emissions increase. Methods for determining offsets are described in the Ozone Precursor Offsets definition (OAR 340-225-0020(11)).

(c) In lieu of obtaining offsets, the owner or operator may obtain an allocation at the rate of 1:1 from a growth allowance, if available, in an applicable maintenance plan.

(d) Sources within or affecting the Medford Ozone Maintenance Area are exempt from the requirement for NOx offsets relating to ozone formation.

(e) Sources within or affecting the Salem Ozone Nonattainment Area are exempt from the requirement for VOC and NOx offsets relating to ozone formation.

(2) Non-Ozone areas (PM10, SO2, CO, NOx, and Lead emissions)

(a) For a source locating within a designated nonattainment area, the owner or operator must:

(A) obtain offsets from within the same designated nonattainment area;

(B) provide a minimum of 1:1 offsets for emission increases over the Netting Basis;

(C) provide a net air quality benefit within the designated nonattainment area. "Net Air Quality Benefit" means a reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors;

(D) provide offsets sufficient to demonstrate reasonable further progress toward achieving the NAAQS.

(b) For a source locating outside a designated nonattainment area but causing a significant air quality impact on the area, the owner or operator must provide offsets sufficient to reduce the modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the designated nonattainment area. These offsets may come from within or outside the designated nonattainment area.

(c) For a source locating inside or causing a significant air quality impact on a designated maintenance area, the owner or operator must either provide offsets sufficient to reduce modeled impacts below the significant air quality impact level (OAR 240-200-0020) at all receptors within the designated maintenance area or obtain an allocation from an available growth allowance as allowed by an applicable maintenance plan. These offsets may come from within or outside the designated maintenance area.

(A) Medford-Ashland AQMA: Proposed new major PM10 sources or major PM10 modifications locating within the AQMA that are required to provide emission offsets under OAR 340-224-0060(2)(a) must provide reductions in PM10 emissions equal to 1.2 times the emissions increase over the netting basis from the new or modified source, and must provide a net air quality benefit within the AQMA. "Net Air Quality Benefit" means a reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors.

(B) Medford-Ashland AQMA: Proposed new major PM10 sources or major PM10 modifications located outside the Medford-Ashland AQMA that cause a significant air quality impact on the AQMA must provide reductions in PM10 emissions sufficient to reduce modeled impacts below the significant air quality impact level (OAR 240-200-0020) at all receptors within the AQMA.

(3) The emission reductions used as offsets must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM10 must be offset with particulate in the same size range.

(4) The emission reductions used as offsets must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the start-

up period of the new facility, if net emissions are not increased during that time period. Any emission reductions must be federally enforceable at the time of the issuance of the permit.

(5) Offsets required under this rule must meet the requirements of Emissions Reduction Credits in OAR 340 division 268.

(6) Emission reductions used as offsets must be equivalent in terms of short term, seasonal, and yearly time periods to mitigate the effects of the proposed emissions.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0111; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-224-0090 & 340-240-0260; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(2) "Air Conveying System" means an air moving device, such as a fan or blower, associated ductwork, and a cyclone or other collection device, the purpose of which is to move material from one point to another by entrainment in a moving airstream.

(3) "Average Operating Opacity" means the opacity of emissions determined using EPA Method 9 on any three days within a 12-month period which are separated from each other by at least 30 days; a violation of the average operating opacity limitation is judged to have occurred if the opacity of emissions on each of the three days is greater than the specified average operating opacity limitation.

(4) "Charcoal Producing Plant" means an industrial operation which uses the destructive distillation of wood to obtain the fixed carbon in the wood.

(5) "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of weight of material collected to total weight of input to the collector.

(6) "Department" means Department of Environmental Quality.

(7) "Design Criteria" means the numerical as well as verbal description of the basis of design, including but not necessarily limited to design flow rates, temperatures, humidities, contaminant descriptions in terms of types and chemical species, mass emission rates, concentrations, and specification of desired results in terms of final emission rates and concentrations, and scopes of vendor supplies and owner-supplied equipment and utilities, and a description of any operational controls.

(8) "Domestic Waste" means combustible household waste, other than wet garbage, such as paper, cardboard, leaves, yard clippings, wood, or similar materials generated in a dwelling housing four (4) families or less, or on the real property on which the dwelling is situated.

(9) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions.

(10) "Emission" means a release into the outdoor atmosphere of air contaminants.

(11) "EPA Method 9" means the method for Visual Determination of the Opacity of Emissions From Stationary Sources described as Method (average of 24 consecutive observations) in the Department Source Sampling Manual (January, 1992).

(12) "Facility" means an identifiable piece of process equipment. A stationary source may be comprised of one or more pollutant-emitting facilities.

(13) "Fuel Burning Equipment" means a device that burns a solid, liquid, or gaseous fuel, the principal purpose of which is to produce heat or power by indirect heat transfer. All stationary gas turbines are considered

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Fuel Burning Equipment. Marine installations and internal combustion engines are not considered Fuel Burning Equipment.

(14) "Fuel Moisture Content By Weight Greater Than 20 Percent" means bark, hogged wood waste, or other wood with an average moisture content of more than 20 percent by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(15) "Fuel Moisture Content By Weight Less Than 20 Percent" means pulverized ply trim, sanderdust, or other wood with an average moisture content of 20 percent or less by weight on a wet basis as used for fuel in the normal operation of a wood-fired veneer dryer as measured by ASTM D4442-84 during compliance source testing.

(16) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof not easily given to measurement, collection and treatment by conventional pollution control methods.

(17) "Grants Pass Urban Growth Area" and "Grants Pass Area" means the area within the Grants Pass Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of Grants Pass as of 1 February 1988.

(18) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

(19) "La Grande Urban Growth Area" means the area within the La Grande Urban Growth Boundary as shown on the Plan and Zoning Maps for the City of La Grande as of 1 October 1991.

(20) "Lakeview Urban Growth Area" means the area within the Lakeview Urban Growth Boundary as shown on the Plan and Zoning Maps for the Town of Lakeview as of 25 October 1993.

(21) "Liquefied petroleum gas" has the meaning given by the American Society for Testing and Materials in ASTM D1835-82, "Standard Specification for Liquid Petroleum Gases."

(22) "Lowest Achievable Emission Rate" or "LAER" is defined in OAR 340-200-0020.

(23) "Maximum Opacity" means the opacity as determined by EPA Method 9 (average of 24 consecutive observations).

(24) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(25) "Modified Source" means any source with a major modification as defined in OAR 340-200-0020.

(26) "Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal component is methane.

(27) "New Source" means any source not in existence prior to April 7, 1978 or any source not having a Permit as of April 7, 1978.

(28) "Odor" means that property of an air contaminant that affects the sense of smell.

(29) "Offset" is defined in OAR 340-200-0020.

(30) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with the Department's Source Sampling Manual (January, 1992). Unless otherwise specified by rule, opacity must be measured in accordance with EPA Method 9. For all standards, the minimum observation period must be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 min-

utes in any one hour) consist of the total duration of all readings during the observation period that exceed the opacity percentage in the standard, whether or not the readings are consecutive. Alternatives to EPA Method 9, such as a continuous opacity monitoring system (COMS), alternate Method 1 (LIDAR), or EPA Methods 22, or 203, may be used if approved in advance by the Department, in accordance with the Source Sampling Manual.

(31) "Open Burning" means burning conducted in such a manner that combustion air and combustion products may not be effectively controlled including, but not limited to, burning conducted in open outdoor fires, burn barrels, and backyard incinerators.

(32) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binders.

(33) "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured in accordance with the Department Source Sampling Manual. Particulate matter emission determinations must consist of the average of three separate consecutive runs. For sources tested using DEQ Method 5 or DEQ Method 7, each run must have a minimum sampling time of one hour, a maximum sampling time of eight hours, and a minimum sampling volume of 31.8 dscf. For sources tested using DEQ Method 8, each run must have a minimum sampling time of 15 minutes and must collect a minimum particulate sample of 100 mg. Wood waste boilers and charcoal producing plants must be tested with DEQ Method 5; veneer dryers, wood particle dryers, fiber dryers and press/cooling vents must be tested with DEQ Method 7; and air conveying systems must be tested with DEQ Method 8 (January, 1992).

(34) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(35) "Press/Cooling Vent" means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

(36) "Rebuilt Boiler" means a physical change after April 29, 1988, to a wood-waste boiler or its air-contaminant emission control system which is not considered a "modified source" and for which the fixed, depreciable capital cost of added or replacement components equals or exceeds fifty percent of the fixed depreciable cost of a new component which has the same productive capacity.

(37) "Source" means any structure, building, facility, equipment, installation or operation, or combination thereof, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person, or by persons under common control.

(38) "Standard Conditions" means a temperature of 60° Fahrenheit (15.6° Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 Kilograms per square centimeter).

(39) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(40) "Veneer Dryer" means equipment in which veneer is dried.

(41) "Wood-fired Veneer Dryer" means a veneer dryer which is directly heated by the products of combustion of wood fuel in addition to or exclusive of steam or natural gas or propane combustion.

(42) "Wigwam Fired Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for the incineration of wastes.

(43) "Wood Waste Boiler" means equipment which uses indirect heat transfer from the products of combustion of wood waste to provide heat or power.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 9-1979, f. & ef. 5-3-79; DEQ 3-1980, f. & ef. 1-28-80; DEQ 14-1981, f. & ef. 5-6-81; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0010; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

ADMINISTRATIVE RULES

340-240-0100

Applicability

OAR 340-240-0100 through 340-240-0250 apply in the Medford-Ashland Air Quality Maintenance Area (AQMA) and the Grants Pass Urban Growth Area (Area), except that OAR 340-240-0130, 340-240-0180, and 340-240-0190 apply only in the Medford-Ashland AQMA.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0012; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0110

Wood Waste Boilers

(1) No person may cause or permit the emission of particulate matter from any boiler with a heat input capacity greater than 35 million Btu/hour unless the boiler has been equipped with emission control equipment which:

(a) Limits emissions of particulate matter to LAER as defined by the Department at the time the Department approves the control device; and

(b) Limits visible emissions such that their opacity does not exceed 5% for more than an aggregate of 3 minutes in any one hour, unless the permittee demonstrates by source test that emissions can be limited to LAER at higher visible emissions, but in no case may emissions equal or exceed 10% opacity for more than an aggregate of 3 minutes in any one hour. Specific opacity limits will be included in the Permit for each affected source.

(2) For boilers existing in the Baseline Period with a heat input capacity greater than 35 million Btu/hour, boiler mass emission limits for the purpose of establishing the facility's netting basis under OAR 340-200-0020 will be based on particulate matter emissions of 0.030 grains per dry standard cubic foot, corrected to 12% CO₂.

(3) Rebuilt Boilers are subject to OAR 340-240-0110(1). Boiler mass emissions for purposes of OAR 340-222-0041 will be based on LAER at the time the Department approves the rebuilt boiler.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 29-1980, f. & ef. 10-29-80; DEQ 14-1986, f. & ef. 6-20-86; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0015; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0120

Veneer Dryer Emission Limitations

(1) No person is allowed to operate any veneer dryer such that visible air contaminants emitted from any dryer stack or emission point exceed the opacity limits specified in subsections (a) and (b) of this section or such that emissions of particulate matter exceed the mass emission limits of subsections (c) through (g) of this section:

(a) An average operating opacity of five percent; and

(b) A maximum opacity of ten percent, unless the permittee demonstrates by source test that the emission limits in subsections (c) through (g) of this section can be achieved at higher visible emissions than specified in subsections (a) and (b) of this section, but in no case may emissions exceed the visible air contaminant limitations of OAR 340-234-0510(1)(b). Specific opacity limits will be included in the Permit for each affected source;

(c) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct natural gas or propane fired veneer dryers;

(d) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for steam heated veneer dryers;

(e) 0.40 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight less than 20 percent;

(f) 0.45 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight greater than 20 percent;

(g) In addition to subsections (e) and (f) of this section, 0.20 pounds per 1,000 pounds of steam generated in boilers which exhaust combustion gases to the veneer dryer.

(2) Exhaust gases from fuel-burning equipment vented to the veneer dryer are exempt from OAR 340-228-0210.

(3) No person is allowed to operate a veneer dryer unless:

(a) The owner or operator has submitted a program and time schedule for installing an emission-control system which has been approved in writing by the Department as being capable of complying with subsections (1)(a) through (g) of this rule;

(b) The veneer dryer is equipped with an emission-control system which has been approved in writing by the Department and is capable of complying with subsections (1)(a) through (g) of this rule; or

(c) The owner or operator has demonstrated and the Department has agreed in writing that the dryer is capable of being operated and is operated in continuous compliance with subsections (1)(a) through (g) of this rule.

(4) Each veneer dryer must be maintained and operated at all times such that air contaminant generating processes and all contaminant control equipment are at full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable levels.

(5) No person is allowed to willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule.

(6) Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing, handling and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0021; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0130

Air Conveying Systems (Medford-Ashland AQMA Only)

All air conveying systems emitting greater than ten tons per year of particulate matter to the atmosphere must, with the prior written approval of the Department, be equipped with a control system with collection efficiency of at least 98.5 percent.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0025; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0140

Wood Particle Dryers at Particleboard Plants

(1) No person is allowed to cause or permit the total emission of particulate matter from all wood particle dryers at a particleboard plant site to exceed 0.40 pounds per 1,000 square feet of board produced by the plant on a 3/4" basis of finished product equivalent.

(2) No person is allowed to cause or permit the visible emissions from the wood particle dryers at a particleboard plant to exceed ten percent opacity, unless the permittee demonstrates by source test that the particulate matter emission limit in section (1) of this rule can be achieved at higher visible emissions. In no case are emissions allowed to equal or exceed 20 percent opacity. Specific opacity limits will be included in the Permit for each affected source.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 14-1981, f. & ef. 5-6-81; DEQ 14-1986, f. & ef. 6-20-86; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0030; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0150

Hardboard Manufacturing Plants

(1) Emissions from Hardboard plants excluding press vents. No person is allowed to cause or permit the total emissions of particulate matter from a hardboard plant, excluding press/cooling vents, to exceed 0.25 pounds per

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1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent.

(2) Emissions from Hardboard plants including press vents. No person is allowed to cause or permit the total emissions of particulate matter from a hardboard plant, including press/cooling vents, to exceed 0.55 pounds per 1,000 square feet of hardboard produced on a 1/8" basis of finished product equivalent.

(3) When calculating emissions for this rule, emissions from truck dump and storage areas, fuel burning equipment, and refuse burning equipment are not included.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1981, f. & ef. 5-6-81; DEQ 14-1986, f. & ef. 6-20-86; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 2-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0031; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0180

Control of Fugitive Emissions (Medford-Ashland AQMA Only)

(1) All sawmills, all plywood mills and veneer manufacturing plants, particleboard and hardboard plants, charcoal manufacturing plants, asphalt plants, rock crushers, animal feed manufacturers, and other major industrial facilities as identified by the Department, must prepare and implement site-specific plans for the control of fugitive emissions.

(2) Fugitive emission-control plans must identify reasonable measures to prevent particulate matter from becoming airborne. Special care will be taken by the facility to avoid the migration of material onto the public road system. Such reasonable measures include, but are not limited to the following:

(a) The systematic paving of all unpaved roads and areas on which vehicular traffic occurs. Until an area is paved, subsection (2)(b) applies;

(b) Scheduled application of asphalt, oil, water, or other suitable chemicals on unpaved roads, log storage or sorting yards, materials stockpiles, and other surfaces which can create airborne dust. Dust suppressant material must not adversely affect water quality;

(c) Periodic sweeping or cleaning of paved roads and other areas as necessary to prevent migration of material onto the public road system;

(d) Full or partial enclosure of materials stockpiled in cases where application of oil, water, or chemicals are not sufficient to prevent particulate matter from becoming airborne;

(e) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

(f) Adequate containment during sandblasting or other similar operations;

(g) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne; and

(h) Procedures for the prompt removal of earth or other material from paved streets.

(3) Reasonable measures may include landscaping and using vegetation to reduce the migration of material onto public and private roadways.

(4) The facility owner or operator must supervise and control fugitive emissions and material that may become airborne caused by the activity of outside contractors delivering or removing materials at the site.

(5) The site-specific fugitive dust emissions control plan must be submitted to the Department prior to or within 60 days of permit issuance or renewal. The Department will approve or deny the plan within 30 days.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 6-1983, f. & ef. 4-18-83; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ16-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0043; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0190

Requirement for Operation and Maintenance Plans (Medford-Ashland AQMA Only)

(1) Operation and Maintenance Plans must be prepared by all holders of Permits other than a Basic ACDP. All sources subject to regular permit requirements are subject to operation and maintenance requirements.

(2) The purposes of the operation and maintenance plans are to:

(a) Reduce the number of upsets and breakdowns in particulate control equipment;

(b) Reduce the duration of upsets and downtimes; and

(c) Improve the efficiency of control equipment during normal operations.

(3) The operation and maintenance plans should consider, but not be limited to, the following:

(a) Personnel training in operation and maintenance;

(b) Preventative maintenance procedures, schedule and records;

(c) Logging of the occurrence and duration of all upsets, breakdowns and malfunctions which result in excessive emissions;

(d) Routine follow-up evaluation of upsets to identify the cause of the problem and changes needed to prevent a recurrence;

(e) Periodic source testing of pollution control units as required by the permit;

(f) Inspection of internal wear points of pollution control equipment during scheduled shutdowns; and

(g) Inventory of key spare parts.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 6-1983, f. & ef. 4-18-83; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 22-1996, f. & cert. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0044; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0210

Continuous Monitoring

(1) The Department will require the installation and operation of instrumentation for measuring and recording emissions and/or the parameters which affect the emission of air contaminants from wood-waste fired boilers, veneer dryers, fiber dryers, and particle dryers to ensure that the sources and the air pollution control equipment are operated at all times at their full efficiency and effectiveness so that the emission of air contaminants is kept at the lowest practicable level. The instrumentation must be periodically calibrated. The method and frequency of calibration must be approved in writing by the Department. Continuous monitoring equipment and operation must be in accordance with continuous emission monitoring systems guidance provided by the Department and must be consistent, where applicable, with the EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III. The recorded information must be kept for a period of at least one year and must be made available to the Department upon request.

(2) At a minimum, the monitoring required under paragraph (1) of this section must include:

(a) Continuous monitoring and monthly reporting of carbon monoxide concentration and oxygen concentration for any wood-waste fired boiler with a heat input capacity greater than 35 million BTU/hr or for any wood-waste boiler using a wet scrubber as pollution control equipment and steam production rate for any wood-waste fired boiler;

(b) Continuous monitoring and monthly reporting of pressure drop, scrubber water pressure, and scrubber water flow or other parameters deemed by the Department to be equal or better indicators of proper operation of the wet scrubber used as pollution control equipment for any wood-waste fired boiler, veneer dryer, particle dryer, or fiber dryer.

(c) Continuous monitoring and monthly reporting of opacity for any wood-waste fired boiler not controlled by a wet scrubber.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0050; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0220

Source Testing

(1) The person responsible for the following sources of particulate emissions must make or have made tests to determine the type, quantity, quality, and duration of emissions, and/or process parameters affecting

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emissions, in conformance with test methods on file with the Department at the following frequencies:

- (a) Wood Waste Boilers with heat input capacity greater than 35 million Btu/hr. — Once every year;
- (b) Veneer Dryers — Once every year during 1991, 1992, and 1993 and once every 3 years thereafter;
- (c) Wood Particle Dryers at Hardboard and Particleboard Plants — Once every year;
- (d) Charcoal Producing Plants — Once every year.
- (e) Wood Waste Boilers with heat input capacity equal to or less than 35 million BTU/hr with dry emission control equipment — Once in 1992 and once every 3 years thereafter.

(2) Source testing must begin at these frequencies within 90 days of the date by which compliance is to be achieved for each individual emission source.

(3) These source testing requirements will remain in effect unless waived in writing by the Department because of adequate demonstration that the source is consistently operating at lowest practicable levels, or that continuous emission monitoring systems are producing equivalent information.

(4) Source tests on wood waste boilers must not be performed during periods of soot blowing, grate cleaning, or other abnormal operating conditions. The maximum steaming rate for the boiler may not exceed the average steam production rate measured during the source test by more than ten percent (10%).

(5) Source tests must be performed within 90 days of the startup of air pollution control systems.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 14-1986, f. & ef. 6-20-86; DEQ 22-1988, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0055; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

340-240-0230

New Sources

New sources are required to comply with OAR 340-240-0110(1) and 340-240-0120 through 340-240-0250 immediately upon initiation of operation.

[NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 4-1978, f. & ef. 4-7-78; DEQ 22-1988, f. & cert. ef. 9-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0065; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2005, f. & cert. ef. 1-4-05

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Department of Fish and Wildlife

Chapter 635

Adm. Order No.: DFW 122-2004

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 9-1-04

Rules Amended: 635-043-0085, 635-044-0130, 635-060-0000, 635-060-0005, 635-060-0023, 635-060-0046, 635-065-0001, 635-065-0006, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0625, 635-065-0635, 635-065-0720, 635-065-0735, 635-065-0740, 635-065-0745, 635-066-0000, 635-067-0000, 635-067-0015, 635-067-0028, 635-067-0029, 635-067-0034, 635-067-0041, 635-072-0000, 635-073-0080, 635-075-0005, 635-075-0010, 635-075-0015, 635-075-0029, 635-080-0065

Subject: Established 2005 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations. Specific rule changes

include; changes to cougar quotas; set 2005 spring bear controlled tag numbers.

Modifications in rules governing the Bighorn Sheep, Pronghorn Antelope, and Rocky Mountain Goat Raffle Tags and Bighorn Sheep and Pronghorn Antelope Auction Tags will be made.

Rules were amended pertaining to permanent disabilities permit and Columbian white-tailed deer issues.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-043-0085

Hunting from a Motor-Propelled Vehicle

(1) Any person permanently disabled from walking and who carries on his or her person a disabled hunter permit issued by the Commission may hunt wildlife from a motor-propelled vehicle except while the vehicle is in motion or on any public road or highway.

(2) Any person authorized to alleviate wildlife damage pursuant to ORS 498.136 may hunt designated wildlife from a motor propelled vehicle in the manner prescribed by permit.

Stat. Auth.: ORS 183 & 496

Stats. Implemented: ORS 183 & 496

Hist.: 3WC 2, f. 12-19-73, ef. 1-11-74, Renumbered from 630-025-0183, Renumbered from 635-010-0160, Renumbered from 635-07-327; FWC 27-1987, f. & ef. 6-19-87; FWC 49-1991, f. & cert. ef. 5-13-91; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-044-0130

Nongame Wildlife Protected

(1) Except as provided by 635-043-0030, 635-200-0040, 635-044-0015, 635-056-0080 and 635-044-0200, it is unlawful for any person to hunt, trap, pursue, kill, take, catch, angle for, or have in possession, either dead or alive, whole or in part, any:

(a) Threatened or Endangered animals as provided for in 635-100-0125; or

(b) Protected wildlife listed herein except as otherwise provided by the commission by permit, or with respect to Pacific Lamprey, as authorized by a federally-recognized Indian tribe to which the Commission has issued a permit authorizing that tribe to allow its members to take Pacific Lamprey at Willamette Falls for personal use, with a tribal enrollment card in possession, within seasons and subject to conditions established by the Commission. Nothing in this rule is intended to affect the provisions of ORS 610.002 to 610.990.

(A) Fish:

(i) Goose Lake lampreys (parasitic and nonparasitic forms) (*Lampetra spp.*);

(ii) Alvord chub (*Gila alvordensis*);

(iii) Catlow tui chub (*Gila bicolor spp.*);

(iv) Oregon lakes tui chub (*Gila bicolor oregonensis*);

(v) Sheldon tui chub (*Gila bicolor eurysona*);

(vi) Summer Basin tui chub (*Gila bicolor spp.*);

(vii) California roach (*Hesperoleucis symmetricus mitrulus*);

(viii) Oregon chub (Willamette Basin) (*Oregonichthys crameri*);

(ix) Millicoma dace (*Rhinichthys cataractae spp.*);

(x) Lahonton redbreast (*Richardsonius egregius*);

(xi) Goose Lake sucker (*Catostomus occidentalis lacusanserinus*);

(xii) Tahoe sucker (*Catostomus tahoensis*);

(xiii) Malheur mottled sculpin (*Cottus bairdi spp.*);

(xiv) Margined sculpin (*Cottus marginatus*);

(xv) Pit sculpin (*Cottus pitensis*);

(xvi) Pacific lamprey (*Lampetra tridentata*);

(xvii) Goose Lake tui chub (*Gila bicolor thalassina*);

(xviii) Warner Basin tui chub (*Gila bicolor spp.*);

(xix) Jenny Creek sucker (*Catostomus rimitulus spp.*)

(xx) River lamprey (*Lampetra ayresi*);

(xxi) Western brook lamprey (*Lampetra richardsoni*);

(xxii) Miller Lake lamprey (*Lampetra minima*);

(xxiii) Klamath lamprey (*Lampetra similis*);

(xxiv) Pit-Klamath brook lamprey (*Lampetra lethophaga*);

(xxv) Klamath Basin lamprey (parasitic form) (*Lampetra spp.*)

(B) Amphibians:

(i) Cope's giant salamander (*Dicamptodon copei*);

(ii) Clouded salamander (*Aneides ferreus*);

(iii) Black salamander (*Aneides flavipunctatus*);

(iv) California slender salamander (*Batrachoseps attenuatus*);

(v) Oregon slender salamander (*Batrachoseps wrighti*);

(vi) Del Norte salamander (*Plethodon elongatus*);

(vii) Larch Mountain salamander (*Plethodon larselli*);

(viii) Siskiyou Mountains salamander (*Plethodon stormi*);

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- (ix) Tailed frog (*Ascaphus truei*);
- (x) Red-legged frog (*Rana aurora*);
- (xi) Foothill yellow-legged frog (*Rana boylei*);
- (xii) Cascade frog (*Rana cascadae*);
- (xiii) Northern leopard frog (*Rana pipiens*);
- (xiv) Spotted frog (*Rana pretiosa*);
- (xv) Southern seep salamander (*Rhyacotriton variegatus*);
- (xvi) Columbia seep salamander (*Rhyacotriton kezeri*);
- (xvii) Cascade seep salamander (*Rhyacotriton cascadae*);
- (xviii) Western toad (*Bufo boreas*);
- (xix) Woodhouse toad (*Bufo woodhousei*);
- (xx) Blotched tiger salamander (*Ambystoma tigrinum melanostictum*).

(C) Reptiles:

- (i) Western painted turtle (*Chrysemys picta*);
- (ii) Western pond turtle (*Clemmys marmorata*);
- (iii) Desert Collared (Mojave black-collared) lizard (*Crotaphytus insularis bicinctores*.)

(iv) Long-nosed leopard lizard (*Gambelia wislizenii*);

(v) Short-horned lizard (*Phrynosoma douglassi*);

(iv) Desert horned lizard (*Phrynosoma platyrhinos*);

(v) Sharptail snake (*Contia tenuis*);

(vi) Common kingsnake (*Lampropeltis getulus*);

(vii) California mountain kingsnake (*Lampropeltis zonata*);

(viii) Western ground snake (*Sonora semiannulata*);

(D) Birds: All nongame birds except European starling, house sparrow and rock dove.

(E) Mammals:

(i) Fringed myotis (*Myotis thysanodes*);

(ii) Townsend's big-eared bat (*Plecotus townsendii*);

(iii) Pallid bat (*Antrozous pallidus*);

(iv) Pika (cony) (*Ochotona princeps*);

(v) Pygmy rabbit (*Brachylagus idahoensis*);

(vi) White-tailed jack rabbit (*Lepus townsendii*);

(vii) Chipmunk (*Tamias amoenus*, *T. minimus*, *T. siskiyou* and *T. townsendii*);

(ix) Washington ground squirrel (*Spermophilus washingtoni*);

(x) Golden-mantled ground squirrel (*Spermophilus lateralis*);

(xi) Chickaree (pine squirrel) (*Tamiasciurus douglasii* and *T. hudsonicus*);

(viii) White-tailed antelope squirrel (*Ammospermophilus leucurus*);

(xii) Northern flying squirrel (*Glaucomys sabrinus*);

(xiii) White-footed vole (*Phenacomys albipes*);

(xiv) Ringtail (*Bassariscus astutus*);

(xv) Fisher (*Martes pennanti*).

(xvi) All marine mammals.

(xvii) Silver — haired bat (*Lasionycteris noctivagans*);

(xiv) Western small-footed myotis (*Myotis ciliolabrum*);

(xv) Long-eared myotis (*Myotis evotis*);

(xvi) Long-legged myotis (*Myotis volans*);

(xvii) Yuma myotis (*Myotis yumanensis*);

(xviii) Columbian white-tailed deer (*Odocoileus virginianus leucurus*) in the following Wildlife Management Units: Saddle Mountain (10), Scappoose (11), Willamette (15), and Santiam (16).

(2) Notwithstanding section (1) of this rule, it shall be lawful to purchase, sell, or exchange, or have in possession any pelt of wildlife listed therein which was lawfully taken in another state and transported into Oregon. A bill of lading or freight bill from a common carrier or other documentary proof indicating the state of origin of the pelt and the name and address of the person from whom the pelt was received shall be sufficient.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 39-1991, f. & cert. ef. 4-24-91; FWC 69-1996, f. & cert. ef. 12-20-96; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 78-2002, f. & cert. ef. 7-30-02; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-060-0000

Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS 496.162.

(2) The documents entitled "2004-2005 Oregon Game Bird Regulations," and "2005 Oregon Big Game Regulations," are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 25-1978, f. & cert. ef. 5-26-78; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. 2-18-81, f. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 16-1985, f. & cert. ef. 4-11-85; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-060-0005

Application Eligibility and Procedures

(1)(a) An applicant for game mammal controlled hunts shall have a current adult hunting license. A current and complete hunting license number shall be entered on the application for the controlled hunt.

(b) Licenses are nonrefundable, whether or not an applicant is successful in the drawing.

(2)(a) A valid controlled hunt application shall be purchased from a license agent authorized to sell controlled hunt applications. The purchase price of the application shall be a nonrefundable fee of \$3.00 per game mammal application, and a nonrefundable \$1.50 license agent processing fee.

(b) Department license agents authorized to sell applications for controlled hunts shall be connected to the department's computerized licensing system.

(3) Each controlled hunt is assigned a hunt number. The hunt number shall be entered on the application indicating area of choice and shall match the type of application purchased. All hunt numbers listed on an application shall have the same first digit, which indicates a species or group of hunts as listed below:

(a) 100 series for controlled buck deer.

(b) 200 series for controlled elk.

(c) 400 series for pronghorn antelope.

(d) 500 series for bighorn sheep.

(e) 600 series for controlled antlerless deer.

(f) 700 series for controlled black bear.

(g) 900 series for controlled Rocky Mountain goat.

(4) If successful in the drawing, party members shall receive the same hunt choice as the party leader. If a party application exceeds the allowed party size, all applicants in the party shall be considered as individual applicants in the drawing. Party size limits are as follows:

(a) 100 series hunts up to 18 persons.

(b) 200 series hunts up to 18 persons.

(c) 400 series hunts up to two persons.

(d) 500 series hunts, no parties allowed.

(e) 600 series hunts up to 18 persons.

(f) 700 series hunts up to six persons.

(g) 900 series hunts no parties allowed.

(5) Controlled Hunt applications may be submitted to the department headquarters office via telephone fax machine, US Postal Service, or hand-delivered (3406 Cherry Ave, NE, Salem, OR, 97303). Applications along with the proper fees must be submitted by telephone, fax machine, or hand-delivered received at the department headquarters office (3406 Cherry Ave, NE, Salem, OR, 97303; Fax: (503) 947-6117 no later than midnight of the deadline date described in OAR 635-060-0008(1)-(5). Applications along with proper fees submitted by U.S. Postal Service must be postmarked by the application deadline. Applications received after the specified deadline dates may be considered disqualified as described in OAR 635-060-0018(4).

(6) To apply for a controlled youth hunt for spring bear, pronghorn, deer or elk a youth must be 12-17 years old at the time they hunt.

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

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

Hist.: FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 14-1980, f. & cert. ef. 4-8-80; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. 2-18-81, f. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; Renumbered from 635-60-017; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 54-1990, f. & cert. ef. 6-21-90; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 8-1-97

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cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 32-2002(Temp), f. & cert. ef. 4-17-02 thru 10-13-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-060-0023

Modified Preference Point System

(1) The Modified Preference Point System separates the tags for each controlled game mammal hunt into two groups:

(a) Seventy-five percent of the tags will be issued through the preference point system;

(b) The remaining 25 percent of the tags will be issued by the equal-probability computer drawing.

(2) Applicants shall accrue no more than one preference point per hunt number series per year.

(a) Valid applicants who did not receive controlled hunt tags for their first choice hunt number in the 100, 200, 400, 600, or 700 series hunts during the controlled hunt drawing shall receive one preference point applicable to subsequent controlled hunt drawings for the respective hunt number series, except as excluded in OAR 635-060-0008(4).

(3) A preference point will automatically accrue within each controlled hunt series when an applicant's first choice is as follows:

(a) Hunt number 199: controlled buck deer

(b) Hunt number 299: controlled elk

(c) hunt number 499: controlled pronghorn antelope

(d) Hunt number 699: controlled antlerless deer

(e) Hunt number 799: controlled black bear

(4) The Modified Preference Point System will group controlled hunt applicants by the number of preference points they have accrued for each hunt number series. Applicants with the highest number of preference points for each hunt number will be drawn first. Applicants having the next highest number of preference points per hunt number will be drawn next. This tag issuance process will continue through descending numbers of preference points until 75 percent of the tags authorized for the hunt have been issued, unless all qualified applicants with preference points have been issued tags prior to that point. Any tags remaining following the issuance of preference point tags will be issued through the equal-probability computer drawing. Applicants unsuccessful in the preference point tag issuance procedure and those applicants without preference points will be placed in the equal-probability computer drawing for the remaining tags.

(5) Applicants successful in drawing their first choice hunt except numbers ending in 99 within a hunt number series shall have zero preference points when they next apply for a tag in that hunt number series.

(6) Applicants will forfeit preference points accumulated for a hunt number series when they do not apply for that hunt number series for two consecutive years.

(7) Party applicant preference points shall be determined by totaling the preference points of all party members and then calculating the average of this total. Party preference points will be rounded up from x.51 (e.g. 3.51 to 4, 3.50 to 3) to the next whole number.

(8) Department records are final to determine accrued preference points for controlled hunt applicants.

(9) Each applicant's preference point accrual record will be linked to his or her permanent identification number. Preference point applicants shall use the permanent identification number each time they apply for a controlled hunt tag. Failure to do so shall place the applicant in the equal-probability drawing for his or her hunt number series and preference points will not be accrued together.

(10) Applicants will receive no preference points when:

(a) Their application is not received by the appropriate application date;

(b) They request their controlled hunt application be withdrawn prior to the controlled hunt drawing;

(c) The controlled hunt application has been falsified.

(11) The Modified Preference Point System shall apply to 100, 200, 400, 600, and 700 series hunts.

(12) In 2005, 800 series points will be converted into 600 series points.

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

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

Hist.: FWC 6-1994, f. & cert. ef. 1-26-94; FWC 13-1994(Temp), f. & cert. ef. 3-1-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-060-0046

Lost Tags and Tag Exchanges

(1) A fee of \$5.00 and a \$1.50 license agent fee is charged to replace or exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the department, and designated district offices. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the department if the department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-075-0001. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be requested by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or 635-0065-0015(5)(a), (b), (c), (d), (e), (f), or (g).

(7) In situations involving national security emergency, the Commission shall accommodate individuals who lose hunting opportunities because of being called to service in the national interest:

(a) The Commission shall (as specified in paragraph (b)) accommodate the following individuals called to service because of national emergency: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, Coast Guard), members of the United States military reserves, and members of the National Guard.

(b) The Commission authorizes the Director to make such accommodation by:

(A) Allowing an individual to hunt during the same hunt period for the same species in a later year for bighorn sheep, Rocky Mountain goat, and pronghorn antelope; or

(B) Refunding general or controlled season tag fees and reinstating preference points existing for a series, plus an additional point for participating in the drawing. (Original tag must be returned to ODFW and no refund is available for the hunting license).

(c) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Wildlife Division headquarters office within one year of loss of hunting opportunity. Each request must include a copy of military orders documenting service dates or date of service status change. Each request must include proof of tag draw success and tag purchase.

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

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

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0001

Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable

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requirements for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications referenced are available from the agency.]

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

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

Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0006

General License Requirement

A person may obtain and possess only one valid annual hunting license per calendar year.

Stat. Auth.: ORS 183 & 496

Stats. Implemented: ORS 183 & 496

Hist.: FWC 63-1989, f. & cert. ef. 8-15-89; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0015

General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20-30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag valid only in zones C-F and the Hood, White River, and Metolius units as referenced in the **2005 Oregon Big Game Regulations**;

(g) one valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk — first season tag,

(e) One valid Rocky Mountain elk — second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015 (5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(8) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(9) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(10) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception: Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the department.

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

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

Hist.: FWC 123, f. & cert. ef. 6-9-77; FWC 33-1978, f. & cert. ef. 6-30-78; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 1-2-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0090

Disabled Hunter Seasons and Bag Limits

(1) A person who possesses a "Permanent Disabilities Permit" issued by the department is qualified for expanded bag limits as follows: [Table not included. See ED. NOTE.]

(2) The "Permanent Disabilities Permit" is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(3) An able-bodied companion may accompany a person with a "Permanent Disabilities Permit" and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

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

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

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

Hist.: FWC 29-1987, f. & cert. ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0401

Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11 p.m., September 30, 2005.

(2) No deer bow tag shall be issued after 11 p.m., August 26, 2005.

(3) No bear tag shall be issued after 11 p.m. September 30, 2005.

(4) No cougar (mountain lion) tag shall be issued after 11 p.m. September 30, 2005.

(5) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11 p.m., October 25, 2005.

(6) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11 p.m., November 4, 2005.

(7) No Coast First Season Elk Tag shall be issued after 11 p.m., November 11, 2005.

(9) No Coast Second Season Elk Tag shall be issued after 11 p.m., November 18, 2005.

(10) No Cascade Elk Rifle Tag shall be issued after 11 p.m., October 14, 2005.

(11) No elk bow tag shall be issued after 11 p.m., August 26, 2005.

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

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

Hist.: FWC 123, f. & cert. ef. 6-9-77; FWC 33-1978, f. & cert. ef. 6-30-78; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 28, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 41-1987, f. & cert. ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-65-010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0625

Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

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(1) Bear Valley National Wildlife Refuge (Klamath County): The Bear Valley Refuge shall be closed to all entry from November 1 through March 31 annually.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry by permit only December 1 through April 30.

(3) Cascade Head Area: The Cascade Head Area shall be closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting shall be restricted to archery and shotguns only during authorized seasons. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head Area boundaries shall be defined as follows: Beginning at the Pacific Ocean at Roads End (Lincoln City); east along the northern boundary of the Lincoln City limits to U.S. Highway 101; north along U.S. Highway 101 to Highway 18; east along Highway 18 to Old Scenic Highway 101; north along Old Scenic Highway 101 to Three Rocks Road; west on Three Rocks Road to U.S. Highway 101; north on U.S. Highway 101 to Forest Service road 1861; west on Forest Service road 1861 to the Harts Cove trailhead; west on Harts Cove Trail to the Pacific Ocean; south along the Pacific Ocean coastline to Roads End (Lincoln City), point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): Approximately 1,800 acres in the Tioga Unit including all BLM property between Hakki Ridge Road and State Highway 38, are closed to all hunting.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area shall be closed to all big game hunting except for and during controlled deer hunts specific to the management area by hunters possessing a controlled hunt tag for the area.

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons, except that East and West Coyote units are closed after October 31, and hunting in Fisher Butte Unit after October 31 is limited to Saturdays, Sundays, Wednesdays, Thanksgiving Day, Christmas Day, New Year's Day, and Veteran's Day only. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, and Royal Amazon units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(12) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 27 through September 25, 2005 under the regulations for bowhunting seasons.

(b) Portions of the refuge shall be open to hunting for buck deer October 1 through October 31, 2005 under regulations for the general western Oregon deer buck season. Use of rifles is prohibited.

(c) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(13) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to county roads.

(14) Government Island Complex (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot is prohibited at all times.

(15) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns are prohibited at all times.

(16) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season.

(17) Heppner Regulated Hunt Area: Open fires and camping prohibited in posted areas. Approximately 69 square miles in Townships 2, 3, 4, 6 and 7 South, Ranges 26, 27 and 28 East;

(18) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(19) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(20) John Day River Refuge: All land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. The area shall be open to hunting of game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. Hunting of big game is allowed during authorized seasons.

(21) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(22) Klamath Marsh National Wildlife Refuge: Closed to deer and elk hunting.

(23) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road shall be closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting.

(24) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, S32 shall be closed to all hunting.

(25) Lower Deschutes Wildlife Area: Open to hunting of big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(26) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 shall be open during authorized rifle and bow deer seasons.

(27) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(28) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(29) Metolius Wildlife Refuge (Jefferson County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). (36 CFR 261.58(v)).

(30) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(31) Newberry Crater Wildlife Refuge (Deschutes County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(32) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(33) Rogue River Area: (a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(34) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

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(35) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 27 through September 25, 2005. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 25, 2005. Oak Island shall be closed to deer hunting. Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(36) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 30, or year-round; including BLM land within the exterior boundaries of the Wildlife Area.

(37) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(38) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(39) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The 12-foot right-of-way along each side of all 8-foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually.

(40) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from Mar. 15-Aug. 15 and 3 days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit.

(41) Umatilla Refuge (Morrow County): This refuge shall be closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(42) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(43) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(44) Willamette River Greenway Parcels: Discharge of any weapon is prohibited, except that shotguns and bows may be used while hunting on select posted State Willamette Greenway properties during authorized seasons.

(45) White River Wildlife Area: Open to hunting during authorized seasons.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0635

Winter Range Closure Areas

The following winter closures shall be effective during the specified periods each year:

(1) Tumalo Winter Range: December 1 through March 31 — That part of the Upper Deschutes Unit as follows: 125 square miles in Townships 15, 16, 17, 18, and 19 South, Ranges 10 and 11 East.

(2) Doak Mountain: Permanent Closure — January 1 through July 31 — That part of the Keno Unit as follows: seven square miles in Township 37 South, Ranges 7 and 8 East.

(3) Bear Valley: November 1 through March 31 — That part of the Keno Unit as follows: six square miles in Township 40 South, Ranges 7 and 8 East.

(4) Lost River: December 1 through April 15 — That part of the Klamath Falls Unit as follows: 6 square miles in Township 39 South, Ranges 11, 11-1/2, and 12 East.

(5) Lost River: December 1 through April 15 — That part of the Interstate Unit as follows: 6 square miles in Township 41 South, Range 14 East.

(6) Cabin Lake-Silver Lake: December 1 through March 31 — That part of the Paulina Unit as follows: 342 square miles in Townships 24, 25, 26, 27, 28, and 29 South, Ranges 11, 12, and 13 East.

(7) Spring Creek Winter Range: December 15 through April 30 — That part of the Starkey Unit as follows: 14 square miles in Townships 2 and 3 South, Range 36 East.

(8) McCarty Winter Range: December 15 through March 31 — That part of the Starkey Unit as follows: 12 square miles in Townships 4 and 5 South, Ranges 34 and 35 East.

(9) Coombs Canyon Regulated Hunt Area: 19.5 square miles in the Columbia Basin Unit. Closed to entry August 15 through the day prior to the statewide pheasant season annually (Exception: entry is allowed for people possessing Coombs Canyon youth buck deer tags and their adult chaperone. People hunting antlerless deer must possess a permit which can be obtained at the Watershed District Office in Pendleton).

(10) Metolius Winter Range: December 1 through March 31—That part of the Metolius Unit as follows: 40 square miles in Townships 11, 12, and 13 South and Ranges 11 and 12 East.

(11) Bryant Mountain: November 1 through April 15 — That part of the Klamath Falls Unit as follows: 50 square miles in Townships 39, 40, and 41 South and Ranges 12 and 13 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0720

Bows and Arrows

Hunters shall use:

(1) Any long, recurve, or compound bow with 40-pound or heavier pull rating to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(2) Any long, recurve, or compound bow to hunt western gray squirrels.

(3) Any long, recurve, or compound bow with a 50-pound or heavier pull rating to hunt bighorn sheep, Rocky Mountain goat, or elk.

(4) Only unbarbed fixed position blade broadheads at least 7/8-inch wide to hunt game mammals other than western gray squirrel. See 635-045-0002(77). Possession of moveable blade broadheads is prohibited when hunting game mammals, except western gray squirrels may be hunted with moveable blade broadheads.

(5) A long, recurve, or compound bow and shall not possess any crossbow while hunting within an authorized bowhunting area or season.

(6) Only a long, recurve, or compound bow during any authorized pronghorn antelope, deer or elk bowhunting season to hunt pronghorn antelope, deer, or elk.

(7) For hunting seasons designated as bowhunting, hunters shall only use the bows legal for the species being hunted. Bows may be used during controlled antlerless deer seasons. Bows shall not be used during any designated rifle hunt.

(8) Maximum let-off of any bow at full draw shall not exceed 65 percent as determined by standards of the Archery Manufacturers and Merchants Organization. (Persons unable to comply because of a disability are excepted from this rule).

(9) Hunters shall not use any electronic device(s) attached to bow or arrow.

(10) Hunters shall not use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw (Persons unable to comply because of a disability are excepted from this rule).

(11) Hunters shall not use any device secured to or supported by a bow's riser which supports or guides an arrow from a point rearward of a

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bow's brace height (i.e. the position of the bows string when the bow is undrawn).

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0735

Vehicles, Boats, Aircraft

It is *unlawful*:

(1) To hunt any big game from a motor-propelled vehicle. Exception: A qualified disabled hunter may obtain a permanent disabilities permit to hunt from a motor vehicle except while the vehicle is in motion or on any public road or highway.

(2) To communicate information on the location of game mammals from an aircraft.

(3) To hunt within eight hours after having been transported by helicopter or fixed-wing aircraft to any point other than an established airport adequate for fixed-wing aircraft.

(4) To shoot at pronghorn antelope from a point within 50 yards of a motor-propelled vehicle including aircraft, except for qualified disabled hunters as shown in 635-065-735(1).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0740

Hunting Prohibited

It is *unlawful*:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (Oct. 1-12, 2005, Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 19 – Nov. 27, 2005) without a valid, unused tag for that species, time period and area on their person.

EXCEPTION: Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

EXCEPTION: Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 19 – Nov. 27, 2005).

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (4) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) that crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-065-0745

Prohibited Methods

It is *unlawful*:

(1) To shoot from or across a public road, road right-of-way, or railroad right-of-way, except that persons legally hunting on closed roads within department Cooperative Travel Management Areas are not violating current prohibitions on shooting from or across a public road.

(2) To hunt for or kill any wildlife for another person except as provided in ORS 498.170 for visually impaired hunters, and OAR 635-065-0090 for hunters with permanent disability permits.

(3) To hunt any game mammal with dogs, except western gray squirrel.

(4) To use an artificial light for hunting any wildlife, except raccoon, bobcat, and opossum provided the light is not cast from or attached to a motor vehicle. This includes laser sights or any other sights which project a beam to the target. This does not include battery operated sights which only light the reticle.

(5) To hunt any wildlife with infrared or any other "night vision" sight.

(6) To cast from or within 500 feet of a motor vehicle an artificial light on game mammals, predatory animals or livestock while having in possession or immediate physical presence a weapon with which the game mammals or livestock could be killed.

(7) To take any game mammals with trap or snare.

(8) To use any poisoning, immobilizing, or tranquilizing drug or chemical to hunt or kill any game mammal.

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 38-1995, f. & cert. ef. 5-4-95; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2005 Oregon Big

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Game Regulations, into Oregon Administrative Rules. Therefore, persons must consult the “2005 Oregon Big Game Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2004 are listed in **Tables 1, 2, and 3** and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables & Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0015

General Cougar Season Zone Harvest Quotas

- (1) Hunt Zone: A — Hunt Name: Coast/North Cascades;
 - (a) Harvest Quota: 132;
 - (b) Hunt Area: All of Wildlife Units: 10, 11, 12, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 39, 41, and 42;
- (2) Hunt Zone: B — Hunt Name: Southwest Cascades;
 - (a) Harvest Quota: 150;
 - (b) Hunt Area: All of Wildlife Units: 19, 21, 22, 23, 28, 29, 30, and 31;
- (3) Hunt Zone: C — Hunt Name: Southeast Cascades;
 - (a) Harvest Quota: 53;
 - (b) Hunt Area: All of Wildlife Units: 32, 33, 34, 35, 75, 76, and 77;
- (4) Hunt Zone: D — Hunt Name: Columbia Basin;
 - (a) Harvest Quota: 19;
 - (b) Hunt Area: All of Wildlife Units: 38, 40, 43, 44, and 45;
- (5) Hunt Zone: E — Hunt Name: Blue Mountains;
 - (a) Harvest Quota: 139;
 - (b) Hunt Area: All of Wildlife Units: 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64;
- (6) Hunt Zone: F — Hunt Name: Southeast Oregon;
 - (a) Harvest Quota: 87;
 - (b) Hunt Area: All of Wildlife Units: 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 12-1979, f. & cert. ef. 3-28-79; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 14-1980, f. & cert. ef. 4-8-80; FWC 19-1980, f. & cert. ef. 4-18-80; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82, Renumbered from 635-060-0700; FWC 15-1983, f. & cert. ef. 4-19-83; FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & cert. ef. 5-7-85; FWC 29-1986, f. & cert. ef. 7-23-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 57-1990, f. & cert. ef. 6-21-90; FWC 60-1991, f. & cert. ef. 6-24-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0028

Pronghorn Antelope Auction Tag

(1) One pronghorn antelope tag will be auctioned to the highest bidder annually in the manner and at such time as provided by the department. The department may contract with a sportsmen’s group or organization to conduct the auction.

(2) The pronghorn antelope auction tag and auction shall be limited as follows:

- (a) Bag Limit: One buck pronghorn antelope.
- (b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.
- (c) Open Season: The season shall begin on August 1 and shall end on September 30.

(d) Open Area: Any area where pronghorn antelope hunts and tags have been authorized for the current year.

(e) Auction Requirements:

(A) The minimum acceptable bid for a pronghorn antelope auction tag shall be \$2,000.00. The bid price includes the hunting license and tag fee. A valid pronghorn antelope tag will be provided to the winning bidder and a valid hunting license will be provided if the winning bidder has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(B) Any person, resident or nonresident, is eligible to bid.

(C) If the highest bid is submitted by a person other than the person who is to receive the tag, the department shall be notified within five business days of the name, address, and phone number of the individual who is to receive the license and tag and his or her position or affiliation with the corporation or organization.

(D) Acceptance of the highest bid shall be conditional until the full amount of the bid is paid. Payment shall be made to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 60 days of the date of the auction, whether conducted by the department or by a sportsman’s group or organization authorized by the department to conduct the auction.

(E) If the full amount is not paid as provided in OAR 635-067-0032(2)(d)(D), the department may, at its discretion, reject the bid and offer the tag to the next highest bidder. If the department offers the tag to the next highest bidder, such next highest bidder must make payment to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 30 days of notification of his or her opportunity to obtain the tag.

(F) The department shall reserve the right to accept or reject any or all bids.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats Implemented: ORS 496.012, 496.138 & 496.146
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0029

Controlled Pronghorn Antelope Raffle Tag

(1) One pronghorn antelope tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen’s group or organization to conduct the raffle.

(2) The pronghorn antelope raffle tag shall be limited as follows:

- (a) Bag Limit: One buck pronghorn antelope.
- (b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on August 1 and shall end on September 30.

(d) Open Area: Any area where pronghorn antelope hunts and tags have been authorized for the current year.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game Regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportsmen’s groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

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(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., July 31, it will not be issued.

(i) License and Tag Requirements: A valid pronghorn antelope tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The pronghorn antelope tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats Implemented: ORS 496.012, 496.138 & 496.146

Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0034

Bighorn Sheep Raffle Tag

(1) One bighorn sheep tag will be raffled during the current year to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The bighorn sheep raffle tag shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on the opening day of the first regularly scheduled bighorn sheep season for the current year and shall end on the last day of the last regularly scheduled bighorn sheep season for the current year.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the current year. The remainder of the state is closed to bighorn sheep hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase. Raffle tickets shall be available for purchase in the following denominations:

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game Regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 18, it will not be issued.

(i) License and Tag Requirements: A valid bighorn sheep tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The bighorn sheep tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(k) The winner of the bighorn sheep tag may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(l) If the holder of the raffle bighorn sheep tag is successful in taking a bighorn sheep ram, that person shall present the ram to the department for permanent marking within five days of taking of the ram.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Hist.: FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94; FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-067-0041

Rocky Mountain Goat Raffle

(1) One Rocky Mountain goat tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The Rocky Mountain goat raffle tag shall be limited as follows:

(a) Bag Limit: One Rocky Mountain goat.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on September 1 and shall end on October 31.

(d) Open Area: Any area where Rocky Mountain goat hunts and tags have been authorized for the current year. The remainder of the state is closed to Rocky Mountain goat hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turning in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 31, it will not be issued.

(i) License and Tag Requirements: A valid Rocky Mountain goat tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The Rocky Mountain goat tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

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(k) The winner of the Rocky Mountain goat tag will be required to complete a Rocky Mountain goat hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(l) If the holder of the Rocky Mountain goat raffle tag is successful in taking a Rocky Mountain goat, that person shall present the animal to the department for permanent marking within five days of taking of the animal.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats Implemented: ORS 496.012, 496.138 & 496.146
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-072-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR Chapter 635, Division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-073-0080

Controlled Muzzleloader Deer Hunt Regulations

Tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. A hunter successful in drawing one of the controlled muzzleloader deer tags shall not hunt in any general deer season or other 100 series hunts. Exception: Hunters who possess an additional 100 or 600 series "left over" tag obtained through the first-come, first-served process may hunt during the season for which that tag was issued. Hunters successful in drawing a tag may hunt in 600 series hunts as provided in OAR chapter 635, division 090.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-075-0005

Registration, Application and Tag Issuance Procedures and Limits for All Controlled Hunts

(1) A landowner shall submit a landowner preference registration form to be eligible for a landowner preference tag. A landowner can have only one registration form on file with the department. The registration form is an affidavit certifying ownership, number of acres owned, the county and Wildlife Management Unit where the property is located. This registration form registers the individual and remains valid until the individual registered no longer qualifies as a landowner as defined under OAR 635-045-0002, writes to the department requesting the registration form be deleted, or the department notifies the landowner that a renewal is required.

(2) In addition to having a landowner preference registration form on file with the department, a landowner shall submit a tag distribution form annually. The tag distribution form shall list the names of the landowner, stockholder(s), partner(s), and their immediate family members to receive tags for pronghorn antelope, and the names of the landowner, stockholder(s), partner(s), their immediate family members, and those persons of the landowners' choosing to receive landowner preference tags for deer and elk.

(3) Landowners shall submit registration forms and tag distribution forms prior to September 15 for all controlled 100 series buck deer and bull elk hunts, and through the day prior to the season openings for 600 series antlerless deer, antlerless elk, and doe/fawn pronghorn antelope hunts.

(4) Registration forms and tag distribution forms are available at no charge in any office of the department.

(5) Registration forms, tag distribution forms, and applications shall be received at the Salem headquarters office of the department prior to issuance of any landowner preference tag, except as provided for in OAR

635-075-0007. Landowners are not required to submit proof of ownership with their registration form. Landowners shall be required to submit proof of ownership at the request of the department or the Oregon State Police acting on behalf of the department.

(6) A landowner, stockholder(s), partner(s), and immediate family and those persons of the landowners' choosing wishing to also apply for controlled hunt tags shall apply by the May 15 controlled hunt deadline. Listing a hunt choice other than a landowner preference choice is not required.

(7) Everyone shall follow controlled hunt application procedures and regulations as described in OAR division 060.

(8) The number of landowner preference tags issued is based upon a landowner's acreage. Landowner Preference tags shall be allocated by the following minimum acreage requirements: [Table not included. See ED. NOTE.]

(9) Landowner preference tags for the hunting of deer or elk may be issued to any person of the landowner's choosing, and shall be used for the taking of antlerless animals except as described in OAR 635-075-0005(8). Season dates of the transferred landowner preference tags shall be the same dates as the original tag.

(10) Landowner preference tags for the hunting of antlered deer or elk that are issued to a person of the landowner's choosing who is not a member of the landowner's, partner's, or stockholder's immediate family may be used to take an antlered animal only as follows:

(a) If the landowner is eligible for one preference tag, that tag may not be so used.

(b) If the landowner is eligible for two, three, or four preference tags, one of those tags may be so used.

(c) If the landowner is eligible for five, six or seven preference tags, two of those tags may be so used.

(d) If the landowner is eligible for eight, nine or 10 preference tags, three of those tags may be so used.

(11) A landowner who is qualified to receive landowner hunting preference tags may request two additional tags for providing public access and/or two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. These tags may not be applied to the options as defined in OAR 635-075-0005(8).

(12) No one shall receive both a controlled hunt tag and a landowner preference tag for the same type of hunt. Landowner hunting preference tags shall not be issued to any person successful in the controlled hunt drawing for the same type of hunt.

(13) Landowner preference tags, except as described in OAR 635-075-0007, 635-075-0010, and 635-075-0015 shall only be issued from the headquarters office of the department following the controlled hunt drawings.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 35-1982, f. & cert. ef. 6-7-82; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 48-1987, f. & cert. ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 14-1994(Temp), f. & cert. ef. 3-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-075-0010

Hunting Area Allowed With Landowner Hunting Preference Tags

(1) A landowner preference tag authorizes the recipient to hunt only on those lands owned by the landowner, and meeting the minimum acreage requirements for that hunt, during the season dates for which the tag is valid, except as provided for in OAR 635-075-0010(4) and (5).

(2) Landowner hunting preference tags are valid on the landowner's property in other controlled hunt areas provided the species, bag limits, and season dates are the same, and the landowner's property in that area either:

(a) Meets the minimum acreage requirements for that hunt; or

(b) Is contiguous to other property owned by the landowner that, if added together, would meet the minimum acreage requirements for that hunt.

(3) A landowner receiving a landowner preference controlled buck deer hunt or controlled elk hunt tag may not hunt in any other controlled or general buck deer or elk season, except as provided in OAR division 090.

(4) When a landowner is qualified under landowner preference rules adopted by the Commission and receives a deer or elk controlled hunt tag for that unit and has not harvested an animal, the landowner may use that

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tag to take an antlerless deer, except for white-tailed deer in Western Oregon, or elk before, during, or after the hunting season for which the tags are valid, when approved by the department, to alleviate damage that is presently occurring to the landowner's property.

(5) Each unfilled landowner preference deer or elk tag may be transferred and used to take two antlerless animals, except for white-tailed deer in Western Oregon, before, during or after the hunting season for which the tags are valid, when approved by the department, to alleviate damage that is presently occurring to the landowner's property in accordance with the following criteria:

(a) Transfer must be done by an authorized representative of the department for no charge;

(b) Tag(s) is/are to be transferred to someone of the landowner's choice;

(c) The landowner and those receiving a transferred elk tag must surrender any original unfilled elk tag; or sign an affidavit stating the tag has been lost, stolen, or destroyed;

(d) No more than one tag may be transferred to any one person;

(e) Each tag may only be transferred once;

(f) Tags shall be issued for a period of no more than 30 days from the date of issuance, and end no later than March 31. A department representative may reauthorize an unfilled tag to the same person for an additional 30 days if damage is presently occurring;

(g) Persons who have been successful in harvesting a buck and/or antlerless deer in a general and/or controlled hunt season (excluding "left-over" tags) are also eligible to receive one damage landowner preference deer tag in a fiscal year of July through June;

(h) Only persons who have not been successful in harvesting an elk in a general or controlled hunt season are eligible to receive one damage landowner preference elk tag in a fiscal year of July through June;

(i) Department personnel shall verify that the person(s) receiving tag(s) has a valid hunting license and has not been successful in harvesting an elk during a current general or controlled seasons.

(j) Department personnel shall collect the appropriate fee for the second tag at time of transfer;

(6) Landowner preference pronghorn antelope tags may only be used during the authorized hunt season.

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

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

Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 5-1995, f. & cert. ef. 1-23-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-075-0015

Exchanging Landowner Preference Tags That Do Not Fall Under the Category of a Damage Situation

(1) The landowner hunting preference tag may be exchanged for another landowner hunting preference controlled hunt of the same hunt type provided the controlled hunt area includes the same landowner's property. For example, a landowner may exchange a landowner preference controlled bull tag for a landowner preference controlled antlerless elk tag.

(2) The landowner hunting preference tag, except controlled antlerless deer tag, may be exchanged for a general season tag.

(a) Tags must be exchanged prior to the season(s) for which such tags are valid.

(3) Landowners (635-045-0002) and immediate family (635-045-0002) currently listed on a landowner's tag distribution list may exchange a controlled hunt tag for an LOP tag before the opening date of the season for which either tag is valid.

(4) Exchanges may be made at the Salem headquarters or regional offices of the department for no charge.

(5) Landowner preference tag exchanges may be made for no charge at the Salem headquarters, regional, and district offices of the department, if the landowner is only exchanging his/her antlered tag for an antlerless tag for his/her own use. All other landowner preference tag exchanges may only be made at the Salem headquarters or regional offices of the department.

(6) Tags must be exchanged prior to the general or limited entry season in the landowner's unit.

(7) Landowner preference tags for the hunting of pronghorn antelope may not be exchanged and may not be used for the taking of buck antelope.

(8) Landowner preference tags for the hunting of antlerless deer may not be used for taking of white-tailed deer in Western Oregon.

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

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

Hist.: FWC 14-1990, f. & cert. ef. 2-2-90; FWC 7-1996, f. & cert. ef. 2-12-96; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-075-0029

Tag Purchasing Requirements

(1) The department will notify outfitters and guides of the drawing results by December 31 of each year.

(2) On or before April 15 of each year Outfitters and Guides who are successful in the drawing must:

(a) Submit to the department the names, addresses, proof of nonresidency, and hunting license numbers (if already purchased) of the nonresidents for whom tags are to be issued. For the purpose of these rules: Proper identification for nonresident documents includes an out-of-state driver's license. If an applicant does not have a driver's license, then a combination of three pieces of identification are required including utility bill, rent receipt, passport, birth certificate, social security card, major credit card, medical card, marriage license, voter's registration card, library card, or military ID. One piece must show name and current address outside the state of Oregon.

(b) Submit to the department all required fees. Outfitters and guides must submit all fees; they will not be accepted from nonresident applicants to whom the tags will be issued. The department shall not issue a tag to any person who does not have a valid nonresident Oregon hunting license.

Note: Fees for Outfitter and Guides tags are described in ORS 497.112.

(c) No later than July 31 the department will issue to outfitters and guides all requested tags for which they have met requirements.

Stat. Auth.: ORS 496.012, 496.138 & 497.112

Stats. Implemented: ORS 496.012, 496.138 & 497.112

Hist.: FWC 73-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 27-2003(Temp), f. & cert. ef. 3-28-03 thru 6-6-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

635-080-0065

Beulah Unit

The Beulah Unit, number 65, is that area beginning at Vale; southwest on U.S. Highway 20 to Drewsey-Prairie City Road near Drewsey; northwest on Drewsey-Prairie City Road and Forest Road 1663 to the junction with Forest Road 14 near Antelope Mt.; northwest on Forest Road 14 and Forest Road 16 to Summit Prairie; north on County Road 62 to U.S. Highway 26 near Prairie City; easterly on U.S. Highway 26 to Ironside; easterly on Malheur Reservoir Road to Interstate Highway 84; southeasterly on Interstate 84 to Birch Creek near Farewell Bend; easterly on Birch Creek to Snake River; southeast along Snake River to Nyssa; north and west on U.S. Highway 20 to Vale, point of beginning.

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

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

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 32-1980, f. & ef. 6-30-80; FWC 39-1982, f. & ef. 6-25-82; FWC 46-1988, f. & cert. ef. 6-13-88; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05

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Adm. Order No.: DFW 123-2004

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 2-1-05

Notice Publication Date: 9-1-04

Rules Amended: 635-069-0000, 635-069-0030, 635-073-0000

Subject: Establish 2005 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in **Tables 1** and **2** and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "**2005 Oregon Big Game Regulations**," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game

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Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. & cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. & cert. ef. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 12-21-04, cert. ef. 2-1-05

635-069-0030

Controlled Eastern Oregon Deer Hunts

(1) Tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. A person successful in drawing a 100 series eastern Oregon deer tag may not hunt in any general deer season.

(2) A person successful in drawing a 600 series tag may also hunt in any general season or any 100 series controlled buck deer hunt and as provided in OAR chapter 635, division 090; if possessing the proper tag for the area and time period being hunted.

(3) A hunter drawing a 100 or 600 series deer tag also may possess one “left over” deer tag in each 100 and 600 series obtained through the first come-first served process.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 123-2004, f. & cert. ef. 12-21-04, cert. ef. 2-1-05

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR Chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled “2005 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2005 Oregon Big Game Regulations,” in addition to OAR Chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. & cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 21-2000(Temp), f. & cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. & cert. ef. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 12-21-04, cert. ef. 2-1-05

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Adm. Order No.: DFW 124-2004

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 3-1-05

Notice Publication Date: 9-1-04

Rules Amended: 635-068-0000, 635-068-0022

Subject: Establish 2005 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference. [Table not included. See ED. NOTE.]

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled “2005 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2005 Oregon Big Game Regulations,” in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. & cert. ef. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. & cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. & cert. ef. 12-21-04, cert. ef. 3-1-05

635-068-0022

W. High Cascade Buck Deer Hunt or Hood-White River Hunt and Western Oregon Controlled Deer Hunts

(1) Tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Each successful applicant for a W. High Cascade or Hood-White River hunt tag shall receive one tag valid for both the W. High Cascade hunt or Hood-White River and the Western Oregon General deer rifle season. Each hunter may take only one buck deer.

(2) A hunter successful in drawing a 600 series tag may also hunt in any general deer season or any 100 series controlled buck deer hunt and as provided in OAR chapter 635, division 090; if possessing the proper tag for the area and time period being hunted.

(3) A hunter drawing a 100 or 600 series deer tag or purchasing a general season western Oregon deer tag, also may possess a “left over” 100 and 600 series tag obtained through the first come-first served process.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 28-2002(Temp), f. & cert. ef. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 124-2004, f. & cert. ef. 12-21-04, cert. ef. 3-1-05

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Adm. Order No.: DFW 125-2004

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 6-1-05

Notice Publication Date: 9-1-04

Rules Amended: 635-065-0760

Subject: Establish 2005 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-065-0760

Other Restrictions

It is *unlawful*:

- (1) To take or hold in captivity the young of any game mammal.
- (2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.
- (3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.
- (4) To resist game law enforcement officers.
- (5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.
- (6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or

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amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2. round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through December 1 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose and Wilson wildlife management units.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Individual gated and posted roads on Alsea, Mapleton, and Waldport Ranger Districts, Siuslaw National Forest;

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season — That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Hadsall: Permanent Closure — That part of the Siuslaw Unit as follows: 6 square miles in Township 18 South, Ranges 9 and 10 West;

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: Butte Falls and Prospect Ranger Districts, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 87 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of

the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 69 square miles in Townships 2, 3, 4, 6, and 7 South, Ranges 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 30 annually — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: October 23 through November 13, 2005 — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: October 23 through November 13, 2005 — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: October 23 through November 13, 2005 — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: October 23, 2005 through April 30, 2006 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: August 24, 2005 through May 31, 2006 — That part of the Catherine Creek Unit as follows: 17 square miles in Townships 4 and 5 South, Range 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

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(nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, Range 48 East.

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Melhorn: May 1 through December 1: That part of the Pine Creek Unit as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1— That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1— That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: May 1 to December 1: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(yy) Eagle Creek: December 1 through March 31 annually — That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: September 28 through October 12, 2005 and October 23 through November 13, 2005 — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: September 28 through October 12, 2005 and October 23 through November 13, 2005 — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: September 28 through October 12, 2005 and October 23 through November 13, 2005 — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: September 28 through October 12, 2005 and October 23 through November 13, 2005 — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paunina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use

only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 road in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area — Permanent Closure. Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(lll) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 4-1995, f. & cert. ef. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. & cert. ef. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 5-2003, f. & cert. ef. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. & cert. ef. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. & cert. ef. 12-21-04, cert. ef. 6-1-05

Adm. Order No.: DFW 126-2004(Temp)

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 12-21-04 thru 3-1-05

Notice Publication Date:

Rules Amended: 635-005-0045

Rules Suspended: 635-005-0045(T)

Subject: Amend rule to 1) open the Oregon 2004-2005 ocean commercial Dungeness crab fishery at 12:01 a.m. on January 15, 2005 for the area north of 45° 46' 00" N. lat. (at Cape Falcon) to the OR/WA border; and 2) prohibit vessels electing to fish south of 45° 46' 00" N. lat. (at Cape Falcon) but north of Sonoma County, California, with a December 1, 2004 opening date, from fishing in the area north of this line (at Cape Falcon) before 12:01 a.m. on February 14, 2005.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is unlawful to take land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30. It is *unlawful* for any vessel operating under the authority of an Oregon permit to take, land or possess crab taken from north of an east-west line at 46° 53' 18" N. Lat. (Point Chehalis) off the Washington state coast before March 1, 2005.

(2) It is *unlawful* prior to January 1, pursuant to a fishery described in (3) (a), and prior to February 14, 2005, pursuant to a fishery described in (3) (b), to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, as specified in section (3) (a), or January 14, 2005, as specified in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) The area from 45° 46' 00" N. Lat. (at Cape Falcon) south to the Oregon/California border is open at 12:01 a.m. on December 1, 2004.

(b) The area from 45° 46' 00" N. Lat. (at Cape Falcon) north to the Oregon/Washington border is closed December 1, 2004 until 12:01 a.m., January 15, 2005.

(c) Vessels electing to fish south of 45° 46' 00" N. Lat. but north of Sonoma County, California, with a December 1, 2004 opening date, as

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12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05

Adm. Order No.: DFW 129-2004(Temp)

Filed with Sec. of State: 12-23-2004

Certified to be Effective: 1-1-05 thru 2-28-05

Notice Publication Date:

Rules Adopted: 635-023-0095

Subject: Adopt rules to announce sturgeon sport fishing seasons and correct length limits and specifications in the mainstem Columbia River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) The Columbia River is open to the retention of sturgeon all year with the following restrictions:

(a) Catch limit is one per day, five per year.

(b) There is a 42-inch length minimum and a 60-inch maximum length from mouth upstream to The Dalles Dam.

(c) There is a 48-inch length minimum and a 60-inch maximum length from The Dalles Dam upstream to the Oregon-Washington border.

(d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.

(e) Oversize sturgeon cannot be removed totally or in part from the water.

(f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.

(g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Saturday, January 1, 2005 through Saturday, April 30, 2005, and

(b) Saturday, May 14, 2005 through Monday, July 4, 2005.

(c) The retention of sturgeon is prohibited May 1, 2005 through May 13, 2005 and from July 5, 2005 through December 31, 2005.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05

Adm. Order No.: DFW 130-2004(Temp)

Filed with Sec. of State: 12-23-2004

Certified to be Effective: 1-1-05 thru 4-1-05

Notice Publication Date:

Rules Amended: 635-041-0061, 635-041-0065, 635-042-0130, 635-042-0135

Subject: Amend rules to establish the winter season for Treaty Indian fishers in the Columbia River above Bonneville Dam. Amend rules of commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam. Revisions consistent with action taken December 16, 2004 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0061

Sturgeon Size

(1) Sturgeon may be taken for commercial purposes by treaty Indian fishers during commercial fishing seasons in which sales of sturgeon are authorized.

(2) Sales are limited to sturgeon between four and five feet in overall length from The Dalles and John Day pools and between 45-60-inches in overall length from the Bonneville Pool.

(3) It is *unlawful* to mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, Zone 6, from 12 noon February 1 to 12 noon March 21, 2005.

(2) There are no mesh size restrictions.

(3) Closed areas are set forth in OAR 635-041-0045 remain in effect, with the exception of Spring Creek Hatchery.

(4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05

635-042-0130

Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River, Zones 1-5, from 3 a.m. to 9 p.m. on the following dates: January 3, 2005; January 6, 2005; January 10, 2005; January 13, 2005; January 17, 2005; January 20, 2005; January 24, 2005; January 27, 2005; January 31, 2005; February 3, 2005; February 7, 2005; February 10, 2005; February 14, 2005; February 17, 2005; February 21, 2005; February 24, 2005; February 28, 2005; March 3, 2005; March 7, 2005; March 10, 2005; March 14, 2005; March 17, 2005; March 21, 2005; March 24, 2005; March 28, 2005; and March 31, 2005.

(2) It is unlawful to use other than the following gear for the taking of smelt in the Columbia River:

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(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05

635-042-0135

Sturgeon Season

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam, Zones 1-5, during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are as follows:

(a) 6:00 am, January 18, 2005 to 6:00 am, January 19, 2005;

(b) 6:00 am, January 25, 2005 to 6:00 am, January 26, 2005;

(c) 6:00 am, February 1, 2005 to 6:00 am, February 2, 2005;

(d) 6:00 am, February 8, 2005 to 6:00 am, February 9, 2005;

(e) 6:00 am, February 15, 2005 to 6:00 am, February 16, 2005;

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, cannery, or fish buyers undressed (in the round).

(4) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any green sturgeon smaller than 48 inches or larger than 66 inches in overall length or any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(4) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection 2(a), (b), (c), (d) and (e) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05

Adm. Order No.: DFW 131-2004

Filed with Sec. of State: 12-21-2004

Certified to be Effective: 4-1-05

Notice Publication Date: 9-1-04

Rules Adopted: 635-078-0011

Rules Amended: 635-060-0055, 635-070-0000, 635-071-0000, 635-078-0001, 635-078-0005, 635-078-0008

Subject: Establish 2005 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-060-0055

Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag. Exception: Controlled hunts continuing or occurring after December 31, 2005 will have a 2005 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2005 shall have on his or her person a valid 2006 hunting license.

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

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

Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 4-2003, f. 1-17-03, cert. ef. 4-1-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in **Tables 1** and **2** and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, dis-

ADMINISTRATIVE RULES

trict and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in **Tables 1 and 2** and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled **"2005 Oregon Big Game Regulations,"** into Oregon Administrative Rules. Therefore, persons must consult the **"2005 Oregon Big Game Regulations"** in addition to OAR Chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-078-0001

Emergency Hunt List (Commission Approval)

After first determining that acute game mammal or wild turkey damage to agricultural or other resources is occurring and that an emergency exists requiring more than 50 hunters, temporary rules shall be adopted in accordance with ORS Chapter 183 establishing:

(1) Open periods for taking game mammals or wild turkey in areas designated by the commission;

(2) Manner of taking game mammals or wild turkey;

(3) Numbers and sex to be taken.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162
Hist.: Renumbered from 635-060-0800; FWC 23-1982, f. & ef. 4-1-82; FWC 34-1984, f. & ef. 7-24-84; FWC 7-1986, f. & ef. 2-19-86; FWC 35-1986, f. & ef. 8-7-86; FWC 52-1992, f. & cert. ef. 7-15-92; FWC 5-1995, f. & cert. ef. 1-23-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-078-0005

Emergency Hunt List (Director's Approval)

(1) After determining that acute game mammal or wild turkey damage to agriculture or other resources is occurring and that an emergency exists requiring an immediate response using no more than 50 hunters to alleviate the damage situation, the commission may authorize the director to issue permits and tags for:

(a) Taking pronghorn antelope, deer, elk, or wild turkey in designated areas from August 1 to March 31; and taking cougar (mountain lion) and black bear in designated areas all year.

(b) The manner of taking game mammals or wild turkey.

(c) Numbers and sex to be taken.

(2) The director shall notify the commission of the results of any hunts set forth in section (1) of this rule.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 34-1984, f. & ef. 7-24-84; FWC 7-1986, f. & ef. 2-19-86; FWC 35-1986, f. & ef. 8-7-86; FWC 52-1992, f. & cert. ef. 7-15-92; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-078-0008

District Emergency Hunts

(1) Upon determination that acute game mammal or wild turkey damage to agriculture or other resources is occurring, and that an emergency exists requiring an immediate response to alleviate the damage situation, the commission authorizes district wildlife biologists to issue permits and tags for:

(a) Taking pronghorn antelope, deer, elk, and wild turkey in designated areas from August 1 to March 31;

(b) The manner of taking game mammals or wild turkey;

(c) Numbers and sex to be taken.

(2) Districts are authorized to use no more than 250 hunters in aggregate, per county to alleviate emergency damage between August 1 — March 31 annually. Additional hunters must be authorized by the Director or the Commission.

(3) The director shall notify the commission of the results of any hunts set forth in section (1) if this rule.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162
Hist.: FWC 15-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 52-1992, f. & cert. ef. 7-15-92; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

635-078-0011

Determining Eligibility

(1) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt: the list is to be effective for one year. Each hunter less than 18 years of age shall have an adult hunting license and be accompanied by a responsible adult (21 years of age or older) when hunting. Applications will be accepted and kept on file at the headquarters office of the Department of Fish and Wildlife, 3406 Cherry Ave, NE, Salem, OR, 97303. Beginning July 1 of each year, the hunter's name will be placed on the eligible list. No fee is required for applicants to be placed on the emergency hunt list. Applications may be made on a form available at department offices and in the annual regulations document, and up to two hunters may apply on the form as a party. Each applicant shall list their name, address and telephone number where they can be contacted and the county for which they are applying.

(b) At such time as the department determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from regional or district office of the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Certified Master Hunters applying during July shall be randomized and moved to the top of the emergency hunt list. Applications received after July 31 each year will be prioritized as received.

(2) It is unlawful to take game mammals or wild turkey in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on one's person.

(3) Upon killing a game mammal or wild turkey pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required.

(4) Eligibility and fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05

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Adm. Order No.: DFW 132-2004(Temp)

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 12-30-04 thru 3-1-05

Notice Publication Date:

Rules Amended: 635-005-0045

Rules Suspended: 635-005-0045(T)

ADMINISTRATIVE RULES

Subject: Amend rule to suspend the transfer of vessel permits from one vessel to another until February 15, 2005.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is unlawful to take land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30. It is *unlawful* for any vessel operating under the authority of an Oregon permit to take, land or possess crab taken from north of an east-west line at 46° 53' 18" N. Lat. (Point Chehalis) off the Washington state coast before March 1, 2005.

(2) It is unlawful prior to January 1, pursuant to a fishery described in (3)(a), and prior to February 14, 2005, pursuant to a fishery described in (3)(b), to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, as specified in section (3)(a), or January 14, 2005, as specified in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) The area from 45° 46' 00" N. Lat. (at Cape Falcon) south to the Oregon/California border is open at 12:01 a.m. on December 1, 2004.

(b) The area from 45° 46' 00" N. Lat. (at Cape Falcon) north to the Oregon/Washington border is closed December 1, 2004 until 12:01 a.m., January 15, 2005.

(c) Vessels electing to fish south of 45° 46' 00" N. Lat. but north of Sonoma County, California, with a December 1, 2004 opening date, as noted in (3)(a), may not take, land or possess Dungeness crab in an area with the delayed opening date north of 45° 46' 00" N. Lat. identified in (3)(b) until February 14, 2005.

(d) For the first 30 days of a fishing season in areas pursuant to (3)(a) and (b), vessels electing to fish in either area shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing area. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing area.

(4) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

(5) Notwithstanding OAR 635-006-1095(7), the transfer of a permit from one vessel to another is suspended until February 15, 2005, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155. Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05

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Adm. Order No.: DFW 1-2005

Filed with Sec. of State: 1-7-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 12-1-04

Rules Amended: 635-006-0232

Subject: Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations during the year.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2005 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Cabezon, \$3.49;

(B) Carp \$0.10 (1995 price);

(C) Cod, Pacific \$0.48;

(D) Flounder, arrowtooth \$0.12;

(E) Flounder, starry \$0.39;

(F) Greenling, \$4.21;

(G) Grenadier \$0.10;

(H) Hake, Pacific (Whiting) \$0.03;

(I) Halibut, Pacific, dressed weight with head on \$2.92;

(J) Herring, Pacific \$0.55;

(K) Lingcod, \$1.53;

(L) Pollock, Walleye \$0.67 (2001 price);

(M) Pacific ocean perch, \$0.46.

(N) Rockfish:

(i) Black, \$1.52;

(ii) Blue, \$1.51;

(iii) Canary, using trawl gears \$0.51, using line and pot gears, \$0.76;

(iv) Widow \$0.45;

(v) Yellowtail, using trawl gears \$0.50, using line and pot gears \$0.71 and live \$1.56;

(vi) Nearshore, \$6.16;

(vii) Shelf, \$0.43;

(viii) Slope, using trawl gears \$0.47, using line and pot gears \$0.52;

(ix) Shortbelly, using trawl gears \$0.29 (2003 price);

(x) Darkblotched, \$0.46;

(xi) Yelloweye, using trawl gears \$0.54, using line and pot gears \$0.80.

(O) Sablefish:

(i) Round weight, ungraded \$1.57, extra small \$0.71, small \$0.96, medium \$1.24 and large \$1.60;

(ii) Dressed weight, ungraded \$2.25, extra small \$1.75, small \$2.61, medium \$3.11 and large \$3.20.

(P) Salmon, Chinook, Ocean dressed weight: large \$3.49, medium \$3.41, small \$3.81 and mixed size \$3.39;

(Q) Salmon, coho, Ocean dressed weight: mixed size \$1.24;

(R) Salmon, pink, ocean dressed weight, ungraded, \$1.07;

(S) Sanddab, Pacific \$0.36;

(T) Sardine, Pacific \$0.06.

(U) Shad, American:

(i) Columbia, ungraded \$0.23;

(ii) Coast, ungraded, gill net and set net, \$0.30 (2003 price).

(V) Shark, blue \$1.04, Pacific sleeper, live \$0.62 (2000 price), shortfin mako \$0.95, sixgill, \$0.50 (2001 price), soupfin \$0.53, spiny dogfish \$0.05, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.70 and other species \$0.10;

(W) Skates and Rays \$0.16;

(X) Smelt, Eulachon (Columbia River), \$1.26 and other species \$2.00;

(Y) Sole, butter \$0.36, curlfin (turbot) \$0.35, Dover \$0.37, English \$0.35, flathead \$0.31, petrale \$1.01, rex \$0.41, rock \$0.33 and sand \$0.64;

(Z) Steelhead \$0.37;

(AA) Sturgeon, green \$0.66 and white \$1.76;

(BB) Surfperch \$5.85 (2003 price);

(CC) Swordfish \$3.25 (2003 price);

(DD) Thornyhead (Sebastolobus), longspine \$0.49 and shortspine \$0.66;

(EE) Tuna, albacore \$0.85, bluefin \$2.50 and yellowfin \$0.73 (2001 price);

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- (FF) Walleye \$3.24;
- (GG) Wolf-eel \$1.04;
- (HH) Wrymouth \$0.16;
- (II) Hagfish \$0.36;
- (JJ) Anchovy, Northern \$0.16;
- (KK) Mackerel, jack \$0.06, Pacific \$0.01.

(b) CRUSTACEANS:

(A) Crab: box \$1.11 (2002 price), Dungeness bay \$2.42 and ocean \$1.58, rock \$1.41 and Tanner \$0.69 (2003 price);

(B) Crayfish \$1.55;

(C) Shrimp: brine \$1.00, coonstripe \$3.23, ghost (sand) \$2.13, mud \$1.26, pink \$0.39 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$5.77;

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$16.00;

(B) Clams: butter \$0.31, cockle \$0.45, gaper \$0.92, littleneck \$2.64, razor \$1.90 and softshell \$1.37;

(C) Mussels, ocean \$0.66;

(D) Octopus \$1.24;

(E) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price);

(F) Squid \$0.14.

(d) OTHER INVERTEBRATES:

(A) Sea urchin, red \$0.41 and purple \$0.30;

(B) Sea cucumber \$1.00;

(C) Sea stars \$1.00;

(D) Jellyfish \$10.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05

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Department of Forestry
Chapter 629

Adm. Order No.: DOF 1-2005

Filed with Sec. of State: 1-7-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 2-1-04

Rules Amended: 629-041-0515

Subject: Describes the boundary of the Central Oregon Forest Protection District.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-041-0515

Central Oregon Forest Protection District Boundary

The area within the Central Oregon Forest Protection District is contained within the boundaries of five units described in subsections (1), (2), (3), (4) and (5) of this rule.

(1) The boundary of the Baldy Unit of the Central Oregon Forest Protection District is as follows: Beginning at the northwest corner of section 8, township 10 south, range 23 east, Wheeler County; thence east to the northwest corner of section 10, township 10 south, range 23 east, Wheeler County; thence north to the northwest corner of the southwest quarter of section 27, township 9 south, range 23 east, Wheeler County; thence east to the northwest corner of the southwest quarter of section 26, township 9 south, range 23 east, Wheeler County; thence north to the northwest corner of section 26, township 9 south, range 23 east, Wheeler County; thence east to the northeast corner of section 25, township 9 south, range 23 east, Wheeler County; thence south to the northeast corner of section 1, township 10 south, range 23 east, Wheeler County; thence east to the northwest corner of section 4, township 10 south, range 24 east, Wheeler County; thence north to the northwest corner of section 33, township 9 south, range 24 east, Wheeler County; thence east to the northeast corner of section 34, township 9 south, range 24 east, Wheeler County; thence south to the northeast corner of section 3, township 10 south, range 24 east, Wheeler County; thence east to the northeast corner of section 3, township 10 south, range 25 east, Wheeler County; thence south to the northeast corner of section 27, township 10 south, range 25 east, Wheeler County; thence east to the north-

east corner of section 26, township 10 south, range 25 east, Wheeler County; thence south to the southeast corner of section 23, township 11 south, range 25 east, Wheeler County; thence west to the southeast corner of section 22, township 11 south, range 25 east, Wheeler County; thence south to the southeast corner of section 27, township 11 south, range 25 east, Wheeler County; thence west to the southwest corner of section 29, township 11 south, range 25 east, Wheeler County; thence north to the southwest corner of section 20, township 11 south, range 25 east, Wheeler County; thence west to the southwest corner of section 23, township 11 south, range 24 east, Wheeler County; thence north to the southwest corner of section 14, township 11 south, range 24 east, Wheeler County; thence west to the southwest corner of section 15, township 11 south, range 24 east, Wheeler County; thence north to the southwest corner of section 34, township 10 south, range 24 east, Wheeler County; thence west to the southeast corner of section 31, township 10 south, range 24 east, Wheeler County; thence south to the southeast corner of section 6, township 11 south, range 24 east, Wheeler County; thence west to the southeast corner of the southwest quarter of section 7, township 11 south, range 24 east, Wheeler County; thence west to the southeast corner of section 12, township 11 south, range 23 east, Wheeler County; thence south to the southeast corner of section 13, township 11 south, range 23 east, Wheeler County; thence west to the southeast corner of the southwest quarter of section 13, township 11 south, range 23 east, Wheeler County; thence south to the southeast corner of the northwest quarter of section 24, township 11 south, range 23 east, Wheeler County; thence west to the southeast corner of the northeast quarter of section 23, township 11 south, range 23 east, Wheeler County; thence south to the southeast corner of section 23, township 11 south, range 23 east, Wheeler County; thence west to the southeast corner of section 22, township 11 south, range 23 east, Wheeler County; thence south to the southeast corner of section 34, township 11 south, range 23 east, Wheeler County; thence west to the southwest corner of section 36, township 11 south, range 22 east, Wheeler County; thence north to the southwest corner of section 24, township 11 south, range 22 east, Wheeler County; thence west to the southwest corner of section 23, township 11 south, range 22 east, Wheeler County; thence north to the northwest corner of the southwest quarter of section 11, township 11 south, range 22 east, Wheeler County; thence east to the northwest corner of the southwest quarter of section 12, township 11 south, range 22 east, Wheeler County; thence north to the northwest corner of section 1, township 11 south, range 22 east, Wheeler County; thence east to the northwest corner of section 6, township 11 south, range 23 east, Wheeler County; thence north to the northwest corner of section 31, township 10 south, range 23 east, Wheeler County; thence east to the northwest corner of section 32, township 10 south, range 23 east, Wheeler County; thence north to the point of beginning.

(2) The boundary of the Deschutes Unit of the Central Oregon Forest Protection District is as follows: Beginning at the point where the common boundary of Jefferson County and Linn County, as set forth in ORS 201.160 and 201.220, intersect with the southern boundary of the Warm Springs Indian Reservation, in or near section 5, township 11 south, range 8 east, Jefferson County; thence southerly and easterly on the southern boundary of the Warm Springs Indian Reservation to center of the main channel of Jefferson Creek, in or near section 4, township 11 south, range 8 east, Jefferson County; thence easterly and southerly on the center of the main channel of Jefferson Creek to the junction with the Metolius River, in or near section 35, township 11 south, range 9 east, Jefferson County; thence northerly, southerly and easterly on the center of the main channel of the Metolius River to the line of ordinary high water, at an elevation of approximately 1,945 feet, of the Metolius Arm of Lake Billy Chinook in or near section 18, township 11 south, range 11 east, Jefferson County; thence easterly on the southern line of ordinary high water, at an elevation of approximately 1,945 feet, of the Metolius Arm of Lake Billy Chinook to the most northerly point of the western side of the Deschutes Arm of Lake Billy Chinook in or near section 27, township 11 south, range 12 east, Jefferson County; thence northerly to the line of ordinary high water, at an elevation of approximately 1,945 feet, at the most northerly point of the eastern side of the Deschutes Arm of Lake Billy Chinook in or near section 22, township 11 south, range 12 east, Jefferson County; thence northerly and easterly on the line of ordinary high water, at an elevation of approximately 1,945 feet, of Lake Billy Chinook to the face of the Round Butte Dam in section 22, township 11 south, range 12 east, Jefferson County; thence westerly on the face of the Round Butte Dam to the center of the main channel of the Deschutes River in or near section 22, township 11 south, range 12 east,

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16 east, Crook County; thence south to the southeast corner of section 13, township 14 south, range, 16 east, Crook County; thence west to the southwest corner of section 16, township 14 south, range 16 east, Crook County; thence north to the southwest corner of section 21, township 13 south, range 16 east, Crook County; thence west to the common boundary of Crook County and Jefferson County, as set forth in ORS 201.070 and 201.160, in or near section 19, township 13 south, range 15 east, Crook County; thence northerly on the common boundary of Crook County and Jefferson County, as set forth in ORS 201.070 and 201.160, to the northwest corner of section 31, township 12 south, range 15 east, Jefferson County; thence east to the northwest corner of section 34, township 12 south, range 15 east, Jefferson County; thence north to the northwest corner of section 3, township 12 south, range 15 east, Jefferson County; thence east to the northwest corner of section 6, township 12 south, range 16 east, Jefferson County; thence north to the point of beginning.

(4) The boundary of the Maury Mountains Unit of the Central Oregon Forest Protection District is as follows: Beginning at the northwest corner of section 18, township 17 south, range 18 east, Crook County; thence east to the northeast corner of section 15, township 17 south, range 21 east, Crook County; thence south to the northeast corner of section 27, township 17 south, range 21 east, Crook County; thence east to the northeast corner of section 25, township 17 south, range 21 east, Crook County; thence south to the southeast corner of section 36, township 17 south, range 21 east, Crook County; thence east to the northeast corner of section 1, township 18 south, range 21 east, Crook County; thence south to the southeast corner of section 13, township 18 south, range 21 east, Crook County; thence west to the southeast corner of section 18, township 18 south, range 20 east, Crook County; thence south to the southeast corner of section 30, township 18 south, range 20 east, Crook County; thence west to the southwest corner of section 29, township 18 south, range 19 east, Crook County; thence north to the southwest corner of section 20, township 18 south, range 19 east, Crook County; thence west to the southwest corner of section 19, township 18 south, range 19 east, Crook County; thence north to the southwest corner of section 18, township 18 south, range 19 east, Crook County; thence west to the southwest corner of section 16, township 18 south, range 18 east, Crook County; thence north to the southwest corner of section 4, township 18 south, range 18 east, Crook County; thence west to the southwest corner of section 5, township 18 south, range 18 east, Crook County; thence north to the northwest corner of section 5, township 18 south, range 18 east, Crook County; thence west to the southwest corner of section 31, township 17 south, range 18 east, Crook County; thence north to the point of beginning.

(5) The area within the The Dalles Unit of the Central Oregon Forest Protection District is contained within the boundaries of eight parcels described in subsections (a), (b), (c), (d), (e), (f), (g) and (h) below:

(a) Beginning at the point where the common boundary of Hood River County and Multnomah County, as set forth in ORS 201.030 and 201.260, intersect with the line of ordinary low water on the southern shore of the Columbia River in or near section 23, township 2 north, range 7 east, Hood River County; thence easterly on the line of ordinary low water on the southern shore of the Columbia River to the common line between section 12, township 2 north, range 12 east and section 7, township 2 north, range 13 east, Wasco County; thence south to the northern boundary of the Bonneville Power Administration's Big Eddy-Troutdale powerline right of way in or near section 19, township 1 north, range 13 east, Wasco County; thence easterly on the northern boundary of the Bonneville Power Administration's Big Eddy-Troutdale powerline right of way to the common line between section 16, township 1 north, range 13 east and section 21, township 1 north, range 13 east, Wasco County; thence east to the centerline of the Northern Wasco County Public Utility District's Dufur-The Dalles powerline right of way in or near section 21, township 1 north, range 13 east, Wasco County; thence southerly on the centerline of the Northern Wasco County Public Utility District's Dufur-The Dalles powerline right of way to the common line between section 23, township 1 south, range 13 east and section 26, township 1 south, range 13 east, Wasco County; thence west to southeast corner of the southwest quarter of the southeast quarter of section 23, township 1 south, range 13 east, Wasco County; thence south to the northeast corner of the southwest quarter of the northeast quarter of section 35, township 1 south, range 13 east, Wasco County; thence east to the northeast corner of the southeast quarter of the northeast quarter of section 35, township 1 north, range 13 east, Wasco County; thence south to the centerline of U.S. Highway 197 in or near section 35, township 1 south, range 13 east, Wasco County; thence southerly on the centerline of U.S. Highway 197 to the centerline of Dufur Gap County Road, in section 11, township 2 south, range 13 east Wasco County; thence southerly on the centerline of

Dufur Gap County Road to the centerline of U.S. Highway 197, in section 11, township 3 south, range 13 east, Wasco County; thence southerly on the centerline of U.S. Highway 197 to the center of the main channel of White River, in section 11, township 4 south, range 13 east, Wasco County; thence westerly on the center of the main channel of White River to the common line between section 25, township 4 south, range 12 east and section 30, township 4 south, range 13 east, Wasco County; thence south to the southeast corner of section 36, township 4 south, range 12 east, Wasco County; thence west to the southeast corner of section 34, township 4 south, range 12 east, Wasco County; thence south to the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation in or near section 10, township 6 south, range 12 east, Wasco County; thence westerly on the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation to the common boundary of Clackamas County and Wasco County, as set forth in ORS 201.030 and 201.330, in or near section 7, township 5 south, range 9 east, Wasco County; thence northerly on the common boundary of Clackamas County and Wasco County, as set forth in ORS 201.030 and 201.330, to the boundary of Hood River County, as set forth in ORS 201.140, in or near section 5, township 4 south, range 9 east, Wasco County; thence northerly on the common boundary of Clackamas County and Hood River County, as set forth in ORS 201.030 and 201.140, to the boundary of Multnomah County, as set forth in ORS 201.260, in or near section 27, township 1 south, range 8 east, Hood River County; thence northerly on the common boundary of Hood River County and Multnomah County, as set forth in ORS 201.140 and 201.260, to the point of beginning.

(b) Beginning at the northwest corner of the northwest quarter of the southwest quarter of section 2, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the northwest quarter of the southwest quarter of section 2, township 6 south, range 11 east, Wasco County; thence south to the northeast corner of the southwest quarter of the southwest quarter of section 2, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the southeast quarter of the southwest quarter of section 2, township 6 south, range 11 east, Wasco County; thence south to the southeast corner of the northeast quarter of the northwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of the northeast quarter of the northwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence north to the southwest corner of the southeast quarter of the southwest quarter of section 2, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of the southeast quarter of section 3, township 6 south, range 11 east, Wasco County; thence north to the southwest corner of the northwest quarter of the southeast quarter of section 3, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of the northwest quarter of the southwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence north to the northeast corner of the southwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence east to the northwest corner of the northeast quarter of the southwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence north to the northwest corner of the northeast quarter of the northwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the northwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence south to the northeast corner of the southwest quarter of section 3, township 6 south, range 11 east, Wasco County; thence east to the point of beginning.

(c) Beginning at the northwest corner of the northeast quarter of section 5, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the northwest quarter of the northeast quarter of section 5, township 6 south, range 11 east, Wasco County; thence south to the southeast corner of the southwest quarter of the northeast quarter of section 5, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of the northeast quarter of section 5, township 6 south, range 11 east, Wasco County; thence north to the point of beginning.

(d) Beginning at the northwest corner of the southeast quarter of section 9, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the northwest quarter of the southwest quarter of section 10 township 6 south, range 11 east, Wasco County; thence south to the southeast corner of lot 4 of section 10, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of lot 4 of section 10, township 6 south, range 11 east, Wasco County; thence north to the southwest corner of the northwest quarter of the southwest quarter of section 10, township 6 south, range 11 east, Wasco County; thence west to the southeast corner of the northwest quarter of the southeast quarter of section 9, township 6 south, range 11 east, Wasco County; thence south to the southeast corner of lot 2 of section 9, township 6 south, range 11 east, Wasco

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County; thence west to the southwest corner of lot 2 of section 9, township 6 south, range 11 east, Wasco County; thence north to the point of beginning.

(e) Beginning at the northwest corner of the northeast quarter of the southwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence east to the northeast corner of the northeast quarter of the southwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence south to the southwest corner of the northeast quarter of the southwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence west to the southwest corner of the northeast quarter of the southwest quarter of section 11, township 6 south, range 11 east, Wasco County; thence north to the point of beginning.

(f) Beginning at the northwest corner of the northeast quarter of the southeast quarter of section 6, township 6 south, range 12 east, Wasco County; thence east to the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation in section 6, township 6 south, range 12 east, Wasco County; thence easterly on the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation to the common line between section 4, township 6 south, range 12 east and section 9, township 6 south, range 12 east, Wasco County; thence west to the southwest corner of the southeast quarter of the southeast quarter of section 6, township 6 south, range 12 east, Wasco County; thence north to the point of beginning.

(g) Beginning at the southwest corner of section 29, township 5 south, range 11 east, Wasco County; thence north to the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation in section 29, township 5 south, range 11 east, Wasco County; thence easterly on the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation to the common line between the southwest quarter of the southwest quarter and the southeast quarter of the southwest quarter of section 29, township 5 south, range 11 east, Wasco County; thence south to the southeast corner of the southwest quarter of the southwest quarter of section 29, township 5 south, range 11 east; Wasco County; thence west to the point of beginning.

(h) Beginning at the southwest corner of the southeast quarter of the southwest quarter of section 35, township 5 south, range 11 east, Wasco County; thence north to the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation in section 35, township 5 south, range 11 east, Wasco County; thence easterly on the McQuinn Line and northern boundary of the Warm Springs Indian Reservation to the common line between section 35, township 5 south, range 11 east and section 36, township 5 south, range 11 east, Wasco County; thence south to the southeast corner of section 35, township 5 south, range 11 east, Wasco County; thence west to the point of beginning.

Stat. Auth.: ORS 477.225
Stats. Implemented: ORS 477.225
Hist.: DOF 10-1998, f. & cert. ef. 8-13-98; DOF 2-1999, f. & cert. ef. 5-13-99; DOF 1-2005, f. & cert. ef. 1-7-05

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Rules Amended: 629-041-0570

Subject: Describes the boundary of the West Oregon Forest Protection District.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-041-0570

West Oregon Forest Protection District Boundary

The boundary of the West Oregon Forest Protection District is as follows: Beginning at the point where the common line of section 10 and section 15, township 6 south, range 11 west and the ocean shore line of vegetation, as set forth in ORS 390.770, intersect, in or near section 15, township 6 south, range 11 west, Tillamook County; thence east to the northeast corner of section 13, township 6 south, range 11 west, Tillamook County; thence south to the northeast corner of the southeast quarter of the northeast quarter of the northeast quarter of section 13, township 6 south, range 11 west, Tillamook County; thence east to the northeast corner of the southeast quarter of the northeast quarter of the northwest quarter of the northwest quarter of section 18, township 6 south, range 10 west, Tillamook County; thence south to the northeast corner of the southwest quarter of the northwest quarter of section 18, township 6 south, range 10 west, Tillamook County; thence east to the centerline of U.S. Highway 101, in or near the southwest quarter of the northeast quarter of section 18, township 6 south, range 10 west, Tillamook County; thence southerly on the centerline of U.S. Highway 101 to the

common line of section 18 and section 19, in or near the southwest quarter of the southeast quarter of section 18, township 6 south, range 10 west, Lincoln County; thence east to the northeast corner of the northwest quarter of the northwest quarter of section 20, township 6 south, range 10 west, Lincoln County; thence south to the northeast corner of the northwest quarter of the southwest quarter of section 20, township 6 south, range 10 west, Lincoln County; thence east to the northeast corner of the southeast quarter of section 20, township 6 south, range 10 west, Lincoln County; thence south to the northeast corner of section 32, township 6 south, range 10 west, Lincoln County; thence east to the northwest corner of section 35, township 6 south, range 10 west, Lincoln County; thence north to the northwest corner of section 26, township 6 south, range 10 west, Lincoln County; thence east to the northwest corner of section 25, township 6 south, range 10 west, Lincoln County; thence north to the northwest corner of section 17, township 6 south, range 9 west, Tillamook County; thence north to the northwest corner of the southwest quarter of section 8, township 6 south, range 9 west, Tillamook County; thence east to the northwest corner of the southwest quarter of section 10, township 6 south, range 9 west, Tillamook County; thence north to the northwest corner of the southwest quarter of the southwest quarter of section 3, township 6 south, range 9 west, Tillamook County; thence east to the northwest corner of the southwest quarter of the southeast quarter of section 2, township 6 south, range 9 west, Tillamook County; thence north to the northwest corner of the southwest quarter of the northeast quarter of section 2, township 6 south, range 9 west, Yamhill County; thence east to the northwest corner of the southeast quarter of the northeast quarter of section 2, township 6 south, range 9 west, Yamhill County; thence north to the northwest corner of the northeast quarter of the northeast quarter of section 2, township 6 south, range 9 west, Yamhill County; thence east to the northwest corner of section 1, township 6 south, range 9 west, Yamhill County; thence north to the northwest corner of section 36, township 5 south, range 9 west, Yamhill County; thence east to the northwest corner of section 31, township 5 south, range 8 west, Yamhill County; thence north to the northwest corner of section 6, township 5 south, range 8 west, Yamhill County; thence east to the northwest corner of section 1, township 5 south, range 8 west, Yamhill County; thence north to the northwest corner of the southwest quarter of section 36, township 4 south, range 8 west, Yamhill County; thence east to the northwest corner of the southwest quarter of section 31, township 4 south, range 7 west, Yamhill County; thence north to the northwest corner of section 19, township 4 south, range 7 west, Yamhill County; thence east to the centerline of Baltimore Road, a private road, in or near the northwest quarter of the northwest quarter of section 20, township 4 south, range 6 west, Yamhill County; thence southeasterly on the centerline of Baltimore Road, a private road, to the centerline of Rock Creek Road, a county road, in or near the northeast quarter of the southwest quarter of section 27, township 4 south, range 6 west, Yamhill County; thence southwesterly and southeasterly on the centerline of Rock Creek Road, a county road, to Old Oregon Highway 18, a county road, in or near the southwest quarter of the northeast quarter of section 33, township 5 south, range 6 west, Yamhill County; thence southwesterly on the centerline of Old Oregon Highway 18, a county road, to the centerline of Oregon Highway 18 in or near the northeast quarter of the northwest quarter of section 13, township 6 south, range 7 west, Polk County; thence easterly on the centerline of Oregon Highway 18 to the centerline of Oregon Highway 22 in or near the southwest quarter of the northeast quarter of section 13, township 6 south, range 7 west, Polk County; thence southeasterly on the centerline of Oregon Highway 22 to the centerline of Perrydale Road, a county road, in or near the northwest quarter of the northeast quarter of section 16, township 7 south, range 5 west, Polk County; thence southerly on the centerline of Perrydale Road, a county road, to the common line of the north half and the south half of the southwest quarter of section 28, township 7 south, range 5 west, Polk County; thence west to the southeast corner of the northwest quarter of the southwest quarter of section 29, township 7 south, range 5 west, Polk County; thence south to the southeast corner of the northwest quarter of the northwest quarter of section 5, township 8 south, range 5 west, Polk County; thence east to the centerline of Clow Corner Road, a county road, in or near the northwest quarter of the northwest quarter of section 3, township 8 south, range 5 west, Polk County; thence southeasterly on the centerline of Clow Corner Road, a county road, to the common line of section 2 and section 11, in or near the northeast quarter of the northeast quarter of section 11, township 8 south, range 5 west, Polk County; thence east to the northeast corner of the northwest quarter of section 12, township 8 south, range 5 west, Polk County; thence south to the southeast corner of the northwest quarter of section 12, township 8 south, range 5 west, Polk

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County; thence west to the southeast corner of the southwest quarter of the southeast quarter of the northeast quarter of section 11, township 8 south, range 5 west, Polk County; thence south to the southeast corner of the southwest quarter of the southeast quarter of the southeast quarter of section 11, township 8 south, range 5 west, Polk County; thence west to the southwest corner of the southeast quarter of section 11, township 8 south, range 5 west, Polk County; thence north to the northeast corner of the southeast quarter of the southwest quarter of section 11, township 8 south, range 5 west, Polk County; thence west to the southeast corner of the northwest quarter of the southwest quarter of section 10, township 8 south, range 5 west, Polk County; thence south to the southeast corner of the southwest quarter of the northwest quarter of section 15, township 8 south, range 5 west, Polk County; thence west to the southeast corner of the northeast quarter of section 16, township 8 south, range 5 west, Polk County; thence south to the centerline of Fishback Road, a county road, in or near the northeast quarter of the northeast quarter of section 33, township 8 south, range 5 west, Polk County; thence southwesterly on the centerline of Fishback Road, a county road, to the common line of section 32 and section 33, township 8 south, range 5 west, Polk County; thence south to the northeast corner of the southeast quarter of the northeast quarter of section 8, township 9 south, range 5 west, Polk County; thence east to the northeast corner of the southeast quarter of the northwest quarter of the northwest quarter of section 9, township 9 south, range 5 west, Polk County; thence south to the southeast corner of the southwest quarter of the southwest quarter of section 9, township 9 south, range 5 west, Polk County; thence west to the centerline of Airlie Road, a county road, in or near the northwest quarter of the northeast quarter of section 18, township 9 south, range 5 west, Polk County; thence southerly on the centerline of Airlie Road, a county road, to the centerline of Berry Creek Road, a county road, in or near the northeast quarter of the northwest quarter of section 4, township 10 south, range 5 west, Polk County; thence southerly on the centerline of Berry Creek Road, a county road, to the common line of section 4 and section 9, township 10 south, range 5 west, Polk County; thence southerly and easterly on the centerline of Tampico Road, a county road, to the centerline of Oregon Highway 99 West in or near the northeast quarter of the southwest quarter of section 30, township 10 south, range 4 west, Benton County; thence southerly on the centerline of Oregon Highway 99 West to the centerline of Arboretum Road, a county road, in or near the northwest quarter of the northeast quarter of section 31, township 10 south, range 4 west, Benton County; thence southerly on the centerline of Arboretum Road, a county road, to the centerline of Oregon Highway 99 West in or near the southeast quarter of the northeast quarter of section 1, township 11 south, range 5 west, Benton County; thence southerly on the centerline of Oregon Highway 99 West to the center of the main channel of Marys River in or near the southeast quarter of the northwest quarter of section 2, township 12 south, range 5 west, Benton County; thence southerly on the center of the main channel of Marys River to the center of the main channel of Muddy Creek in or near the northeast quarter of the southeast quarter of section 16, township 12 south, range 5 west, Benton County; thence southerly on the center of the main channel of Muddy Creek to the common line of section 8 and section 17, township 13 south, range 5 west, Benton County; thence west to the northeast corner of the northwest quarter of section 17, township 13 south, range 5 west, Benton County; thence south to the southeast corner of the southwest quarter of section 32, township 13 south, range 5 west, Benton County; thence west to the northeast corner of the northwest quarter of section 6, township 14 south, range 5 west, Benton County; thence south to the southeast corner of the northwest quarter of section 6, township 14 south, range 5 west, Benton County; thence west to the southeast corner of the northeast quarter of section 1, township 14 south, range 6 west, Benton County; thence south to the southeast corner of section 2, township 14 south, range 6 west, Benton County; thence south to the southeast corner of section 11, township 14 south, range 6 west, Benton County; thence west to the centerline of Foster Road, a county road, in or near the northwest quarter of the northeast quarter of section 14, township 14 south, range 6 west, Benton County; thence southerly and southwesterly on the centerline of Foster Road, a county road, to the centerline of McCain, a county road, in or near the southeast quarter of the northwest quarter of section 23, township 14 south, range 6 west, Benton County; thence southerly on the centerline of Foster Road, a county road, to the point due east of the southeast corner of the northeast quarter of the southeast quarter of section 22, township 14 south, range 6 west, Benton County; thence west to the southeast corner of the northeast quarter of the southeast quarter of section 22, township 14 south, range 6 west, Benton County; thence south to the centerline of Williams Road, a

county road, in or near the northeast quarter of the southeast quarter of section 27, township 14 south, range 6 west, Benton County; thence easterly on the centerline of Williams Road, a county road, to the centerline of Bellfountain Road, a county road, in or near the northeast quarter of the northwest quarter of section 36, township 14 south, range 6 west, Benton County; thence southerly on the centerline of Bellfountain Road, a county road, to the centerline of Coon Road, a county road, in or near the northeast quarter of the southwest quarter of section 36, township 14 south, range 6 west, Benton County; thence easterly on the centerline of Coon Road to the point due north of the northeast corner of the northwest quarter of section 5, township 15 south, range 5 west, Benton County; thence south to northeast corner of the northwest quarter of section 5, township 15 south, range 5 west, Benton County; thence east to the centerline of Cherry Creek Road, a county road, in or near the northeast quarter of the northeast quarter of section 5, township 15 south, range 5 west, Benton County; thence southeasterly, directly to the northeast corner of the southeast quarter of the northeast quarter of section 5, township 15 south, range 5 west, Benton County; thence east to the northeast corner of the southwest quarter of the northwest quarter of section 4, township 15 south, range 5 west, Benton County; thence south to the northeast corner of the northwest quarter of the southwest quarter of section 4, township 15 south, range 5 west, Benton County; thence east to the northeast corner of the southwest quarter of section 4, township 15 south, range 5 west, Benton County; thence south to the boundary of the Western Lane Forest Protection District, as forth in OAR 629-041-0575, in or near the northwest quarter of the northeast quarter of section 9, township 15 south, range 5 west, Benton County; thence westerly on the boundary of the Western Lane Forest Protection District, as forth in OAR 629-041-0575, to the ocean shore line of vegetation, as set forth in ORS 390.770, in or near the southwest quarter of the northwest quarter of section 10, township 15 south, range 12 west, Lincoln County; thence northerly on the ocean shore line of vegetation, as set forth in ORS 390.770, to the point of beginning.

Stat. Auth.: ORS 477.225, 526.016(4)

Stats. Implemented: ORS 477.225

Hist.: DOF 10-1998, f. & cert. ef. 8-13-98; DOF 2-2005, f. & cert. ef. 1-7-05

Adm. Order No.: DOF 3-2005

Filed with Sec. of State: 1-7-2005

Certified to be Effective: 1-7-05

Notice Publication Date: 11-1-04

Rules Amended: 629-041-0200

Subject: Requires the confidentiality of information used during the mediation of fire cost recovery claims made pursuant to ORS chapter 477.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-041-0200

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 to which the agency has regulatory 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) to (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;

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(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) to (l), (o) or (p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8) and (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." [Form not included. See ED. NOTE.]

(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 Board of Forestry 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.

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

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Stat. Auth.: ORS 526.016(4), 526.041
Stats. Implemented: ORS 477.068, 477.085
Hist.: DOF 7-2004(Temp), f. 9-10-04, cert. ef. 9-15-04 thru 3-13-05; DOF 3-2005, f. & cert. ef. 1-7-05

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

Adm. Order No.: CWP 18-2004
Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 413-050-0500, 413-050-0510, 413-050-0515, 413-050-0530, 413-050-0535, 413-050-0555, 413-050-0560, 413-050-0565, 413-050-0570, 413-050-0575, 413-050-0585

Rules Repealed: 413-050-0525, 413-050-0540, 413-050-0545, 413-050-0550, 413-050-0580

Subject: Rules in the Domestic Violence Fund set of rules are being amended and repealed to streamline the rules. Contract requirements will instead be listed in the RFPs and grant contracts. The revised grant process language clarifies we are doing grants, not contracts and allows DHS flexibility to do joint proposals with other funding agencies. This will reduce workload for service providers. These rules will also be changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-050-0500

Policy

These rules (OAR 413-050-0500 to 413-050-0590) provide procedures for the Department of Human Services (Department) to fund programs from the Domestic Violence Fund. The 1981 Oregon Legislature established this fund to provide intervention on behalf of and support for victims of domestic violence. The Department is authorized to enter into grant contracts with public agencies or private non-profit organizations to support operation by those organizations and agencies of programs designed to prevent, identify, and treat family violence

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610-108.660
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0510

Definitions

(1) "Crisis line" is defined in ORS 108.610(2) and means an emergency telephone service staffed by persons who are trained to provide emergency peer counseling, information, referral, and advocacy to victims of domestic violence and their families.

(2) "Domestic and Sexual Violence Fund Advisory Committee" means the Domestic and Sexual Violence Fund Advisory Committee established in OAR 413-050-0530.

(3) (a) "Domestic violence", defined by ORS 108.610, means the physical injury, sexual abuse or forced imprisonment, or threat thereof, of a person by another person who is related by blood, marriage or intimate cohabitation at the present or has been related at some time in the past, to the extent that the person's health or welfare is harmed or threatened thereby.

(b) "Domestic violence" includes a pattern of assaultive or coercive behaviors including physical, sexual, psychological, and emotional abuses, as well as economic coercion that adults use against their intimate partners to gain power and control in that relationship.

(4) "Domestic Violence Fund" means the fund established by ORS 108.660.

(5) "Family Violence Prevention Program" means the program within the Department funded by the Domestic Violence Fund and other related funds as available to provide shelter and related services to victims of domestic violence.

(6) "Grantee" means a proposer that has been awarded a grant by the Department from the Domestic Violence Fund to support one or more of the projects and programs described in OAR 413-050-0515.

(7) "Proposer" means a public agency or private non-profit organization that meets the minimum criteria contained in OAR 413-050-0515 and that applies to the Department for funding from the Domestic Violence

Fund to support one or more of the projects and programs described in OAR 413-050-0570.

(8) "Safe house" means a place of temporary refuge, offered on an as needed basis to survivors of domestic violence and their families.

(9) "Shelter home" or "shelter facility" means a place of temporary refuge, offered on a 24 hours a day, seven days a week basis to survivors of domestic violence and their children.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 13-2004, f. & cert. ef. 7-1-04; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0515

Qualified Services

The Department uses the Domestic Violence Fund to make grants to nonprofit private organizations and public agencies to fund programs and projects designed to prevent, identify, and treat domestic violence. Grants from the Domestic Violence Fund may be made to:

- (1) Fund shelter homes for victims of domestic violence
- (2) Fund crisis lines providing services to victims of domestic violence and their families
- (3) Fund safe houses for victims of domestic violence and their families

(4) Develop and establish programs for professional and paraprofessional personnel in the fields of social work, law enforcement, education, law, medicine, and other relevant fields who are engaged in the field of the prevention, identification, and treatment of domestic violence and training programs in methods of preventing domestic violence

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0530

Advisory Committee

(1) The Domestic and Sexual Violence Fund Advisory Committee (DSVFAC) established in OAR 413-050-0530 serves as the advisory committee to the Domestic Violence Fund Program. Members are elected and serve terms in accordance with the bylaws established by the advisory committee. Copies of DSVFAC bylaws and other open records are available by contacting the Department.

(2) The Department will consult with the advisory committee regarding the administration of the Family Violence Prevention Program and each proposed change that substantially affects the program's operation.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610-108.660
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 16-1998, f. & cert. ef. 8-13-98; SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0535

Criminal History Checks

(1) A grantee must obtain a criminal history record check on each potential employee or volunteer who will work with victims of domestic violence.

(2) A grantee must develop a written policy or procedure that governs the review of the criminal history record of potential employees and volunteers and the determination of whether a potential employee or volunteer, if there is a criminal history, poses a risk to working safely with victims of domestic violence. The policy or procedure must provide that the review include an examination of:

- (a) The severity and nature of crime that appears in the criminal history;
- (b) The number of criminal offenses;
- (c) The time elapsed since commission of each crime;
- (d) The circumstances surrounding each crime;
- (e) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior, and

(f) The police or arrest report and whether that report confirms the employee's or volunteer's explanation of the crime.

(3) If the grantee determines that the potential employee or volunteer does not pose a risk to working safely with victims of domestic violence and chooses to hire the employee or volunteer, the grantee must explain in writing the reasons for hiring the individual. The written explanation must address how the potential employee or volunteer is presently suitable or able to work with victims of domestic violence in a safe and trustworthy manner, based on the policy or procedure described in section (2) of this

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rule. The grantee must place the written explanation in the personnel file of the employee or volunteer along with the employee's or volunteer's criminal history record.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0555

Shelter Standards

Grantees that provide shelter homes or shelter facilities must:

- (1) Comply with applicable zoning, fire, sanitary and safety regulations.
- (2) Post emergency instructions in English and other primary languages used in the geographic area where the shelter home is located.
- (3) Maintain an operating telephone.
- (4) Provide drinking water that meets Health Division standards.
- (5) Maintain medicines in locked cabinets or areas.
- (6) Have first aid supplies available.
- (7) Protect children from items of potential danger.
- (8) Have kitchen and emergency food supplies available reflective of the cultures present in the community.
- (9) Have emergency clothing available.
- (10) Maintain liability and fire insurance.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0560

Allocation of Funds

The Department uses an equitable distribution method for funding programs throughout the state. The distribution method must be reviewed by the Domestic and Sexual Violence Fund Advisory Committee.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0565

Department Selection Criteria and Rules

The Department will conduct periodically, at least once every five years, an application process for grant from the Domestic Violence Fund. The Department may conduct the application process jointly with other agencies of the State of Oregon that also award grants or provide financial assistance to nonprofit organizations that provide intervention and support services to victims of domestic violence. The application process includes but is not necessarily limited to:

- (1) Public notification of the availability of financial assistance from the Domestic Violence Fund;
- (2) Issuance of a request for grant proposals; and
- (3) Evaluation of the proposals and the award of grants from the Domestic Violence Fund in accordance with the process and criteria set forth in the request for grant proposals and this division of administrative rules.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0570

Applications for Funding

To be considered for funding, a proposer must include the following minimum information in its proposal:

- (1) Official business name of the proposer.
- (2) Business address of the proposer.
- (3) Name of the persons authorized to represent the proposer in any negotiations and to sign grant contract documents.
- (4) Geographic areas the proposer is proposing to serve.
- (5) A statement that no attempt has been made or will be made by the proposer to induce any other person or firm to submit or not submit a proposal, except through efforts to submit collaborative proposals.
- (6) A statement that the proposer accepts all of the terms and conditions contained in the request for grant proposals.
- (7) A written narrative describing how the proposer will provide services and meet the requirements of these rules.
- (8) All other information required by the request for grant proposals.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0575

Evaluation Process

(1) An evaluation committee of the Department reviews proposals in accordance with the process and criteria set forth in the request for grant proposals and this division of administrative rules. Because the State of Oregon wishes to fund programs to deal with victims of domestic violence offenses in all geographic areas of the state, the Department considers, as part of the evaluation process, the geographic area of the state that will be served by the proposer.

(2) The Department will approve, approve in part and reject in part, or reject each received proposal within 60 days after the submission deadline.

(3) The Department will provide written notification by mail to each proposer no later than five working days after the final action is taken on its proposal.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

413-050-0585

Confidentiality

(1) If a grantee keeps the location of premises used to provide services under these rules confidential, the Department will not release that information.

(2) Grantees must keep all individual information relating to people served by programs operating under these rules confidential.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 108.610 - 108.660
Hist.: SOSCF 2-2002, f. & cert. ef. 3-5-02; CWP 7-2003, f. & cert. ef. 1-7-03; CWP 18-2004, f. 12-30-04, cert. ef. 1-1-05

Adm. Order No.: CWP 19-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 413-055-0100, 413-055-0105, 413-055-0110, 413-055-0120, 413-055-0140, 413-055-0145, 413-055-0150, 413-055-0160, 413-055-0165

Rules Repealed: 413-055-0115, 413-055-0125, 413-055-0130, 413-055-0135, 413-055-0155

Subject: The Department is amending and repealing rules in the Sexual Assault Victims Fund set of rules. The original set was done in 2000 when the Department issued the first Request for Proposal. The Department is getting ready to issue another RFP next fall or winter and wants to use this opportunity to streamline the rules. These rules will also be changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-055-0100

Policy

These rules (OAR 413-055-0100 to 413-055-0165) establish the policies of the Department of Human Services (Department) relating to the funding of sexual assault crisis centers and crisis lines authorized by ORS 409.279. This program was established to provide intervention on behalf of and support for victims of sexual offenses. The Department is authorized to enter into grant agreements with private, non-profit agencies to support the delivery by those agencies of intervention and support services to victims of sexual offenses and their families.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0105

Definitions

As used in OAR 413-055-0100 to 413-100-0165:

(1) "Crisis Center" means a location in which there are paid personnel or crisis volunteers who are trained to provide crisis services, including but not limited to intervention, peer support, information and referral, advocacy, outreach, and community education to survivors of sexual assault and their families.

(2) A "grantee" is a proposer that has been awarded a grant by the Department from the Sexual Assault Victims Fund to support the delivery of services to victims of sexual assault and their families.

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(3) A "proposer" is a private, non-profit agency that meets the minimum criteria contained in OAR 413-055-0120 and makes an application to the Department for a grant from the Sexual Assault Victims Fund to support the operation of qualified programs as described in OAR 413-055-0110.

(4) "Sexual Assault" means any touch or act for which informed consent is not given that is sexual in content or used for sexual gratification or stimulation of the perpetrator by either threat of force, force, intimidation, trickery, coercion, or bribery where an imbalance exists because of size, strength, authority, age, development, or knowledge. It includes rape, oral and anal sodomy, exhibitionism, voyeurism, obscene phone calls, sexual pictures, and prostitution.

(5) "Sexual Assault Victims Fund" means the fund created by ORS 409.285.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0110

Qualified Services

(1) The Department uses the Sexual Assault Victims Fund to fund grants to private, non-profit agencies to support the delivery of intervention and support services to victims of sexual offenses and their families. The agencies receiving funds must be either crisis lines or sexual assault centers.

(2) The support and intervention services supported in whole or in part with grant funds from the Sexual Assault Victims Fund must be made accessible and available to all persons who reside in the area served by the agency who may need the services without regard to whether criminal charges were filed. If the grantee is unable to provide necessary services to a client, it must refer the client to alternative community resources.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0120

Criminal History Checks

(1) A grantee must obtain a criminal history record check on each potential employee or volunteer who will work with victims of sexual assault.

(2) A grantee must develop a written policy or procedure that governs the review of the criminal history record of potential employees and volunteers and the determination of whether a potential employee or volunteer, if there is a criminal history, poses a risk to working safely with victims of sexual assault. The policy or procedure must provide that the review include an examination of:

(a) The severity and nature of crime that appears in the criminal history;

(b) The number of criminal offenses;

(c) The time elapsed since commission of each crime;

(d) The circumstances surrounding each crime;

(e) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior, and

(f) The police or arrest report and whether that report confirms the employee's or volunteer's explanation of the crime.

(3) If the grantee determines that the potential employee or volunteer does not pose a risk to working safely with victims of sexual assault and chooses to hire the employee or volunteer, the grantee must explain in writing the reasons for hiring the individual. The written explanation must address how the potential employee or volunteer is presently suitable or able to work with victims of sexual assault in a safe and trustworthy manner, based on the policy or procedure described in section (2) of this rule. The grantee must place the written explanation in the personnel file of the employee or volunteer along with the employee's or volunteer's criminal history record.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0140

Application Process

The Department will conduct periodically, at least once every five years, an application process for grants from the Sexual Assault Victims Fund. The Department may conduct the application process jointly with other agencies of the State of Oregon who also award grants or provide financial assistance to nonprofit organizations that provide intervention and support services to victims of sexual offenses and their families. The application process will include but not necessarily be limited to:

(1) Public notification of the availability of financial assistance from the Sexual Assault Victims Fund.

(2) Issuance of a request for grant proposals.

(3) Evaluation of the proposals and the award of grants from the Sexual Assault Victims Fund in accordance with the process and criteria set forth in the request for grant proposals and this division of administrative rules.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0145

Proposals for Funding

To be considered for funding, a proposer must include the following minimum information in its proposal:

(1) Official business name of the proposer.

(2) Business address of the proposer.

(3) Name of the persons authorized to represent the proposer in any negotiations and to sign grant agreement documents.

(4) Geographic areas the proposer is proposing to serve.

(5) A statement that no attempt has been made or will be made by the proposer to induce any other person or firm to submit or not submit a proposal, except through efforts to submit collaborative proposals.

(6) A statement that the proposer accepts all of the terms and conditions contained in the request for grant proposals.

(7) A statement that the proposer is a private, non-profit organization.

(8) A written narrative describing how the proposer will provide services and meet the requirements of these rules

(9) All other information required by the request for grant proposals.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0150

Proposal Evaluation Process

Proposals are reviewed by an evaluation committee of the Department in accordance with the process and criteria set forth in the request for grant proposals and this division of administrative rules. The Department will approve, approve in part and reject in part, or reject each received proposal within 60 days after the submission deadline. Written notification is mailed to the proposer no later than five working days after the final actions are taken on the proposals. Because the State of Oregon wishes to fund programs to deal with victims of sexual offenses in all geographic areas of the state, the Department considers, as part of the evaluation process, the geographic area of the state that will be served by the proposer.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0160

Confidentiality

(1) If a grantee keeps the location of premises used to provide services under these rules confidential, the Department will not release that information.

(2) Grantees must keep all individual information relating to people served by programs operating under these rules confidential.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

413-055-0165

Advisory Committee

The Advisory Committee on Domestic and Sexual Violence established in OAR 413-050-0530 advises the Department regarding its use of the Sexual Assault Victims Fund.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.270 - 409.285
Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05

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

Adm. Order No.: OMAP 94-2004
Filed with Sec. of State: 12-30-2004
Certified to be Effective: 1-1-05
Notice Publication Date: 12-1-04

ADMINISTRATIVE RULES

Rules Amended: 410-122-0190, 410-122-0202, 410-122-0204, 410-122-0207, 410-122-0208, 410-122-0340, 410-122-0365, 410-122-0400, 410-122-0475, 410-122-0560, 410-122-0580, 410-122-0630, 410-122-0720

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP permanently amended 410-122-0190, 410-122-0202, 410-122-0204, 410-122-0207, 410-122-0208, 410-122-0340, 410-122-0365, 410-122-0400, 410-122-0475, 410-122-0560, 410-122-0580, 410-122-0720 to reflect technical changes, code updates and word clarification. OMAP is working with provider and plan representatives to identify and implement reasonable budget reduction targets. Rule 410-122-0630 is permanently amended to reflect a reduction in the standard maximum allowable quantity of incontinent products, clarify related language, and reformat an existing table.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0190

Equipment and Services Not Otherwise Classified

(1) Documentation must support that the procedure code billed is accurate and is appropriate.

(2) The level of reimbursement should not be considered as a factor in the use of these procedure codes.

(3) Criteria for code E1399:

(a) Code E1399 includes but is not limited to use for the following:

(A) Walker gliders — Not covered for clients in a nursing facility;

(B) Oxymiser cannula — Not covered for clients in a nursing facility;

(C) Hydraulic bathtub lift — Not covered for clients in a nursing facility;

(D) Heavy-duty or extra-wide rehab shower/commode chair — Not covered for clients in a nursing facility;

(E) Routine maintenance for client-owned ventilator.

(i) Proof of manufacturer's suggested maintenance schedule must be submitted when requesting PA;

(ii) Bill E1340 for labor charges.

(b) Code E1399 cannot be used for:

(A) Wheelchair base;

(B) Repairs.

(c) Code E1399 can only be used for gait belts when the:

(A) Client is 60 pounds or greater, and;

(B) Care provider is trained in the proper use, and;

(C) Client meets one of the following criteria:

(i) The client may be able to walk independently, but needs a minor correction of ambulation, or;

(ii) The client needs minimal or standby assistance to walk alone, or;

(iii) The client requires assistance with transfer.

(d) Documentation of medical appropriateness from the prescribing practitioner must:

(A) Be kept on file by the DME provider, and;

(B) Include documentation that the care provider is trained in proper use.

(4) Table 122-0190.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 9-1993, f. & cert. ef. 4-1-93; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 54-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0202

Continuous Positive Airway Pressure (CPAP) System

(1) A continuous positive airway pressure system (CPAP) is a non-invasive technique for providing single levels of air pressure from a flow generator, vianose mask or facemask. This is to prevent the collapse of the oropharyngeal walls and the obstruction of airflow during sleep.

(2) Definitions:

(a) Apnea-Hypopnea Index (AHI) is defined as the average number of episodes of apnea and hypopnea per hour and must be based on a minimum of two hours of recording time without the use of a positive airway pressure

device, reported by polysomnogram. The AHI may not be extrapolated or projected;

(b) Apnea is defined as a cessation of airflow for at least 10 seconds documented on a polysomnogram;

(c) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% oxygen desaturation;

(d) Moderate and severe sleepiness per "Sleep-Related Breathing Disorders in Adults: Recommendations for Syndrome Definition and Measurement Techniques in Clinical Research: The Report of an American Academy of Sleep Medicine Task Force" published in Sleep, Volume 22, Number 5, 1999:

(A) "Moderate: Unwanted sleepiness or involuntary sleep episodes occur during activities that require some attention. Examples include uncontrollable sleepiness that is likely to occur which attending activities such as concerts, meetings or presentations. Symptoms produce moderate impairment of social or occupational function";

(B) Severe: Unwanted sleepiness or involuntary sleep episodes occur during activities that require more active attention. Examples include uncontrollable sleepiness while eating, during conversation, walking or driving. Symptoms produce marked impairment in social or occupational function".

(3) Polysomnography:

(a) For the purpose of this rule, polysomnography must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements; and,

(b) Polysomnographic studies must not be performed by a DME provider. This prohibition does not extend to the results of studies conducted by hospitals certified to do such tests.

(4) Initial Coverage:

(a) A single — level continuous positive airway pressure (CPAP) device (E0601) may be covered if the client has a diagnosis of a breathing-related sleep disorder (obstructive sleep apnea, central apnea, mixed apnea or obstructive sleep apnea-hypopnea syndrome). The polysomnogram must support:

(A) An Apnea-Hypopnea Index (AHI) > 10 per hour; and,

(B) An oxygen saturation related to an apneic or hypopneic event which is less than 90%.

(b) A single level continuous positive airway pressure (CPAP) device (E0601) may be covered if the client has a diagnosis of upper airway resistance syndrome (UARS) and the following criteria are met:

(A) An arousal index > 15; and,

(B) Significant excessive daytime sleepiness as defined by any of the following:

(i) Epworth sleepiness scale > 10; or,

(ii) History of moderate or severe sleepiness; or,

(iii) Multiple Sleep Latency Test (MSLT) with a mean sleep latency < 8.

(c) A three-month rental period is required for CPAP prior to purchase.

(5) Continued Coverage Beyond the First Three Months of Therapy: Ongoing rental beyond the first three months is an option in lieu of purchase if medically appropriate and cost effective.

(6) For a client using a CPAP prior to Medicaid enrollment, and, with recent, supportive documentation from the treating practitioner indicative of effective treatment with a CPAP device, coverage criteria in this rule may be waived.

(7) Payment Authorization: A CPAP device and related accessories may be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040.

(8) Documentation:

(a) Initial Coverage: Prior to the third date of service, submit the following documentation:

(A) Summary of events from a recent technician-attended, facility-based polysomnogram, if required; and,

(B) Any other medical documentation that supports indications of coverage;

(b) Continued Coverage Beyond the First Three Months of Therapy: No sooner than the 61st day after initiating therapy and prior to the fourth

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date of service, submit documentation from the treating practitioner that the client is continuing to effectively use the CPAP device.

(9) Accessories:

(a) Accessories used with an E0601 device are covered when the coverage criteria for the device are met; and,

(b) Accessories are separately reimbursable at the time of initial issue and when replaced; and,

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating physician for use with a covered E0601 device.

(10) Miscellaneous:

(a) If there is discontinuation of usage of an E0601 device at any time, the provider is expected to ascertain this, and stop billing for the equipment and related accessories and supplies.

(b) For auto-titrating CPAP devices, use HCPCS code E0601.

(c) Products must be coded as published by SADMERC's Product Classification List for CPAP Systems and Respiratory Assist Devices.

(11) **Table 122-0202** [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0204

Nebulizer

(1) For adults, Medicare criteria must be met.

(2) **Table 122-0204** [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0207

Respiratory Supplies

Table 122-0207

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0208

Suction Pumps

(1) Coverage Criteria:

(a) Use of a home model suction machine is covered for a client who has difficulty raising and clearing secretions secondary to:

- (A) Cancer or surgery of the throat; or
- (B) Dysfunction of the swallowing muscles; or
- (C) Unconsciousness or obtunded state; or
- (D) Tracheostomy; or
- (E) Neuromuscular conditions.

(b) Suction catheters are disposable supplies and are covered with a medically appropriate rented, purchased or owned suction pump. Sterile catheters are only covered for tracheostomy suctioning. Oropharyngeal and upper tracheal areas are not sterile and catheters can be reused if properly cleansed and/or disinfected;

(c) The suction device must be appropriate for home use without technical or professional supervision. Those using the suction apparatus must be sufficiently trained to adequately, appropriately and safely use the device;

(d) When a suction pump is used for tracheal suctioning, other supplies (e.g., cups, basins, gloves, solutions, etc.) are included in the tracheal care kit code, A4625 — see OAR 410-122-0209 for details. When a suction pump is used for oropharyngeal suctioning, these other supplies are not medically appropriate;

(e) Suction device will be purchased for individual use by a person in a nursing facility when the person is permanently on one of the following:

- (A) Volume ventilator;
- (B) Chest shell;
- (C) Chest wrap;
- (D) Negative pressure ventilator.

(f) Use E1399 for suction pump used with a nasogastric tube.

(g) Sterile saline solution (A4216, A4217) may be covered and separately payable when used to clear a suction catheter after tracheostomy suctioning. It is not usually medically necessary for oropharyngeal suctioning. Saline used for tracheal lavage is not covered.

(h) For adults, Medicare criteria must be met.

(2) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner, must be kept on file by the DME provider.

(3) **Table 122-0208**. [Table not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0340

Wheelchair Options/Accessories

(1) Indications and Coverage:

(a) Covered if client meets the criteria for wheelchair. An option/accessory is not covered if its primary benefit is to allow the client to perform leisure or recreational activities;

(b) The options/accessories are necessary for the client to perform one or more of the following actions:

(A) Function in the home;

(B) Perform instrumental activities of daily living.

(c) Use K0108 for replacement wheelchair parts if no other code is appropriate;

(d) Use of pressure mapping device for specialized seating and positioning is included in the price of the wheelchair base, accessories or options.

(e) For adults, Medicare criteria must be met.

(2) Documentation: Documentation of medical appropriateness which has been filled out, signed, and dated by the treating prescribing practitioner (for example, a Certificate of Medical Necessity (CMN) must be kept on file by the durable medical equipment (DME) provider.

(3) Arm of Chair — Adjustable height armrests are covered if the client:

(a) Requires an arm height that is different than what is available using non-adjustable arms, and;

(b) Spends at least two hours per day in the wheelchair.

(4) Seating and Positioning:

(a) Seating Systems: Item is individually made for a client using:

(A) A plaster model of the client;

(B) A computer-generated model of the client (CAD-CAM technology); or

(C) Detailed measurements of the client used to create a curved foam custom fabricated component.

(D) Not used for seating components that are ready made but subsequently modified to fit an individual client;

(E) Indications and Coverage: Seating systems are covered when:

(i) The client has a significant spinal deformity and/or severe weakness of the trunk muscles; and

(ii) The client's need for prolonged sitting tolerance, postural support to permit functional activities, or pressure reduction cannot be met adequately by a prefabricated seating system; and

(iii) The client is expected to be in the wheelchair at least two hours per day.

(b) A solid seat insert (E0992) is a separate rigid piece of wood or plastic which is added to a cushion.

(c) The code for a seat or back cushion includes any rigid or semi-rigid base or posterior panel, respectively, that is an integral part of the cushion.

(d) There is no separate payment for a solid insert that is used with a seat or back cushion because a solid base is included in the allowance for a wheelchair seat or back cushion.

(e) There is no separate payment for mounting hardware for a seat or back cushion.

(f) There is separate payment for a seat cushion solid support base with mounting hardware when it is used on an adult manual wheelchair (K0001-K0009, E1161) or lightweight power wheelchair (K0012). There is no separate payment when this is used with other types of power wheelchairs (K0010, K0011, K0014) because those wheelchairs include a solid seat pan.

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(g) Code K0108 is used for a stand-alone solid support base for a seat cushion with any type mounting hardware.

(5) Batteries/chargers for motorized/power wheelchairs are separately payable from the purchased wheelchair base.

(6) Table 122-0340.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0365

Standing and Positioning Aids

(1) Indications and coverage: If a client has one aid that meets his/her medical needs, regardless of who obtained it, the Office of Medical Assistance Programs (OMAP) will not provide another aid of same or similar function.

(2) Documentation to be submitted for prior authorization (PA) and kept on file by the Durable Medical Equipment (DME) provider:

(a) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner;

(b) The care plan outlining positioning and treatment regime, and all DME currently available for use by the client;

(c) The prescription;

(d) The documentation for customized positioner must include objective evidence that commercially available positioners are not appropriate;

(e) Each item requested must be itemized with description of product, make, model number, and manufacturers suggested retail price (MSRP);

(f) Submit Positioner Justification form (OMAP 3155) or reasonable facsimile, with recommendation for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, or prescribing practitioner when requesting a PA;

(3) Gait Belts:

(a) Covered when:

(A) The client weighs 60 lbs. or more; and

(B) The care provider is trained in the proper use; and

(C) The client can walk independently, but needs:

(i) A minor correction of ambulation; or

(ii) Needs minimal or standby assistance to walk alone; or

(iii) Requires assistance with transfer.

(b) Use code E1399.

(4) Standing frame systems, prone standers, supine standers or boards and accessories for standing frames are covered when:

(a) The client has been sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and,

(b) The client is following a therapy program initially established by a physical or occupational therapist; and,

(c) The home is able to accommodate the equipment; and,

(d) The weight of the client does not exceed manufacturer's weight capacity; and,

(e) The client has demonstrated an ability to utilize the standing aid independently or with caregiver; and,

(f) The client has demonstrated compliance with other programs; and,

(g) The client has demonstrated a successful trial period in a monitored setting; and,

(h) The client does not have access to equipment from another source.

(5) Sidelyers and custom positioners must meet the following criteria in addition to the criteria in Table 122-0365:

(a) The client must be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and,

(b) The client must be following a therapy program initially established by a physical or occupational therapist; and,(c) The home must be able to accommodate the equipment; and,

(d) The caregiver and/or family are capable of using the equipment appropriately.

(6) Criteria for Specific Accessories:

(a) A back support may be covered when a client:

(A) Needs for balance, stability, or positioning assistance; or

(B) Has extensor tone of the trunk muscles; or

(C) Needs for support while being raised or while completely standing.

(b) A tall back may be covered when:

(A) The client is over 5'11" tall; and,

(B) The client has no trunk control and needs additional support; or,

(C) The client has more involved need for assistance with balance, stability, or positioning.

(c) Hip guides may be covered when a client:

(A) Lacks motor control and/or strength to center hips; or

(B) Has asymmetrical tone which causes hips to pull to one side; or,

(C) Has spasticity; or

(D) Has low tone or high tone; or

(E) Need for balance, stability, or positioning assistance.

(d) A shoulder retractor or harness may be covered when:

(A) Erect posture cannot be maintained without support due to lack of motor control or strength; or

(B) Has kyphosis; or

(C) Presents strong flexor tone.

(e) Lateral supports may be covered when a client:

(A) Lacks trunk control to maintain lateral stability; or

(B) Has scoliosis which requires support; or

(C) Needs a guide to find midline.

(f) A headrest may be covered when a client:

(A) Lacks head control and cannot hold head up without support; or,

(B) Has strong extensor thrust pattern that requires inhibition.

(g) Independent adjustable knee pads may be covered when a client:

(A) Has severe leg length discrepancy; or,

(B) Has contractures in one leg greater than the other.

(h) An actuator handle extension may be covered when a client:

(A) Has no caregiver; and

(B) Is able to transfer independently into standing frame; and

(C) Has limited range of motion in arm and/or shoulder and cannot reach actuator in some positions.

(i) Arm troughs may be covered when a client:

(A) Has increased tone which pulls arms backward so hands cannot come to midline; or

(B) Has poor tone, strength, or control is so poor that causes arms to hang out to side and backward, causing pain and risking injury; or,

(C) Needs for posture.

(j) A tray may be covered when proper positioning cannot be met by other accessories;

(k) Abductors may be covered to reduce tone for proper alignment and weight bearing;

(l) Sandals (shoe holders) may be covered when a client:

(A) Has dorsiflexion of the foot or feet; or

(B) Has planar flexion of the foot or feet; or

(C) Has eversion of the foot or feet; or

(D) Needs for safety.

(7) Table 122-0365. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0400

Pressure Reducing Support Surfaces

(1) Definitions:

(a) Comprehensive Ulcer Treatment Program — generally includes:

(A) Education of the client and caregiver on the prevention and/or management of pressure ulcers;

(B) Regular assessment by a nurse, prescribing practitioner, or other licensed health care practitioner (usually at least weekly for a client with a stage III or IV ulcer);

(C) Appropriate turning and positioning, including instruction and frequency intervals;

(D) Appropriate wound care (for a stage II, III or IV ulcer);

(E) Appropriate management of moisture/incontinence;

(F) Nutritional assessment and intervention consistent with the overall plan of care.

(b) Mattress Overlay — Device designed to be placed on top of a standard hospital or home mattress;

(c) Mattress Replacement — Device that takes the place of the standard hospital or home mattress;

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(d) Bottoming Out — The finding that an outstretched hand can readily palpate the bony prominence (coccyx or lateral trochanter) when it is placed palm up beneath the undersurface of the mattress or overlay and in an area under the bony prominence. This bottoming out criterion should be tested with the client in the supine position with the head flat, in the supine position with the head slightly elevated (no more than 30 degrees) and in the sidelying position;

(e) The staging of pressure ulcers used in this policy is as follows:

(A) Stage 1 — Non-blanchable erythema of intact skin;

(B) Stage 2 — Partial thickness skin loss involving epidermis and/or dermis;

(C) Stage 3 — Full thickness skin loss involving damage or necrosis of subcutaneous tissue that may extend down to, but not through, underlying fascia;

(D) Stage 4 — Full thickness skin loss with extensive destruction, tissue necrosis or damage to muscle, bone or supporting structures.

(f) Home — Adult foster care, assisted living facility, residential care facilities, or private residence.

(2) Group 1

(a) Indications and Coverage — Covered if the client:

(A) Does not bottom out, and;

(B) Has a care plan established by the prescribing practitioner or other licensed health care practitioner directly involved in the client's care, which must include a comprehensive ulcer treatment program (see section (1)), and;

(C) Meets Group 1:

(i) Criterion 1, or;

(ii) Criterion 2 or 3 and at least one of criteria 4)through 7)

(b) Criterion:

(A) 1 — Completely immobile (e.g., client cannot make changes in body position without assistance);

(B) 2 — Limited mobility (e.g., client cannot independently make changes in body position significant enough to alleviate pressure);

(C) 3 — Any stage pressure ulcer on the trunk or pelvis;

(D) 4 — Impaired nutritional status;

(E) 5 — Fecal or urinary incontinence;

(F) 6 — Altered sensory perception;

(G) 7 — Compromised circulatory status.

(c) Documentation: Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider and submitted with the prior authorization (PA) request;

(d) Table 122-0400-1.

(A) The following additional criteria applies to codes A4640, E0180, and E0181 — An air pump or blower which provides:

(i) Either sequential inflation and deflation of air cells or a low interface pressure throughout the overlay, and;

(ii) Inflated cell height of the air cells through which air is being circulated is 2.5" or greater, and;

(iii) Adequate client lift, reduced pressure, and prevents bottoming out, due to the height of the air chambers, proximity of the air chambers to one another, frequency of air cycling and air pressure.(B) The following additional criteria applies to codes E0186, E0187, and E0196:

(i) Total height of 5" or greater, durable waterproof cover and can be placed directly on a hospital bed frame, and;

(ii) Non-powered pressure reducing mattress.

(3) Group 2:

(a) Indication and Coverage — Covered when all of the following are met:

(A) The client is in a home setting or nursing facility; and,

(B) The client is confined to a bed or chair as a result of severely limited mobility; and

(C) In the home setting, a willing and trained adult caregiver is available to assist the client with:

(i) Activities of daily living;

(ii) Fluid balance;

(iii) Skin care;

(iv) Repositioning;

(v) Recognition and management of altered mental status;

(vi) Dietary needs;

(vii) Prescribed treatments; and

(viii) Management of the pressure reducing support surface, and;

(D) A prescribing practitioner coordinates the home treatment regimen, which includes the use of other treatment modalities, where applica-

ble, including, but not limited to nursing care, appropriate nutrition, and the creation of a tissue-growth environment and;

(E) The client meets:

(i) Criterion 1 and 2 and 3; or

(ii) Criterion 4; or

(iii) Criterion 5 or 6.

(b) Criterion definitions:

(A) 1 — Multiple stage II pressure ulcers located on the trunk or pelvis;

(B) 2 — Client has been on a comprehensive ulcer treatment program for at least 30 consecutive days which has included the use of an appropriate group I support surface;

(C) 3 — The ulcers have worsened or remained the same over the last 30 days;

(D) 4 — Large or multiple stage III or IV pressure ulcer(s) on the trunk or pelvis;

(E) 5 — Recent myocutaneous flap or skin graft for a pressure ulcer on the trunk or pelvis (surgery within the past 60 days). All other criteria is waived for this condition;

(F) 6 — The client has been on a Group 2 or 3 support surface immediately prior to a recent discharge from a hospital or nursing facility (discharge within the past 30 days).

(c) The allowable rental fee includes all equipment, supplies, and service appropriate for the effective use of the support surface;

(d) Not covered for the prevention of pressure ulcers or pain control;

(e) Documentation:

(A) For clients in the home setting or nursing facility, the following documentation must be submitted with the initial request:

(i) A prescribing practitioner prescription;

(ii) An evaluation done by the resident care manager (for clients in a nursing facility) or licensed health professional, which includes:

(I) A description of the underlying condition — diagnosis, prognosis, rehabilitation potential and nutritional status;

(II) A comprehensive assessment and evaluation of the individual after conservative treatment with other pressure reducing products or methods has been tried without success; and

(III) A statement of goals for stepping down the intensity of support therapy.

(iii) A summary of a nutritional assessment by a registered dietician (for clients in a nursing facility) or licensed health professional, within the last 90 days;

(iv) Client's height and weight, may approximate if unable to obtain;

(v) Pre-albumin and total lymphocyte count values within the last 60 days;

(vi) Written description of pressure ulcers, which includes:

(I) Numbers;

(II) Locations;

(III) Sizes; and

(IV) Stages.

(vii) Dated photographs of pressure ulcers;

(viii) Pressure ulcers on extremities must have documentation of the reason why pressure cannot be relieved by other methods. This simply means that the medical appropriateness for special pressure reducing products must be proven and documented.

(B) For clients who are not in a nursing facility, the following documentation must be submitted in addition to the previous documentation for the initial request:

(i) Documentation that the client is receiving skilled wound care nursing services either through a home health agency or through the private duty nurse program;

(ii) A copy of the comprehensive ulcer treatment program (see section (1) of this rule for definition), which is client specific and includes but is not limited to the following:

(I) The number of hours per 24-hour period that the pressure reducing support surface will be utilized;

(II) Any contributing factors, such as mobility status, impaired sensory perception, circulatory status, etc.;

(III) Treatment that includes healing;

(IV) Documentation that a trained caregiver is willing and able to assist or supervise in carrying out the prescribed treatment regimen and to support the use and management of the pressure reducing support surface; and,

(V) A copy of the operative report and care plan for clients who have had a recent myocutaneous flap or skin graft.

(C) For subsequent requests, submit the following documentation:

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- (i) Dated photographs of pressure ulcers;
- (ii) Copies of skin flow sheets;
- (iii) Copies of any pertinent notes in the progress records;
- (iv) Copies of records supporting changes in laboratory values or nutritional status;
- (v) Written description of pressure ulcers by nurse, prescribing practitioner, or other licensed health care practitioner, including:
 - (I) Numbers;
 - (II) Locations;
 - (III) Sizes; and
 - (IV) Stages.
- (vi) Copy of current care plan.
- (D) The payment of pressure reducing support surfaces will not be renewed if:

- (i) Client is assessed as being a low risk for further breakdown; or
- (ii) Care plan goals are not being met.
- (E) The following additional criteria applies to codes for powered pressure reducing mattresses/overlays (E0193, E0277, and E0372):

(i) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress/overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is:

- (I) 5" or greater for mattresses;
- (II) 3" or greater for overlays.

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses/overlays), and air pressure provide adequate client lift, reduce pressure and prevent bottoming out;

(iv) A surface designed to reduce friction and shear.

(F) The following additional criteria applies to codes for non-powered pressure reducing mattresses/overlays (E0371 and E0373):

(i) Height and design of individual cells provide significantly more pressure reduction than a Group 1 mattress/overlay and prevent bottoming out;

(ii) Total height of:

- (I) 5" or greater for mattresses;
- (II) 3" or greater for overlays.

(iii) A surface designed to reduce friction and shear; and

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces.

(4) Group 3 – Air-fluidized beds are not covered.

(5) Table 122-0400-1

(6) Table 122-0400-2

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0475

Therapeutic Shoes for Diabetics

(1) Indications and Coverage:

(a) For each client, coverage of the footwear and inserts is limited to one of the following within one calendar year:

(A) One pair of custom — molded shoes (including inserts provided with such shoes) and two additional pair of inserts; or

(B) One pair of extra-depth shoes (not including inserts provided with such shoes) and three pairs of inserts.

(b) An individual may substitute modification(s) of custom molded or extra-depth shoes instead of obtaining one pair of inserts, other than the initial pair of inserts. The most common shoe modifications are:

- (A) Rigid rocker bottoms;
- (B) Roller bottoms;
- (C) Metatarsal bars;
- (D) Wedges;
- (E) Offset heels.

(c) Payment for any expenses for the fitting of such footwear is included in the fee;

(d) Payment for the certification of the need for therapeutic shoes and for the prescription of the shoes (by a different practitioner from the one

who certifies the need for the shoes) is considered to be included in the visit or consultation in which these services are provided;

(e) Following certification by the physician managing the client's systemic diabetic condition, a podiatrist or other qualified practitioner, knowledgeable in the fitting of the therapeutic shoes and inserts, may prescribe the particular type of footwear necessary.

(2) Documentation:

(a) The practitioner who is managing the individual's systemic diabetic condition documents that the client has diabetes and one or more of the following conditions:

(A) Previous amputation of the other foot, or part of either foot;

(B) History of previous foot ulceration of either foot;

(C) History of pre-ulcerative calluses of either foot;

(D) Peripheral neuropathy with evidence of callus formation of either foot;

(E) Foot deformity of either foot; or

(F) Poor circulation in either foot; and

(G) Certifies that the client is being treated under a comprehensive plan of care for his or her diabetes and that he or she needs therapeutic shoes.

(b) Documentation of the above criteria, may be completed by the prescribing practitioner or supplier but must be reviewed for accuracy of the information and signed and dated by the certifying physician to indicate agreement and must be kept on file by the DME supplier.

(3) **Table 122-0475** [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0560

Urological Services

(1) Urinary catheters and external urinary collection devices are covered to drain or collect urine for a client who has permanent urinary incontinence or permanent urinary retention.

(2) Permanent urinary retention is defined as retention that is not expected to be medically or surgically corrected within three months.

(3) This does not require a determination that there is no possibility that the client's condition may improve sometime in the future.

(4) If the medical record, including the judgement of the attending prescribing practitioner, indicates the condition is of long and indefinite duration (ordinarily at least three months), the test of permanence is considered met.

(5) For adults, Medicare criteria must be met.

(6) Intermittent Irrigation of Indwelling Catheters: Supplies are covered when they are used on an as needed (non-routine) basis in the presence of acute obstruction of the catheter.

(7) Continuous Irrigation of Indwelling Catheters: Supplies are covered if there is a history of obstruction of the catheter and the patency of the catheter cannot be maintained by intermittent irrigation in conjunction with medically necessary catheter changes.

(8) For usage exceeding the stated limits per DMERC Region D Supplier Manual, follow Medicare guidelines.

(9) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(b) When billing for quantities of supplies greater than those described in the policy, documentation supporting the medical appropriateness for the higher utilization must be on file in the DME provider's records.

(10) **Table 122-0560**. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

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410-122-0580

Bath Supplies

(1) Indications and Coverage — A rehab shower/commode chair is covered when all of the following criteria are met:

(a) Client is unable to use a standard shower chair/bench due to a musculoskeletal condition;

(b) Client has positioning, trunk stability or neck support needs that a standard shower chair/bench cannot provide;

(c) The home (shower) can accommodate a rehab/shower chair; and,

(d) Less costly alternatives have been considered and ruled out.

(2) Documentation:

(a) The prescription and medical justification for the equipment must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(b) Documentation of MSRP must be kept on file by the DME supplier.

(c) For a rehab/shower chair, submit documentation to support the above criteria, including a list of equipment available for client's use.

(3) Table 122-0580 [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0630

Incontinent Supplies

(1) Category I Incontinent Supplies may be covered:

(a) When medically appropriate; and

(b) For amounts above the limit shown in **Table 122-0630-1**, when documentation supports why the higher amount is medically appropriate; and

(c) For up to 220 units per month, when the documentation does not support the request for the additional quantity;

(2) Category II Incontinent Supplies may be covered:

(a) For fecal or urinary incontinence when:

(A) A documented bowel and bladder retraining program is present;

and,

(B) A client has partial ability to be continent; and

(C) Treatment failure with other, less-expensive products is documented; or,

(a) For autism with tactile aversion; or

(b) For other medically appropriate reasons.

(c) Category II Incontinent Supplies are not separately payable with any other incontinent supplies.

(3) Category III Underpads:

(a) Disposable underpads (T4541 and T4542) are limited to a maximum of 150 per month and are separately payable only with Category I Incontinent Supplies.

(b) Reusable/washable underpads (T4537 and T4540) are limited to a maximum of eight per 12 months and are separately payable only with Category I Incontinent Supplies.

(c) T4541 and T4542 are not separately payable with T4537 and T4540 for the same dates of service or anticipated coverage period. For example, if a provider bills and is paid for eight reusable/washable underpads on a given date of service, a client would not be eligible for disposable underpads for the subsequent 12 months.

(4) Category IV Washable Protective Underwear is not separately payable with Category I Incontinent Supplies for the same dates of service or anticipated coverage period. For example, if a provider bills and is paid for 12 units of T4536 on a given date of service, a client would not be eligible for Category I Incontinent Supplies for the subsequent 12 months.

(5) Incontinent supplies are not covered:

(a) For nocturnal enuresis; or,

(b) For children under the age of three.

(6) A provider may only submit A4335 when there is no definitive Healthcare Common Procedure Coding System (HCPCS) code that meets the product description.

(7) Submit the following documentation with the request for prior authorization:

(a) For all categories, the medical reason for incontinence; and,

(b) In addition, for Category II Incontinent Supplies only:

(A) Bowel and bladder retraining program (this can be in the form of a care plan); and,

(B) Medical proof that other products have been tried and failed; and,

(C) Documented progress of achieving or maintaining goals of bowel and bladder retraining program.

(8) Quantity specification:

(a) For prior authorization (PA) and reimbursement purposes, a unit count for Category I – IV codes is considered as single or individual piece of an item and not as multiple quantity;

(b) If an item quantity is listed as number of boxes, cases or cartons, the total number of individual pieces of that item contained within that respective measurement (box, case or carton) must be specified in the unit column on the PA request. See table 122-0630-2;

(c) For gloves (Category V Miscellaneous), 100 gloves equal one unit.

(9) Table 122-0630-1

(10) Table 122-0630-2

ED. NOTE: Tables referenced are available from the agency.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 64-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

410-122-0720

Pediatric Wheelchairs

(1) Indications and Coverage:

(a) The purchase, rental, or modification of a pediatric wheelchair is covered when:

(A) The client's condition is such that without the use of a wheelchair the client would be bed-confined or confined to a non-mobile chair; and

(B) The client is not functionally ambulatory and the wheelchair is necessary to function within the home.

(b) The Office of Medical Assistance Programs (OMAP) will not pay for back-up chairs. Only one wheelchair will be maintained, rented, repaired, purchased or modified for each client to meet the medical appropriateness; however, if a client's current wheelchair no longer meets the medical appropriateness or repair to the wheelchair exceeds replacement cost, a new wheelchair may be authorized. If a client has a wheelchair that meets his/her medical needs regardless of who has obtained it, OMAP will not provide another chair;

(c) One month's rental of a wheelchair is covered if a client-owned wheelchair is being repaired;

(d) Living quarters must be able to accommodate the requested wheelchair. OMAP is not responsible for adapting living quarters;

(e) Backpacks, accessory bags, clothing guards, awnings, custom colors, wheelchair gloves, upgrades to allow performance of leisure or recreational activities, and any other accessory that is not primarily medical in nature are not covered. (f) Do not use E1399 for manual wheelchair base;

(g) Reimbursement for wheelchair codes includes all labor charges involved in the assembly and delivery of the wheelchair and all adjustments for three months after date the client takes delivery. Reimbursement also includes emergency services, education and on-going assistance with use of the wheelchair for three months after the client takes delivery.

(2) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the treating prescribing practitioner (for example, CMN) must be kept on file by the DME provider;

(b) Submit list of all DME available or being used to meet the client's needs when requesting prior authorization (PA);

(c) Submit Wheelchair and Seating Prescription and Justification form (OMAP 3125) or reasonable facsimile, with recommendations for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, prescribing practitioner, or registered nurse, when requesting a PA. The evaluation must include client's functional ambulation status in their customary environment.

(3) Pediatric Tilt-in Space:

(a) Indications and coverage for tilt-in space: clients must meet the criteria for a wheelchair (manual or powered), plus the following:

(A) Dependent for transfers; and

(B) Spends a minimum of four hours a day continuously in a wheelchair; and

(C) Plan of care addresses the need to change position at frequent intervals and not be left in the tilt position most of the time; and

(D) One of the following:

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- (i) High risk of skin breakdown;
 - (ii) Poor postural control, especially of the head and trunk;
 - (iii) Hyper/hypotonia;
 - (iv) Requires frequent change of position with poor upright sitting.
- (b) Documentation must support the above criteria.
- (4) Table 122-0720

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05

Adm. Order No.: OMAP 95-2004(Temp)

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 12-30-04 thru 3-15-05

Notice Publication Date:

Rules Amended: 410-124-0000

Rules Suspended: 410-124-0000(T)

Subject: The Transplant Services rules govern Office of Medical Assistance Programs' (OMAP) payment for transplant services provided to clients. OMAP temporarily amended 410-124-0000 to continue limited coverage for second solid organ transplants, while maintaining the criteria that affords Medical Director review for exceptions and mitigating medical circumstances to practice guidelines including second solid organ transplants. OMAP is re-filing the temporary certificate and rule to replace incorrect rule text.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-124-0000

Transplant Services

(1) The Office of Medical Assistance Programs (OMAP) will make payment for prior authorized and emergency transplant services identified in these rules as covered for eligible clients receiving the Basic Benefit Health Care Package and when OMAP transplant criteria described in OAR 410-124-0010 and 410-124-0060 through 410-124-0160 is met. All other Benefit Packages do not cover transplant.

(2) OMAP will only prior authorize and reimburse for transplants if:

(a) All OMAP criteria are met; and

(b) Both the transplant center's and the specialist's evaluations recommend that the transplant be authorized; and

(c) The ICD-9-CM diagnosis code(s) and CPT transplant procedure code(s) are paired on the same currently funded line on the Prioritized List of Health Services adopted under OAR 410-141-0520.

(3) Simultaneous multiple organ transplants are covered only if specifically identified as paired on the same currently funded line on the Oregon Health Plan (OHP) Prioritized List of Health Services whether the transplants are for the same underlying disease or for unrelated, but concomitant, underlying diseases.

(4) Not Covered Transplant Services: The following types of transplants are not covered by OMAP:

(a) Transplants which are considered experimental or investigational or which are performed on an experimental or investigational basis, as determined by OMAP;

(b) Transplant services which are contraindicated, as described in OAR 410-124-0060 through 410-124-0160;

(c) Transplants which have not been prior authorized for payment by OMAP or the client's managed health care plan;

(d) Transplants which do not meet the guidelines for an emergency transplant in OAR 410-124-0040;

(e) Transplants which are not described as covered in OAR 410-141-0480 and 410-141-0520.

(5) Selection of Transplant Centers: Transplant services will be reimbursed only when provided in a transplant center that provides quality services, demonstrates good patient outcomes and compliance with all OMAP facility criteria. The transplant center must have provided transplant services for a period of at least two years and must have completed a minimum of 12 cases in the most recent year. The patient-and-graft-survival rates must be equal to or greater than the appropriate standard indicated in this rule. A transplant center which has had at least two years of experience in transplantation of any solid organ (heart, liver, lung, pancreas) and which has met or exceeded the appropriate standards may be considered for reimbursement for the transplantation of other solid organs and/or autologous or allogeneic bone marrow transplantation:

(a) An experienced and proficient transplant team and a well established transplant support infrastructure at the same physical location as the

transplant service is required for transplant services rendered to OMAP clients. These transplant criteria are crucial to successful transplant outcome. Therefore, consortia will not be approved or contracted with for the provision of transplant services for OMAP clients. No OMAP transplant contract, prior approval or reimbursement will be made to consortia for transplant services where, as determined by OMAP, there is no assurance that the individual facilities that make up the consortia independently meet OMAP criteria. OMAP transplant criteria must be met individually by a facility to demonstrate substantial experience with the procedure;

(b) Once a transplant facility has been approved and contracted for OMAP transplant services, it is obliged to report immediately to OMAP any events or changes that would affect its approved status. Specifically, a transplant facility is required to report, within a reasonable period of time, any significant decrease in its experience level or survival rates, the departure of key members of the transplant team or any other major changes that could affect the performance of transplants at the facility. Changes from the terms of approval may lead to prospective withdrawal of approval for OMAP coverage of transplants performed at the facility;

(c) Fully Capitated Health Plans (FCHPs) that contract with non-OMAP contracted facilities for Basic Health Care Package clients will develop and use appropriate transplant facility criteria to evaluate and monitor for quality services at the transplant facility;

(d) Transplant centers which have less than two years experience in solid organ transplant may be reimbursed, at OMAP's discretion, for allogeneic or autologous bone marrow transplants upon completion of two years of experience in bone marrow transplantation with patient survival rates equal to or exceeding those defined in section (5) of this rule;

(e) OMAP will discontinue the contract with a transplant center when the graft and/or survival rates fall below the standards indicated in this rule for a period of two consecutive years.

(6) Standards for Transplant Centers:

(a) Heart, heart-lung and lung transplants:

(A) Heart: One-year patient survival rate of at least 80%;

(B) Heart-Lung: One-year patient survival rate of at least 65%;

(C) Lung: One-year patient survival rate of at least 65%.

(b) Bone Marrow (autologous and allogeneic), peripheral stem cell (autologous and allogeneic) and cord blood (allogeneic) transplants: One-year patient survival rate of at least 50%;

(c) Liver transplants: One year patient survival rate of at least 70% and one year graft survival rate of at least 60%;

(d) Simultaneous pancreas-kidney and pancreas-after-kidney transplants: One year patient survival rate of at least 90% and one year graft survival rate of at least 60%;

(e) Kidney transplants: One year patient survival rate of at least 92% and one year graft survival rate of at least 85%.

(7) Selection of transplant centers by geographic location: If the services are available in the state of Oregon, reimbursement will not be made to out-of-state transplant centers. Out-of-state centers will be considered only if:

(a) The type of transplant required is not available in the state of Oregon and/or the type of transplant (for example, liver transplant) is available in the state of Oregon but the Oregon transplant center does not provide that type of transplant for all clients or all covered diagnoses, (e.g., pediatric transplants); and

(b) An in-state transplant center requests the out-of-state transplant referral; and

(c) An in-state transplant facility recommends transplantation based on in-state facility and OMAP criteria; or

(d) It would be cost effective as determined by OMAP. For example, if the transplant service is covered by the client's benefit package and the client's primary insurer (i.e., Medicare) requires the use of an out-of-state transplant center; or

(e) It is a contiguous, out-of-state transplant center that has a contract or special agreement for reimbursement with OMAP.

(8) Professional and other services will be covered according to administrative rules in the applicable provider guides.

(9) Reimbursement for covered transplants and follow-up care for transplant services is as follows:

(a) For transplants for fee-for-service or Primary Care Case Manager (PCCM) clients:

(A) Transplant facility services — by contract with OMAP;

(B) Professional services — at OMAP maximum allowable rates;

(b) For emergency services, when no special agreement has been established, the rate will be:

(A) 75% of standard inpatient billed charge; and

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(B) 50% of standard outpatient billed charge; or

(C) The payment rate set by the Medical Assistance program of the state in which the center is located, whichever is lower.

(c) For clients enrolled in FCHPs, reimbursement for transplant services will be by agreement between the FCHP and the transplant center.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 8-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 22-1990, f. & cert. ef. 7-17-90; HR 37-1990, f. 11-6-90, cert. ef. 11-9-90; HR 17-1992, f. & cert. ef. 7-1-92; HR 4-1994, f. & cert. ef. 2-1-94; HR 19-1995, f. 9-28-95, cert. ef. 10-1-95; HR 17-1997, f. & cert. ef. 7-11-97; OMAP 18-2000 f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 34-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 92-2004(Temp), f. & cert. ef. 12-10-04 thru 3-15-05; OMAP 95-2004(Temp), f. & cert. ef. 12-30-04 thru 3-15-05

Adm. Order No.: OMAP 96-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 12-1-04

Rules Amended: 410-121-0320

Subject: 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. Rule 410-121-0320 is permanently revised to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2005 through and including December 1, 2005. Current OMAC lists are available on OMAP's website.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0320

Oregon Maximum Allowable Cost (OMAC)

(1) The Oregon maximum allowable cost, or the maximum amount that the Office of Medical Assistance Programs (OMAP) will reimburse for prescribed drugs, is determined by OMAP's claims processing company, First Health Services. First Health Services determines the maximum allowable cost on selected multiple-source drug designation when a bio-equivalent drug product is available from at least two wholesalers serving the State of Oregon.

(2) First Health Services generates and maintains all official OMAC lists and provides a copy of each list to OMAP. OMAC lists are 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. For example: The OMAC list, January 1, 2003, includes the amounts OMAP will reimburse for products provided during the month of January 2003; the list, February 1, 2003, covers the month of February 2003, etc.

(3) OMAP includes in rule by reference the OMAC lists for February 1, 2002, March 1, 2002, April 1, 2002, July 1, 2002, August 1, 2002, September 1, 2002, October 1, 2002, November 1, 2002, December 1, 2002, January 1, 2003, February 1, 2003, March 1, 2003, April 1, 2003, May 1, 2003, June 1, 2003, July 1, 2003, August 1, 2003, September 1, 2003, October 1, 2003, November 1, 2003, and December 1, 2003.

(4) OMAP includes in rule by reference the OMAC lists for January 1, 2004, February 1, 2004, March 1, 2004, April 1, 2004, May 1, 2004, June 1, 2004, July 1, 2004, August 1, 2004, September 1, 2004, October 1, 2004, November 1, 2004 and December 1, 2004.

(5) OMAP includes in rule by reference the OMAC lists for January 1, 2005, February 1, 2005, March 1, 2005, April 1, 2005, May 1, 2005, June 1, 2005, July 1, 2005, August 1, 2005, September 1, 2005, October 1, 2005, November 1, 2005 and December 1, 2005.

(6) Current OMAC lists are available for review and/or downloading on OMAP's website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/ Future lists, referenced in this rule, will be available and posted to OMAP's website upon receipt from First Health Services.

(7) The OMAC list does not apply if a prescriber certifies that a single-source (brand) drug is medically necessary.

Stat. Auth.: ORS 184.750, 184.770, 411 & 414

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-29-89, cert. ef. 10-1-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-016-0340; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 6-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 17-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 28-

2002(Temp), f. 6-28-02, cert. ef. 7-1-02 thru 12-1-02; OMAP 35-2002(Temp), f. & cert. ef. 8-14-02 thru 1-1-03; OMAP 38-2002(Temp), f. & cert. ef. 8-30-02 thru 1-15-03; OMAP 40-2002(Temp), f. & cert. ef. 10-1-02 thru 2-15-03; OMAP 68-2002(Temp), f. & cert. ef. 11-15-02 thru 4-1-03; OMAP 7-2003, f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 52-2003, f. & cert. ef. 8-5-03; OMAP 3-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 96-2004, f. 12-30-04, cert. ef. 1-1-05

Adm. Order No.: OMAP 97-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 12-1-04

Rules Adopted: 410-121-0032

Subject: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. 410-121-0032 is permanently adopted to establish administrative rules governing the process and procedures of establishment of Pharmaceutical manufacturer's supplemental rebates. OMAP has approval from the Centers of Medicare and Medicaid Services (CMS) to establish manufacturers supplemental rebates.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0032

Supplemental Rebate Agreements

(1) Supplemental Rebate Agreements are negotiated for specific drug products between the Office of Medical Assistance Programs (OMAP) and pharmaceutical manufacturers. Manufacturers may submit Supplemental Rebate offers for consideration to include their drug(s) on the Practitioner's-Managed Prescription Drug Plan (PMPDP) Plan Drug List (PDL), OAR 410-121-0030:

(a) Manufacturers must submit Supplemental Rebate Agreements on the agreement template approved by the Centers for Medicare and Medicaid Services (CMS). This template is available on the Department of Human Services Web site;

(b) "Supplemental Rebates" are OMAP and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Rehabilitation Act (OBRA 90) and the federal rebate program;

(c) "Net Price" is the ingredient reimbursement amount minus the CMS Basic Rebate and CMS Consumer Price Index (CPI) Rebate minus the Supplemental Rebate;

(d) "CMS Basic Rebate" is the quarterly payment by a manufacturer pursuant to the manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with the Social Security Act, section 1927(c)(3), 42 USC 1396r-8(c)(1), and 42 USC 1396r-8(c)(3);

(e) "CMS CPI Rebate" is the quarterly payment by the manufacturer pursuant to the manufacturer's CMS Medicaid Drug Rebate Agreement, made in accordance with 42 USC 1396r-8(c)(2).

(2) Manufacturers may offer Supplemental Rebates by submitting the completed template to OMAP:

(a) Manufacturers will be allowed to submit Supplemental Rebate offers for drugs recommended for inclusion on the PDL by the Health Resources Commission;

(b) Drugs will be considered for addition to the appropriate PDL class when the Net Price is equal to or less than the benchmark drug estimated acquisition cost as determined in OAR 410-121-0030(4).

(3) Manufacturers may submit a Supplemental Rebate Agreement offer by:

(a) Obtaining the CMS-approved template from the DHS website; and

(b) Submitting the completed Supplemental Rebate Agreement with attachment B listing the drugs offered to OMAP. The manufacturers may submit up to three separate attachment B drug lists with the Supplemental Rebate Agreement offer.

(4) Acceptance of the offer:

(a) OMAP will notify the manufacturer of the acceptance of the offer(s);

(b) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and added to the PMPDP Plan Drug List by the Administrative rule process.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.965

Hist.: OMAP 97-2004, f. 12-30-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

Adm. Order No.: OMAP 1-2005(Temp)
Filed with Sec. of State: 1-14-2005
Certified to be Effective: 1-14-05 thru 6-1-05
Notice Publication Date:

Rules Amended: 410-121-0157

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-121-0157 is amended to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #134, dated November 18, 2004.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and 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. OMAP includes in rule by reference, Release #134, dated November 18, 2004, and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer. This information is available on the Department of Human Services' website: <http://www.dhs.state.or.us/policy/healthplan/rules/>, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 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. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05

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

Adm. Order No.: MHD 1-2005(Temp)

Filed with Sec. of State: 1-3-2005

Certified to be Effective: 1-3-05 thru 7-1-05

Notice Publication Date:

Rules Adopted: 309-032-1240, 309-032-1245, 309-032-1250, 309-032-1255, 309-032-1260, 309-032-1265, 309-032-1270, 309-032-1275, 309-032-1280, 309-032-1285, 309-032-1290, 309-032-1295, 309-032-1300, 309-032-1305

Subject: Adopts temporary rulemaking as directed by the Legislature in the 2003 Legislative Budget Note included in House Bill 5030 to add standards for continuous care coordination beyond the services that residential, day, and community mental health treatment providers currently provide by: adopting 309-032-1240 through 309-032-1305, relating to Standards for Intensive Community-Based Treatment and Support Services.

Utilizing the temporary rule process allows the Department of Human Services to begin the process to assess a provider's compliance with the Intensive Community-Based Treatment and Support Services standards in January 2005.

Rules Coordinator: Christina Hartman—(503) 731-4405

309-032-1240

Purpose

These rules prescribe standards and procedures for intensive community-based treatment and support services within the continuum of mental health care for children with serious emotional disorders and their families. The planning and provision of intensive community-based treatment and support services must promote collaboration between families, providers, and community resources as equal partners in determining how best to meet the mental health needs of the child and family. These rules set standards for the provision of intensive psychiatric and mental health services and supports that are individualized, comprehensive, coordinated, child-centered, family-driven and culturally competent. The planning and provision of intensive community-based treatment and support services must ensure that the child and family are served in the most natural setting possible and disruptions to the child's school and home life are minimized. The goals of the service planning process are to utilize child and family strengths in meeting needs and to be flexible and responsive to the type, intensity, location, and duration of psychiatric and mental health services and supports that would benefit the child and family.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1245

Definitions

Definitions as used in these rules:

(1) "Behavior management policy" means the written policies and procedures adopted by the provider that describe the behavioral interventions to be used by the provider to manage maladaptive or problem behavior of a child who is receiving services from the provider.

(2) "Care coordination" means a process oriented activity that provides ongoing coordination of efforts on behalf of children and families with multiple needs who would benefit from a higher level of service intensity. Care coordination includes: facilitating communication between the family, community resources, and involved child-serving providers and agencies; organizing, facilitating and participating in team meetings at which needs and strengths are identified and safety planning occurs; and providing for continuity of care by creating linkages to and monitoring transitions between levels of care and transitions for older youth to the adult service system.

(3) "Case management" means a goal oriented activity that assists children and families by: assessing needs; identifying, brokering and linking to community services and resources; assisting in obtaining entitlements; advocating on behalf of families; providing support and consultation to families; facilitating access to intensive services; and providing crisis prevention and intervention services.

(4) "Chemical restraint" means the administration of medication for the acute management of uncontrolled behavior. Chemical restraint is different from the use of medication for treatment of symptoms of severe emo-

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tional disturbances and disorders. Chemical restraint of children is prohibited.

(5) "Child" or "Children" means a person or persons under the age of 18, or for those with Medicaid eligibility under the age of 21, who receives ICTS services.

(6) "Child and family team" means those individuals who are responsible for creating, implementing, reviewing, and revising a Service Coordination Plan. At minimum the team must be comprised of the family, care coordinator, and child when appropriate. The team will also include involved child-serving providers and agencies and other natural, formal, and informal supports as identified by the family.

(7) "Clinical supervision" means the documented oversight by a Clinical Supervisor of mental health treatment services provided by Qualified Mental Health Professionals, Qualified Mental Health Associates, or mental health paraprofessionals. Clinical Supervision includes evaluating the effectiveness of the mental health treatment services provided. Clinical Supervision is performed on a regular, routine basis.

(8) "Clinical Supervisor" means a Qualified Mental Health Professional with two years post-graduate clinical experience in a mental health treatment setting. The clinical supervisor, as documented by the provider, operates within the scope of his or her practice or licensure, and demonstrates the competency to oversee and evaluate the mental health treatment services provided by other Qualified Mental Health Professionals, Qualified Mental Health Associates, or mental health paraprofessionals.

(9) "Community Mental Health Program" or "CMHP" means an organization that provides all services for persons with mental or emotional disorders, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an omnibus contract with the Department of Human Services.

(10) "Department" means the Department of Human Services.

(11) "Discharge criteria" means the diagnostic, behavioral, and functional indicators to be met to complete service provision as documented in the child's mental health treatment plan.

(12) "Discharge summary" means written documentation of the last service contact with the child, the diagnosis at enrollment, and a summary statement that describes the effectiveness of treatment modalities and progress, or lack of progress, toward treatment objectives as documented in the mental health treatment plan. The discharge summary also includes the reason for discharge, changes in diagnosis during treatment, current level of functioning, prognosis, and recommendations for further treatment. Discharge summaries are completed no later than 30 calendar days following a planned discharge and 45 calendar days following an unplanned discharge.

(13) "DSM" means the text revision of the 4th edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-IV-TR) published by the American Psychiatric Association.

(14) "Evidence-based practice" or "EBP" means clinical and preventive mental health services that are based on the most current information from generally accepted scientific research.

(15) "Family" means the natural parents, siblings, other relatives, foster parents, legal guardians, caregivers and other primary relations to the child whether by blood, adoption, legal or social relationship.

(16) "Family support" means the provision of supportive services that include: support to caregivers at community meetings; assistance to families in system navigation and managing multiple appointments; supportive home visits; peer parent mentoring and coaching; advocacy; and furthering efforts to develop natural and informal community supports.

(17) "Intensive community-based treatment and support services" or "ICTS" means a specialized set of in-home and community-based supports and mental health treatment services that are delivered in the most normative, least restrictive setting for a child who would benefit from a higher level of service intensity and meets eligibility criteria. Intensive community-based treatment and support services include, but are not limited to: crisis prevention and intervention; care coordination; case management; individual, group & family therapy; psychiatric services; skills training; family support; respite care; and team-driven service coordination planning.

(18) "Intensive treatment services" or "ITS" means the range of service components in the system of care inclusive of treatment foster care, therapeutic group homes, psychiatric day treatment, partial hospitalization, residential psychiatric treatment, sub-acute care or other services as determined by OMHAS that provide active psychiatric and mental health treatment for children with severe emotional disorders and their families.

(19) "Isolation" means the staff-directed placement of a child in a room or other space in which the child is alone and without ongoing verbal or visual contact with others. Periodic visual or verbal contact by staff does not prevent the child from being considered to be in isolation. A child who is placed in his or her bedroom at the child's normal bedtime or otherwise has a routine separation unrelated to behavior or conduct is not considered to be in isolation.

(20) "Level of care" means the relative amount and intensity of mental health services provided from the least restrictive and least intensive in a community-based setting to the most restrictive and most intensive in an inpatient setting. As required in ORS 430.210(a), children are to be served in the most normative, least restrictive, least intrusive level of care appropriate to their treatment history, degree of impairment, current symptoms and the extent of family or other supportive involvement. Intensive community-based treatment and support services provides services at a higher level of service intensity in less restrictive settings.

(21) "Licensed Medical Practitioner" or "LMP" means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(22) "Local Mental Health Authority" or "LMHA" means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a community mental health and developmental disabilities program;

(b) The tribal council, in the case of a federally recognized tribe of Native Americans, that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(23) "Manual restraint" means the act of involuntarily restricting a child's movement by holding the whole or a portion of a child's body in order to protect the child or others from injury. The momentary periods of physical restriction by direct contact with the child, without the aid of material or mechanical devices, accomplished with limited force, that prevent the child from completing an act that would result in potential physical harm to the child or others are not considered to be manual restraint. Manual restraints are prohibited by these rules.

(24) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from physical medicine, dental, diagnostic or surgical procedures that are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure. Mechanical restraints are prohibited by these rules.

(25) "Mental health assessment" means the written documentation by a QMHP of the child's presenting mental health problem(s) and relevant child and family history, mental status examination and DSM 5-axis diagnosis or provisional diagnosis.

(26) "Mental Health Organization" or "MHO" means an entity under a risk-bearing contract with OMHAS to provide mental health services on a prepaid, capitated basis.

(27) "Mental status exam" means the face-to-face assessment by a QMHP of a child's mental functioning within a developmental and cultural context that includes descriptions of appearance, behavior, speech, language, mood and affect, suicidal or homicidal ideation, thought processes and content and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, intellectual ability, abstraction abilities, judgment, and insight appropriate to the age of the child.

(28) "Office of Mental Health and Addiction Services" or "OMHAS" means the program office of the Department of Human Services responsible for the administration of mental health and addiction services for the State of Oregon.

(29) "Qualified Mental Health Associate" or "QMHA" means a person who delivers services under the direct supervision of a Qualified Mental Health Professional and who meets the following minimum qualifications as documented by the provider:

(a) Has a bachelor's degree in a behavioral sciences field, or a combination of at least three years work, education, training or experience; and

(b) Has the competency necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts;

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- (C) Provide psychosocial skills development; and
- (D) Implement interventions as assigned on a treatment plan.

(30) "Qualified Mental Health Professional" or "QMHP" means a Licensed Medical Practitioner or any other person who meets the following minimum qualifications as documented by the provider:

- (a) Holds any of the following educational degrees:
 - (A) Graduate degree in psychology;
 - (B) Bachelor's degree in nursing and licensed by the State of Oregon;
 - (C) Graduate degree in social work;
 - (D) Graduate degree in a behavioral science field;
 - (E) Graduate degree in recreational, music, or art therapy;
 - (F) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(b) Whose education and experience demonstrate the competency to: identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a treatment plan; conduct a Mental Health Assessment; and provide individual, family and/or group therapy within the scope of their training.

(31) "Respite care" means planned and emergency interventions designed to provide temporary relief from care giving in order to maintain a stable and safe living environment. Respite care can be provided in or out of the home and includes supervision of and behavioral support for the child.

(32) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving. Seclusion is prohibited by these rules.

(33) "Service coordination plan" means a single, written document that organizes and coordinates all other plans, services and supports, including the child's mental health treatment plan, that are being provided to the child and family by the providers, agencies and others who comprise the child and family team. The service coordination plan is formulated by the team and must include:

(a) Assessment of the child's and family's strengths and mental health needs across relevant life domains (psychological/emotional, spiritual, cultural/ethnic, safety, physical health, substance use, educational/vocational, social, family, residential, legal and financial);

(b) Short- and long-term goals to meet the needs and enhance strengths;

(c) The amount, intensity, and duration of interventions and strategies necessary to meet the child and family's needs and the plan's goals;

(d) Planning that utilizes a combination of existing or modified formal services; newly created services; informal, formal and natural supports and community resources; and documentation of the individuals responsible for providing these services and supports;

(e) A proactive safety/crisis plan that utilizes professional and natural supports to provide 24 hours, seven days per week flexible response and is reflective of strategies to avert potential crises without placement disruptions and provide appropriate interventions when crises occur; and

(f) Transition criteria as well as transition planning and coordination for the child's exit from intensive community-based treatment and support services.

(34) "Service intensity" means the relative amount, frequency, intensity, and duration of mental health services provided to a child and family that is based on the assessed needs of the child and family specific to the child's diagnosis, level of functioning, and the acuity and severity of the child's psychiatric symptoms.

(35) "Skills training" means providing parenting information and behavior management training and planning to parents or caregivers as well as skills development for the parent or caregiver and child that focuses on developing and strengthening competencies in areas such as anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug & alcohol awareness, and behavior support with the goal of maintaining a stable living environment, positive interpersonal relationships, and participation in developmentally appropriate activities.

(36) "Transition criteria" means the written diagnostic, behavioral, and functional indicators the child and family will meet to move to a lower level of service intensity as documented in a child's service coordination plan.

(37) "Transition summary" means a written document developed by the child and family team that is completed prior to exit from intensive community-based treatment and support services that is based on the serv-

ice coordination plan and includes: a review of service coordination planning; type and duration of services, supports, and levels of care utilized; concerns that arose during the planning process; significant child and family accomplishments; and how ongoing services and supports will be accessed if necessary.

(38) "Treatment plan" means the written plan developed jointly by the QMHP and the child with his or her family, if appropriate. The treatment plan specifies the DSM diagnosis, goals, measurable objectives, specific treatment modalities and evidence-based practices, and is based on a completed mental health assessment of the child's functioning and the acuity and severity of psychiatric symptoms.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1250

General Conditions of Participation for Children's Intensive Community-Based Treatment and Support Services Providers

(1) Providers delivering children's intensive community-based treatment and support services must:

(a) Hold, and or assure that subcontractors hold, a valid Certificate of Approval issued by the Office of Mental Health and Addiction Services (OMHAS) or a Certificate of Approval issued jointly by OMHAS and a CMHP to deliver intensive community-based treatment and support services, and, when applicable, a license or certification from the Department of Human Services, State Office for Children, Adults, and Families;

(b) Maintain the organizational capacity and interdisciplinary treatment capability to deliver medically appropriate services to meet the assessed needs for treatment in the amount, intensity, and duration for each child specific to the child's diagnosis, level of functioning and the acuity and severity of the child's psychiatric symptoms;

(c) Use evidence-based treatment methods appropriate for children with severe emotional disorders and professional standards of care;

(d) Assure that mental health services are provided under clinical supervision;

(e) Maintain policies describing eligibility criteria, and procedures for admission, transition, and discharge;

(f) Demonstrate family involvement and participation in all phases of assessment, service planning and the child's treatment by documentation in the child's clinical record and:

(A) Develop a formal relationship with a family organization;

(B) Include family representation on governing and advisory bodies; and

(C) Support a family and consumer advisory committee.

(g) Report suspected child abuse as required in ORS 419B.010;

(h) Enroll children in the Mental Health Information System when the child's mental health services are funded all or in part by OMHAS funds;

(i) Maintain policies and procedures prohibiting on- or off-site non-professional relationships and activities between employees and children and their families unless the activities are approved by the provider and interdisciplinary team and identified as clinically appropriate services in the child's service plan;

(j) Provide services for children in a smoke free environment in accordance with Public Law 103.277, the Pro-Child Act;

(k) Establish systematic and objective methods to accomplish the following:

(A) Periodically monitor and evaluate access to, and provision of, children's intensive community-based treatment and support services;

(B) Identify and seek to resolve problems in access to, or provision of, services;

(C) Improve access and services using reliable and valid performance measures; and

(D) Periodically report pertinent data and information as directed by the OMHAS.

(l) Demonstrate education service integration in all phases of assessment, service planning, active treatment, and transition and discharge planning by documentation in the child's clinical record;

(m) Maintain policies and procedures to ensure the safety and provide for the emergency needs of children, families, and staff including:

(A) Medical and/or dental emergencies; and

(B) Facility and environmental emergencies.

(n) Demonstrate cultural competency, gender responsiveness and language appropriateness in the delivery of services to clients and their families;

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(o) Demonstrate oversight by a governing body whose membership reflects diverse community interests and whose organization and operation must be set out in writing;

(p) Develop and publish a comprehensive document which describes the mission statement, treatment philosophy, and program descriptions for the provision of intensive community-based treatment and support services; and

(q) Develop policies and procedures for orientation of eligible children and families that consider orientation times convenient for the family and that provide for adequate child and family preparation.

(2) Mental health service providers who hold a current and valid Certificate of Approval to provide children's intensive mental health treatment services may apply to OMHAS for a Certificate of Approval to provide intensive community-based treatment and support services. Applications must include evidence that each Local Mental Health Authority has been notified about the ITS provider's efforts to become ICTS certified and about the ITS provider's potential to serve children from the child's LMHA area. Certification of an ICTS provider can be effective for a maximum of three years and may be renewed thereafter by OMHAS.

(3) Mental health service providers who hold a current and valid Certificate of Approval to provide community treatment services for children may apply to the CMHPs to recommend that OMHAS issue a Certificate of Approval to provide intensive community-based treatment and support services. Certification of an ICTS provider can be effective for a maximum of three years and may be renewed thereafter by OMHAS and the CMHP.

(4) A provider who is determined by OMHAS not to be in substantial compliance with these rules may, at the discretion of OMHAS, receive a time-limited Certificate of Approval of less than three years and may have conditions for compliance placed on the Certificate of Approval to provide intensive community-based treatment and support services.

(5) OMHAS may require a provider who is not in compliance with these rules to develop a Plan of Correction within a time period specified by OMHAS. OMHAS may accept, reject, or modify the Plan of Correction or require the provider to comply with a Plan of Correction directed and approved by OMHAS.

(6) OMHAS, at its discretion, may terminate the provider's Certificate of Approval to provide intensive community-based treatment and support services, withhold funds, or apply other applicable sanctions allowable in rule and statute for failure to comply with these rules.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1255

Award and Applicability of Certificates of Approval to Provide Children's Intensive Community-Based Treatment and Support Services

Certificates of Approval to provide children's intensive community-based treatment and support services may be applied for by a mental health service provider as defined in 309-012-0140. The mental health service provider must either hold a valid Certificate of Approval issued by OMHAS to provide Children's Intensive Mental Health Treatment Services or a Certificate of Approval issued jointly by OMHAS and a CMHP to provide Community Mental Health Treatment Services for Children.

(1) The mental health service provider may be awarded a Certificate of Approval to provide intensive community-based treatment and support services based on the following:

(a) A description of the proposed services which meets the specifications of this rule;

(b) Written assurance, by an officer with authority to obligate the applicant, that all applicable rules of OMHAS for operation of the proposed services will be met, or if not, operated in compliance with a variance awarded by OMHAS; and

(c) Other reviews, such as those described in OAR 309-012-0190(3), which in the judgment of OMHAS may assist to predict compliance of the applicant's proposed services with administrative rules.

(2) Following the completion of the application process, and any reviews deemed necessary by OMHAS or the CMHP, one of the following determinations will be made by OMHAS or the CMHP:

(a) That the applicant may be awarded a Certificate of Approval based on demonstration of its capacity and willingness to operate in compliance with applicable administrative rules;

(b) That the applicant may be awarded a Certificate of Approval with specified conditions as described in OAR 309-012-0200;

(c) That the applicant will not be awarded a Certificate of Approval because it has not demonstrated that it will comply with applicable administrative rules; or

(d) That the provider's Certificate of Approval will be revoked, suspended, or not renewed pursuant to 309-012-0130 through 309-012-0220.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1260

Service Planning Coordination

ICTS providers must ensure that eligible children and families receive care coordination, the provision of which must ensure that:

(1) A child and family team is identified and organized jointly with the family;

(2) A child and family team meeting is convened and an initial Service Coordination Plan, including any necessary crisis prevention and intervention planning, is developed no later than 14 working days from the date of ICTS eligibility determination;

(3) The Service Coordination Plan is completed within 30 working days from the date of ICTS eligibility determination and reviewed and revised quarterly at a minimum;

(4) The child receives medically appropriate, evidence-based mental health services and supports, at the appropriate level of care, as determined by the ongoing service coordination planning by the child and family team; and

(5) Services and supports are documented in the child's clinical record.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1265

Intensive Community-Based Treatment and Support Services

ICTS providers must ensure that intensive community-based treatment and support services are made available to eligible children and families. Intensive community-based treatment and support services can be delivered at a clinic, facility, home, school, other provider/allied agency location or other setting. Intensive community-based treatment and support services include but are not limited to:

(1) Community Crisis Services. At a minimum, children's community crisis services shall consist of:

(a) 24 hours, seven days per week face-to-face or telephone screening to determine the need for immediate services for any child requesting assistance or for whom assistance is requested;

(b) 24 hours, seven days per week capability to conduct, by or under the supervision of a QMHP, a mental health status examination to determine the child's condition and the interventions necessary to stabilize the child;

(c) A mental health assessment concluding with written recommendations by the QMHP regarding the need for further treatment;

(d) Provision of appropriate child and family, psychological, and psychiatric services necessary to stabilize the child as quickly as possible;

(e) Referral to the appropriate level of care and linkage to other medical interventions necessary to protect and stabilize the child as quickly as possible; and

(f) Linkage to appropriate social services.

(2) Mental health assessment.

(3) Psychiatric services provided by a Licensed Medical Practitioner.

(4) Medication management and monitoring.

(5) Individual, group and family therapy provided by a QMHP who has a strong child and adolescent mental health background and experience providing community-based, intensive services to families.

(6) Care coordination provided by a QMHP or QMHA supervised by a QMHP who has:

(a) Demonstrated competencies in child and adolescent mental health and experience providing intensive services to families;

(b) Extensive knowledge about the local children's system of care;

(c) Experience facilitating service coordination meetings and collaborating with system partners; and

(d) Experience facilitating crisis prevention and intervention services.

(7) Case management provided by a QMHP or QMHA supervised by a QMHP who has:

(a) Demonstrated competencies in child and adolescent mental health and experience providing intensive services to families;

(b) Extensive knowledge about the local children's system of care and community resources; and

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- (c) Experience facilitating crisis prevention and intervention services.
- (8) Skills training provided by a QMHP or QMHA supervised by a QMHP who has:
 - (a) Demonstrated competency in child development, serious emotional and behavioral disorders and parenting-behavioral management;
 - (b) Extensive knowledge of community recreational, social and supportive resources; and
 - (c) Experience facilitating crisis prevention and intervention services.
- (9) Family support and respite care provided by individuals whose education, experience, competence, and supervision are adequate to permit them to perform their specific assigned duties and who have:
 - (a) Specialized knowledge and experience that enables them to provide supportive services to families; and
 - (b) Received training that enables them to implement supportive services interventions to children and families coping with developmental, physical, medical, emotional and behavioral disorders.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1270

Staffing Requirements

(1) ICTS providers must have the clinical leadership and sufficient QMHP, QMHA and other staff to meet the 24-hours, seven days per week treatment needs of children served and must establish policies, contracts and practices to assure:

(a) Availability of psychiatric services to meet the following requirements:

(A) Provide medical oversight of the clinical aspects of care and provide 24-hours, seven days per week psychiatric on-call coverage or consult on clinical care;

(B) Assess each child's medication and treatment needs, prescribe medicine or otherwise assure that case management and consultation services are provided to obtain prescriptions, and prescribe therapeutic modalities to achieve the child's treatment and service coordination goals; and

(C) Participate in the provider's Quality Management process.

(b) An executive director or clinical director who meets the following minimum qualifications:

(A) Masters degree in a human service-related field from an accredited school;

(B) Five years experience in a human services program;

(C) Documented professional references, training and academics; and

(D) Subscribes to a professional code of ethics.

(2) ICTS providers must have adequate numbers of QMHP, QMHA and other staff whose care specialization is consistent with the duties and requirements of the specific level of care. Professional staff shall operate within the scope of their training and licensure.

(3) Staffing must be adequate to provide timely response to crises, potential crises, and other urgent and non-urgent child and family service needs 24 hours a day, 7 days per week throughout the provider's service area.

(4) Providers must have adequate numbers of qualified supervisory staff to oversee service delivery in community settings by QMHP, QMHA, and other staff.

(5) Providers must assure through documentation in personnel files that all supervisory and clinical staff meet all applicable professional licensing and/or certification, and QMHP or QMHA competencies.

(6) Providers shall maintain a personnel file for each employee, that contains:

(a) The employment application;

(b) Verification of a criminal history check as required by ORS 181.536-181.537;

(c) A written job description;

(d) Documentation and copies of relevant licensure and/or certification that the employee meets applicable professional standards;

(e) Annual performance appraisals;

(f) Annual staff development and training activities;

(g) Employee incident reports;

(h) Disciplinary actions;

(i) Commendations; and

(j) Reference checks.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1275

Behavior Management

(1) Providers must establish policies prohibiting the use of chemical restraints, mechanical restraints, manual restraints, and seclusion.

(2) Providers must have a written behavior management policy specifying which behavior management practices and restrictions may be used by staff and the circumstances under which they may be used. The behavior management policy must:

(a) Establish a framework, which assures consistent behavior management practices throughout the program and articulates a rationale consistent with the provider's philosophy of treatment;

(b) Require the provider to obtain informed consent, upon admission, from the parent(s) or guardian in the use of behavior management practices and communicate both verbally and in writing the information to the parent(s) or guardian and the child in a developmentally appropriate manner;

(c) Establish thresholds and tracking mechanisms of behavior management interventions that will activate clinical review and which are relevant to the acuity and severity of symptoms and developmental functioning of the population served by the provider;

(d) Require that when thresholds established in the policy are exceeded that the child's service coordination and treatment plans be reviewed and revised if necessary within no more than 24 hours; specifies the individual(s) in the program with designated clinical leadership responsibilities who must participate in the review, and specifies that the review be documented in the child's clinical record;

(e) Describe the manner in which all staff will be trained to manage aggressive, assaultive, maladaptive, or problem behavior and de-escalate volatile situations; and

(f) Require that the provider review and update behavior management policies, procedures, and practices, minimally annually.

(3) Individual behavior management interventions will be developed, implemented, and reviewed for each child. The review must occur minimally at each service coordination plan meeting and treatment plan review.

(4) Each staff directed behavior management intervention that isolates a child for more than 15 minutes must be noted in the child's clinical record:

(a) The cumulative data must be reviewed by the child and family team and be reported in the next required service coordination plan meeting and treatment plan review;

(b) The service coordination and treatment plans must outline use of this procedure, therapeutic alternatives, and methods to reduce its use.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1280

Establishment and Maintenance of Clinical Records

(1) Individuality and maintenance of clinical records. A separate, individualized clinical record must be opened and maintained for each child served by an ICTS provider. If the ICTS provider is also the outpatient or ITS provider or both, the clinical record will include documentation of outpatient, ITS, and ICTS services.

(2) Organization of clinical records. Each clinical record must be uniform in organization, readily identifiable and accessible, and contain all of the components required by this rule in a current and complete manner.

(3) Signature of authors. All documentation required in this rule must be signed by the staff providing the service and making the entry. Signature must include the person's academic degree or professional credential and the date signed.

(4) Documentation of informed consent. All procedures in this rule requiring consent and the provision of such information to the consenting custodial parent or guardian or where appropriate, the child, must be documented in the clinical record on forms describing what the child or adult giving consent has been informed of, and asked to consent to, and signed and dated by the consenting person. If the provider does not obtain the required documentation, the reasons must be specified in the clinical record and signed by the qualified supervisor of the person responsible for provision of treatment services to the child.

(5) Error corrections. Errors in the clinical record must be corrected by lining out the incorrect data with a single line in ink, and then adding the correct information, the date corrected, and the initials of the person making the correction. Errors may not be corrected by removal or obliteration.

(6) Confidentiality of other clients. References to other persons being treated by the CMHP, CMHP subcontractors, or other providers when included in the child's clinical record must preserve the confidentiality of the other clients.

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(7) Security. Clinical records must be secured, safeguarded, stored, and retained in accordance with applicable Oregon Revised Statutes and Oregon Administrative Rules.

(8) Confidentiality of records. All clinical records are confidential to the extent provided for in OAR 309-032-1030(9) and other state and federal laws, rules, or regulations.

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309-032-1285

Clinical Record Documentation Requirements

The child's clinical record must contain adequate written information that is readily accessible and uniformly placed in the clinical record to include:

(1) CPMS enrollment data if required by OAR 309-032-0960(30);

(2) Identifying data including the child's name, date of birth, sex, address, phone number, and name of parent(s) or legal guardian including an address and phone number if different;

(3) A mental health assessment that is updated annually and reviewed and approved by a LMP;

(4) An individualized treatment plan that is updated quarterly and reviewed and approved by a LMP;

(5) A service coordination plan that is reviewed and updated quarterly, or as clinically appropriate, by the child & family team;

(6) Progress notes documenting specific treatments, interventions, and activities related to the implementation of the service coordination plan and the treatment plan;

(7) Written transition criteria as documented in the service coordination plan;

(8) A written transition summary related to the service coordination plan;

(9) Written discharge criteria as documented in the treatment plan;

(10) A written discharge summary related to the treatment plan; and

(11) A medication service record if medication is prescribed on the treatment plan.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1290

Child & Family Rights

Providers shall establish written policies and procedures pertaining to child and family rights. The written statement of rights shall be posted prominently in simple, easy to understand language on a form devised by the provider or the OMHAS. Written information must be provided in each non-English language that is prevalent in the provider's service area. Written information must be available in alternate formats taking into consideration the special needs of children and families. This form shall be given by the provider to the person legally giving consent to treatment of the child, at the time of admission. In addition, these rights shall be explained orally at the time of admission to the person giving consent to treatment and to the child, in a manner appropriate to the child's developmental level. Statement of Rights shall include the following:

(1) Right to provide consent to treatment in accordance with ORS 109.640 and 109.675. A custodial parent or legal guardian, or a minor child under conditions described below, must give written informed consent to diagnosis and treatment.

(a) Minor children can give informed consent in the following circumstances:

(A) Under age 18 and lawfully married.

(B) Age 16 or older and legally emancipated by the court.

(C) Age 14 or older for outpatient diagnosis and treatment for a mental or emotional disorder. For purposes of informed consent, outpatient and ICTS treatment does not include treatment provided in residential facilities or in day or partial hospitalization programs.

(b) If the child is initially served in a crisis situation, these rights must be explained as soon as clinically practical, but not more than five working days from the initiation of services if the child who received the crisis service remains in service.

(c) The custodial parent or legal guardian of any minor, age 14 or older who has consented to outpatient treatment or diagnosis, must be involved before the end of treatment unless:

(A) The parents refuse;

(B) There are clear clinical indications to the contrary;

(C) The child has been sexually abused by the parent; or

(D) The child has been legally emancipated by the court or has been self sustaining for 90 days prior to obtaining treatment. As required in ORS 109.675, such refusal or the reasons for exclusion must be documented in the child's clinical record.

(2) Right to refuse services. The person giving consent to treatment has the right to refuse service, including any specific treatment procedure. If serious consequences may result from refusing a service, the consequences must be explained verbally and in writing by the provider to the custodial parent, guardian or child who is refusing service. Service refusal must be documented in the clinical record.

(3) Right to confidentiality in accordance with ORS 179.505, 107.154, and 418.312.

(4) Right to consent to disclosure of clinical records. The person consenting to treatment, usually the custodial parent or guardian, has the right to authorize disclosure of the child's clinical record in accordance with ORS 179.505.

(5) Right to immediate inspection of the clinical record in accordance with ORS 179.505.

(a) The child, if able, and the custodial parent(s) or guardian of a minor child has the right to immediate inspection of the record.

(b) A copy of the record is to be provided within five working days of a request for it. The person requesting the record is responsible for payment for the cost of duplication, after the first copy.

(c) Identifying and clinical information about the child shall be protected in provider publications such as newsletters and brochures.

(6) Right to participate in treatment planning and service coordination. The child, if appropriate, and the custodial parent(s) or legal guardian and others of their choosing, must have the opportunity to participate in an informed way in the treatment planning and service coordination process for the child, and in the review, at least every three months, of the child's progress toward treatment goals and objectives. At a minimum, the following information should be discussed:

(a) Treatment and other interventions to be undertaken;

(b) Alternative treatments or interventions available, if any;

(c) Projected time to complete the treatment process;

(d) Benefits which can reasonably be expected; and

(e) Risks that may be involved in treatment, if any.

(7) Right to make informed consent to fees for services. The amount and payment schedule of any fees to be charged must be disclosed in writing and agreed to by the person consenting to treatment.

(8) Right of assertion of rights. The rights contained in this section may be asserted and exercised by the child (except where the law requires that only the parent or guardian may exercise a particular right), the child's parent or guardian, or any representative of the child.

(9) Right of formal complaint. The child, parent or guardian or child's representative shall have the right to assert formal complaints concerning denial of any rights contained in this section in a fair, timely and impartial formal complaint procedure. There shall be no retaliation or punishment for exercise of any rights contained in this section.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1295

Quality Management

Providers must have a planned, systematic and ongoing process for monitoring, evaluating and improving the quality and appropriateness of services provided to children and families. The Quality Management System must include a Quality Management Committee and a Quality Management Plan which together implement a continuous cycle of assessment and improvement of clinical outcomes based on measurement and input from service providers and representatives of the children and families served.

(1) Providers must have a continuous Quality Management Process that:

(a) Establishes and reviews expectations about quality and outcomes; and

(b) Seeks to correct any observed deficiencies identified through its Quality Management Process.

(2) Providers will measure and report on outcomes as determined by the OMHAS.

(3) The written Quality Management Plan must describe the implementation and ongoing operation of the functions performed by the Quality Management Committee.

(4) The overall scope of the Quality Management process is described in the written Quality Management Plan that identifies mechanisms, com-

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mittees or other means of assigning responsibility for carrying out and coordinating the Quality Management process activities, that includes:

- (a) Indicators of quality;
 - (b) Methods of monitoring and reporting of results; and
 - (c) Follow-up mechanisms.
- (5) The provider's board must review the annual Quality Management report and approve the annual Quality Management Plan.
- (6) The Quality Management Plan must include:
- (a) A description of the Quality Management Committee's authority to identify and implement clinical and organizational changes;
 - (b) The composition and tenure of the Quality Management Committee;
 - (c) The schedule of Quality Management Committee(s) meetings;
 - (d) Provisions which require activities to evaluate and recommend improvements as necessary in the following domains:
 - (A) Access to services;
 - (B) Quality of care provided to children and families; and
 - (C) Integration and coordination of services between the provider and other entities associated with the child and family.
 - (e) The requirement that the review of grievances, formal complaints, incidents or accidents is conducted and integrated into the overall Quality Management process.
- (7) The provider must have a Quality Management Committee that meets at least quarterly. The Quality Management Committee shall be composed of:
- (a) One or more qualified mental health professionals who are representative of the scope of services delivered;
 - (b) A representative or representatives of the children and families served;
 - (c) Other persons who have the ability to identify, design, measure, assess and implement clinical and organizational changes; and
 - (d) A representative of external agencies.
- (8) Quality Management activities are conducted with representation of those who have knowledge or ability to effect continuous quality improvement.
- (9) The Quality Management process is conducted with input from children, families, and community stakeholders.
- (10) The provider has a participatory process whereby all personnel contribute to and recommend changes in the Quality Management process.
- (11) The provider assures that the LMP participates and is involved in quality management activities and is recognized within the staff organization as a member of the Quality Management Committee with responsibilities described in the provider's Quality Management Plan.
- (12) Quality Management activities are conducted in accord with the applicable Oregon Revised Statutes, Oregon Administrative Rules and the provider's policies and procedures with regard to confidentiality.
- (13) Documentation of the pertinent facts and conclusions of each Quality Management Committee meeting must be maintained and be available for review by the OMHAS, CMHP, MHO or LMHA.
- (14) An annual report of Quality Management activities and data must be available for review by the OMHAS, CMHP, MHO or LMHA.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1300

Grievances and Appeals

- (1) The child or the person consenting to the child's treatment has the right to lodge an oral or written complaint or file a grievance with the entity providing treatment services. All service providers must:
- (a) Have written procedures for accepting, processing and responding to oral or written complaints and grievances. The procedures must include:
 - (A) The process for registering an oral or written complaint or grievance;
 - (B) The time lines for processing an oral or written complaint or grievance; and
 - (C) Notification of the appeals process, including time lines for an oral or written complaint or grievance and the provision of the appropriate appeal forms.
 - (b) Designate a staff person to receive complaint or grievance information and enter the information into a log. The log will identify, at a minimum, the person lodging the complaint or grievance, the date of the complaint or grievance, the nature of the complaint or grievance, the resolution and the date of the resolution.

(c) Have written procedures for informing children and their legal guardian(s) orally and in writing about the provider's complaint or grievance procedures.

(d) Have written procedures for processing an expedited complaint request if it is believed that the child's health is at risk. A request for expedited complaint must be filed by the child or the person consenting to the child's treatment and must include the following:

- (A) A statement that this is a request for an expedited complaint;
 - (B) An explanation of the urgency of resolving the issue; and
 - (C) A description of the consequences of following the regular complaint process.
- (2) Service denial. The child or the person consenting to treatment on behalf of the child, has the right to appeal when a service has been denied. All providers must have written procedures as described in OAR 309-032-1030(4) for accepting, processing and responding to service denials. In addition to the procedures described in OAR 309-032-1030(4), providers must respond in writing to the appeal within five working days of the appeal. The written response must include:
- (a) The service requested;
 - (b) A statement of service denial;
 - (c) The basis for the denial; and
 - (d) Notification of the appeals process including the required time frame to file an appeal and provision of the appropriate appeal forms.

(3) Hearing request. All providers must include in their written appeals process the right of the Medicaid-eligible child, or the person consenting to treatment for the child, to file a request for an administrative hearing as a result of a denial of service or an adverse finding against a complainant in accordance with OAR 309-016-0140 through 309-016-0210.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

309-032-1305

Variance

A variance from portions of these rules that are not derived from federal regulations or the Office of Medical Assistance Program (OMAP) General Rules may be granted for a period of up to one year or a time period specified on the provider's Certificate of Approval in the following manner:

- (1) The provider shall submit to the Assistant Administrator of OMHAS a written request, which includes:
 - (a) The section of the rule from which the variance is sought;
 - (b) The reason for the proposed variance;
 - (c) The alternative practice proposed; and
 - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought.
- (2) The Assistant Administrator of OMHAS shall approve or deny the request for variance in writing.
- (3) OMHAS shall notify the provider of the decision in writing within 30 days of the receipt of the request.
- (4) Appeal of the denial of a variance request shall be to the Administrator of OMHAS whose decision shall be final.
- (5) All variances must be reapplied for as directed by OMHAS.

Stat. Auth.: ORS 430.640, 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05

Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 38-2004

Filed with Sec. of State: 12-22-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Amended: 333-008-0020

Subject: Reduces registration fees for Oregon Medical Marijuana Program applications. The registration fee for new applications is reduced from \$150.00 to \$55.00. The registration fee for renewal applications is reduced from \$100.00 to \$55.00. For those persons who can demonstrate current, valid eligibility in the Oregon Health Plan, or receipt of current Supplemental Security Income monthly

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benefits, the proposed new or renewal application fee is reduced from \$50.00 to \$20.00.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-008-0020

Registration Application and Verification

(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers.

(2) Except as provided in subsection (4) of this section, the Department shall issue a registry identification card to any person who pays a new or renewal application fee as set forth in subsections (2)(a) and (2)(b) of this section and who provides to the Department a completed application as set forth in subsections (2)(c) and (2)(d) of this section.

(a) For the period January 1, 2005 through December 31, 2006, the following fees will be charged: \$55 (fifty-five dollars) for a new application; \$55 (fifty-five dollars) for a renewal application; or, \$20 (twenty dollars) for either a new or renewal application by any patient who can demonstrate current eligibility in the Oregon Health Plan or who can demonstrate being a recipient of current Supplemental Security Income monthly benefits.

(A) Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

(B) Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

(b) The Department will notify any patient who submits a reduced fee for which the patient is not eligible and will give the patient 14 days from the date of notice to pay the correct fee or to submit a current, valid eligibility determination statement for the Oregon Health Plan, or to submit a copy of a receipt for current Supplemental Security Income monthly benefit, as applicable. The Department will not suspend processing of the patient's application pending receipt of an eligibility statement. The Department will not grant application fee refunds for any eligibility determination made on or after the issue date of the patient's registry identification card.

(c) To supply a completed application, the patient must provide to the Department either:

(A) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or

(B) legible written statements that include all information required on the Department's forms. A copy of the relevant portions of the patient's medical record may serve as written documentation from the attending physician as long as it states that the patient has been diagnosed with a debilitating medical condition; the medical use of marijuana may mitigate the symptoms or effects of the patient's debilitating medical condition; and contains the physician's signature and the date the medical record was made.

(d) In addition to the information required in ORS 475.309(2), the patient and the designated primary caregiver (if applicable) must provide a copy of current, legible photographic identification (i.e., Oregon driver's license, Oregon identification card, or Voter Registration card plus another current, legible photographic identification). The designated primary caregiver (if applicable) must also supply his or her address and date of birth. The patient must provide the Department with the address of the site where marijuana will be manufactured or produced, and indicate whether the property is under the control of the patient or the designated primary caregiver of the patient.

(3) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the patient and assists agencies in the implementation of the Act. Optional information need not be provided by the patient, attending physician, or designated primary caregiver, and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(4) The Department shall issue a registry identification card to a person who is under eighteen years of age if the person submits the materials required under subsection (2) of this section, and one of the person's par-

ents or legal guardians signs and has notarized a written declaration that states:

(a) The person's attending physician has explained to the person and to one of the person's parents or legal guardians the possible risks and benefits of the medical use of marijuana;

(b) The parent or legal guardian consents to the use of marijuana by the person for medical purposes;

(c) The parent or legal guardian agrees to serve as the person's designated primary caregiver; and

(d) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the person.

(5) The Department will verify information on all initial registration applications or written documentation.

(a) The Department will contact each patient and designated primary caregiver (if appropriate) by telephone or by mail to confirm that the information provided is accurate. In cases where the patient is less than eighteen years old, the Department will also contact the parent or legal guardian to verify the information. In cases where proof of identity is uncertain, the Department may require a face-to-face meeting with the patient or designated primary caregiver and/or the production of additional identification materials for verification purposes.

(b) The Department will verify with the Oregon Board of Medical Examiners that the attending physician is licensed to practice in the state and is in good standing. The Department will also contact each attending physician to confirm that the information provided is accurate and valid, and that the physician is an "attending physician" as defined by 333-008-0010(1).

(6) Upon annual renewal of a registration application, the Department will verify all new information, but may use its discretion in determining the need to verify information that has not changed.

Stat. Auth.: ORS 475.309, 475.312 & 475.316

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05

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Rules Amended: 333-029-0015, 333-029-0050, 333-029-0075, 333-030-0015, 333-030-0040, 333-030-0045, 333-030-0050, 333-030-0080, 333-030-0085, 333-030-0120, 333-031-0002, 333-031-0004, 333-031-0006, 333-031-0010, 333-031-0012, 333-031-0018, 333-031-0066, 333-150-0000

Subject: The Department of Human Services (DHS) is adopting rule amendments to set standards for small licensed facility drinking water systems not subject to Drinking Water Section regulations. The Drinking Water Section no longer regulates water systems of very small licensed facilities, yet these facilities are still required to provide an approved drinking water supply. These rules set standards to allow these facilities to comply with the Food Sanitation Rules; Travelers' Accommodation Rules; Organizational Camp Rules; and Construction, Operation, and Maintenance of Recreation Parks Rules requirements for an approved water system. These small systems will be required to meet the standards for Transient systems, which is similar to the standards that they previously operated under.

DHS is also adopting standards for granting variances to the Food Sanitation Rules. The current rules allow for variances, but our Assistant Attorney General advised us that the variance process must be spelled out in rule. This rule amendment addresses this concern.

DHS also updated the references to other rules and codes in the Traveler's Accommodation Rules; Organizational Camp Rules; and the Construction, Operation, and Maintenance of Recreation Park Rules. The updates reference the current applicable rule or code, with language added to allow continuing compliance of existing facilities where applicable.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-029-0015

Definitions

As used in these rules unless otherwise required by context:

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(1) "Administrator" means the Assistant Director for Health of the Department of Human Services.

(2) "Approval or Approved" means approved in writing.

(3) "Division" means Health Services of the Department of Human Services.

(4) "Dormitory" means a room containing beds, cots, or other sleeping places and occupied by unrelated or separate groups and/or other individuals. Every 100 square feet of usable floor space in a dormitory shall constitute a lodging unit.

(5) "Hostel" means any establishment having beds rented or kept for rent on a daily basis to travelers for a charge or fee paid or to be paid for rental or use of facilities and which are operated, managed or maintained under the sponsorship of a nonprofit organization which holds a valid exemption from federal income taxes under 26 USC Sec. 501.

(6) "Issuing Authority" means the Department of Human Services, Health Services, its delegate, or contract agent.

(7) "Lodging Unit" means one or more self-contained rooms for travelers' occupancy, including those for sleeping, sitting, or cooking purposes, and except where a travelers' accommodation is comprised of a single lodging unit, designated by a number, letter, or other means of identification.

(8) "Person" means individuals, corporations, associations, firms, partnerships, and joint stock companies as well as public entities of any character.

(9) "Tourist Facility" means any traveler's accommodation, hostel, picnic park, recreation park, and organizational camp.

(10) "Travelers' Accommodation" includes any establishment, which is not a hostel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

(11) "Unregulated Small Drinking Water System" means a facility licensed under the authority of these rules that is not regulated under OAR 333-061, Public Water Systems. These systems must comply with the requirements of OAR 333-029-0075.

(12) "Usable Floor Space" means all floor space in a lodging unit not occupied by closets, built-ins, toilet rooms, bathrooms, or shower rooms.

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

Stat. Auth.: ORS 446

Stats. Implemented:

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 1-2005, f. & cert. ef. 1-14-05

333-029-0050

Toilet, Lavatory, and Bath Facilities

(1) At least one toilet, lavatory, and bath shall be provided for each five lodging units or fraction thereof where the individual lodging units are not provided such facilities. The required number of sanitary fixtures shall be in accordance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division.

(a) Multi-story accommodations constructed after July 1, 1970, shall have toilet, lavatory, and bath facilities located on each floor. Toilets, lavatories and bath facilities shall be maintained in a clean and sanitary condition.

(b) New toilet, lavatory and bath facilities, or facilities remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2000 Oregon Plumbing Specialty Code** and the **2004 Oregon Structural Specialty Code**.

(2) The location and use of all public toilet and bath facilities shall be clearly indicated by appropriate signs.

(3) Toilet, lavatory, and bath facilities for travelers' accommodations and hostels, located in private homes shall be separate from toilet and bath facilities utilized by the owner or operator of said travelers' accommodations and hostels.

(4) All lavatories, bathtubs, and showers, shall be provided with hot and cold water except where otherwise specifically exempted by the Division. Hot water shall be at least 120° F.

(5) Toilet and bathrooms shall:

(a) Have floors which are finished with a material that is smooth, easily cleanable, impervious to water, and coved to a height of four inches;

(b) Have shower compartments with walls which are impervious to water to a height of six (6) feet above the floor. An effective water-tight joint between the wall and the floor shall be maintained. (Wooden racks or duck boards over shower floors are prohibited);

(c) Have interior finishes which are smooth, easily cleanable, and impervious to water;

(d) Where rubber or impervious mats are used, have such mats clean and dry between usages;

(e) Have bathtub and shower stall floors that are finished with non-slip, impervious surfaces or provided with non-slip impervious bath mats;

(f) Where glass bath or glass shower doors are used, have such doors made of safety glass.

(6) Non-water carried sewage disposal shall not be used in lieu of water carried sewage disposal unless approved by the issuing authority and the Department of Environmental Quality according to OAR 340-071-0130.

(7) All plumbing installations shall be in accordance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division, **2002 Oregon Plumbing Specialty Code**. New plumbing installations, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2000 Oregon Plumbing Specialty Code**.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 1-2005, f. & cert. ef. 1-14-05

333-029-0075

Water Supply Systems

(1) Definitions applicable to this rule:

(a) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(b) "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is from January 1 through March 31, 2nd Quarter is from April 1 through June 30, 3rd Quarter is from July 1 through September 30 and the 4th Quarter is from October 1 through December 31.

(2) Water supply systems serving travelers' accommodations and hostels shall comply with Oregon Administrative Rules for Public Water Systems, OAR 333-061-0005 through 333-061-0095, and must be:

(a) Regulated as a Public Drinking Water System under OAR 333-06; or

(b) Water systems serving travelers' accommodations and hostels that are not regulated under OAR 333-061 as a Public Drinking Water System must meet the requirements in section (3) below.

(3) Unregulated Public Drinking Water Systems:

(a) Plan Review. All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(b) Surface Water Sources. New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(c) Sampling frequency:

(A) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(B) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(ii) Inorganic Samples: One time sampling required for new facilities before beginning operation.

(d) MCL Violations. An item is not considered a violation until confirmed by second sample taken with 24 hours. Four repeat samples must be taken within 24 hours of the original positive sample for a sample result above the maximum contaminant level (MCL).

(A) Total coliform: Report positive total coliform samples to the Department within 24 hours of being notified of the positive sample.

(B) Fecal coliform. Any positive fecal coliform sample must be reported to the Department within 24 hours.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Department must be in place before serving public.

(C) Inorganic Samples. One time sampling is required for new facilities. Additional testing is not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

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(D) Nitrate: Sample must be submitted for testing annually

(i) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(ii) When a test on a sample is reported to exceed the MCL for nitrate, public notification is required. Bottled water must also be provided to public upon request.

(E) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(e) Sample collection methods.

(A) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(B) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are also used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030 (Table 1);

(ii) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level.

(iii) Test results: Sample results must be submitted to the Local Public Health Authority by the 10th of the month following the sampling period.

(iv) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(f) Public Notice. All public notification must be posted conspicuously on site and must include:

(A) A description of the violation or situation of concern;

(B) Corrective actions taken to improve water quality;

(C) Any potential adverse health effects;

(D) The population at risk;

(E) The alternative measures in place to provide safe drinking water.

(4) All water distribution systems shall be designed, constructed, approved and maintained in compliance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New water supply distribution systems, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2000 Oregon Plumbing Specialty Code.

(5) Hot water heaters shall have installed an approved A.S.M.E. pressure relief valve which is accessible for inspection and testing.

(6) Where drinking fountains are provided, they shall be of an angle jet type with adequate water pressure at all times.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0015

Definitions

As used in these rules unless otherwise required by context:

(1) "Administrator" means the Assistant Director for Health of the Department of Human Services or designee.

(2) "Activity Leader or Supervisor" means the staff member providing direct on-site supervision for a camp program or activity.

(3) "Approved" means approved in writing by the Department of Human Services, Health Services.

(4) "Aquatic Director" means a person over 18 years of age who is employed by or within the organizational camp and is a currently certified Red Cross Water Safety Instructor, Boy Scouts of America National Aquatic Instructor or having equivalent certification as determined by the Department of Human Services, Health Services.

(5) "Camp Director" means the person on site who has the overall responsibility for all camp activities and functions.

(6) "Day Camp" means an organizational camp facility that campers attend for an established period of time, leaving at the end of the camping day. It provides creative and recreational opportunities in the out-of-doors utilizing trained leadership and the resources of the natural surroundings to contribute to the camper's mental, physical and spiritual growth. It is oriented to providing such programming for children between the ages of 5-13 when school is not in session.

(7) "Delegated County" means a county delegated to administer the Organizational Camp Program under ORS 446.425.

(8) "Division" means Health Services of the Department of Human Services or delegated county.

(9) "Lifeguard" means a currently certified Red Cross Lifeguard (with waterfront module where applicable), YMCA Lifeguard, Boy Scout Lifeguard, National Pool and Waterpark Lifeguard, or a person having equivalent certification as determined by the Department of Human Services, Health Services.

(10) "Organizational Camp" means any facility operating for recreational use by groups or organizations. Organizational Camps include, but are not limited to, youth camps, scout camps, summer camps, day camps, nature camps, science camps, survival camps, athletic camps, camps operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations or other persons or organizations whether for-profit or non-profit. Organizational camps are distinguished from recreation parks, or hotels and motels by the existence of organized group activities comprising the majority of activities by all participants rather than individual or family recreation. Camps operating less than one week per year are excluded from these rules unless they have permanent structures or operate as a "day camp."

(11) "Permanent Sleeping Unit" means cabins, tents, huts and other shelters which are used for sleeping and remain stationary for more than six 6 nights in an organizational camp.

(12) "Person" means individuals, corporations, associations, firms, partnerships and joint stock companies as well as public entities such as schools, colleges, public or private educational corporations.

(13) "Public Swimming Pool" means an artificial structure, and its appurtenances, which contains water more than two feet deep which is used, or intended to be used, for swimming or recreational bathing and which is for the use of any segment of the public. A "public swimming pool" includes, but is not limited to, swimming pools owned or operated by organizational camps.

(14) "Recreation Park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking or overnight camping by the general public or any segment of the public. Recreation park includes, but is not limited to, areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to, those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

(15) "Public Spa Pool" means any public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(16) "Public Wading Pool" means an artificial structure, and its appurtenances, which contains water less than two feet (60cm) deep which is expressly designated or which is used with the knowledge and consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

(17) "Primitive Camping" means: Camp activities that take place in a wilderness setting far enough away from the Organizational Camp to require eating meals and/or sleeping away from the camp facilities.

(18) "These Rules" means OAR 333-030-0005 through 333-030-0130.

(19) "Trip Camping" means camp activities that involve travel. Such travel may include eating meals and/or sleeping away from the organizational camp.

(20) "Unregulated Small Drinking Water System" means a facility licensed under the authority of these rules that is not regulated under OAR 333-061, Public Water Systems. These systems must comply with the requirements of OAR 333-030-0080.

(21) "Waterfront Program" means those activities occurring in or on bodies of water other than public swimming and spa pools.

(22) "Wilderness Camping" means Camp activities that take place in a wilderness setting far enough away from the Organizational Camp to require eating meals and/or sleeping away from the camp facilities.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

ADMINISTRATIVE RULES

333-030-0040

Plans

(1) No person shall construct, enlarge or alter any organizational camp or convert the use of an existing structure to an organizational camp without first: Submitting complete plans and receiving approval from the Division.

(2) Plan submission is not required when:

(a) The work proposed constitutes maintenance;

(b) The Division has been fully advised of the nature of the construction, enlargement or alteration and has determined that no plans are necessary because the proposal does not affect camp capacity, the health or safety of campers.

(3) Where plan review is made by the Oregon Department of Consumer and Business Services, Building Codes Division or by jurisdictions exempt under ORS 476.030, and such review covers the requirements of OAR 333-030-0005 through 333-030-0125, a written plan approval from such plan review authority may, at the discretion of the Division, be substituted for plan submission to and review and approval by the Division.

(4) Plans shall be submitted in duplicate and shall be drawn to scale. They shall clearly indicate the nature and extent of the work proposed and shall show in detail how conformance will be achieved with these rules and all statutes and rules of the State of Oregon adopted by reference by these rules which pertain to organizational camps. The following information shall be furnished on all plans:

(a) Name of organizational camp and location;

(b) Legal description of property;

(c) Name of owner;

(d) Name of operator;

(e) Name of person who prepared plans;

(f) Scale used;

(g) Explanation of all symbols used;

(h) Identification of proposed and existing construction.

(5) The plans required in section (4) shall be accompanied by the plot plan showing the general layout of the organizational camp. Plans shall be drawn at a scale no smaller than one inch equals one hundred feet except that plot plans may be drawn at a smaller scale. The location for each of the following must be clearly shown and identified:

(a) Property lines;

(b) Proposed and existing construction;

(c) Building floor plans;

(d) The number, size, type and location of all permanent structures and facilities;

(e) Location of all proposed and existing water supply and sewage disposal systems;

(f) Location of water and sewer lines;

(g) Estimated total number of campers and staff to be using the facilities at any given time;

(h) Location of storage, collection and disposal facilities of solid waste.

(6) Where construction, enlargement or alteration of the organizational camp involved areas described in subsections (5)(c), (d), (e), (f), (g) or (h), details shall be provided as part of the plans. Finish schedules shall be provided for toilet, bath, lavatory and kitchen facilities.

(7) A copy of a building plan approval or building permits issued by the building department having jurisdiction shall accompany the plot plan. Approval or permit in this context may be limited to the work proposed. Floor plans shall show the location of all plumbing fixtures.

(8) Whenever a food service facility is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service facility, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator or Designee for approval before construction. Plans shall be submitted in accordance with Oregon Food Sanitation Rules OAR 333-150-0000 part 8-2.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0045

Building Construction

All new buildings constructed or existing buildings remodeled, enlarged or converted after the effective date of these rules shall meet the requirements of:

(1) The 2004 Oregon Structural Specialty Code.

(2) The 2004 Oregon Mechanical Specialty Code.

(3) The 2002 Oregon Electrical Specialty Code.

(4) The 2000 Oregon Plumbing Specialty Code.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0050

Sleeping Space

(1) Each permanent sleeping unit shall have:

(a) At least thirty inches (76.2 cm) separation between beds and sleeping bags.

(b) At least thirty inches (76.2 cm) separation between the heads of sleepers shall be provided. In lieu of such separation, partitions or physical barriers are acceptable.

(c) At least thirty inches (76.2 cm) vertical separation between tiers of beds or between the top tier and the ceiling.

(d) Where two tiers of beds are provided, there must be at least ten inches (25.4 cm) of space between the floor of the sleeping units and the underside of the first tier of beds. In lieu of such spacing, the first tier of bunks shall have a continuous base which shall be sealed to the floor.

(2) Permanent sleeping units shall be provided with cross ventilation or shall comply with the ventilation requirements of the Oregon Department of Consumer and Business Services, Building Codes Division.

(3) Sleeping units and furnishings shall be kept clean and in good repair.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0080

Water Quality, Source and Distribution

(1) Definitions applicable to this rule:

(a) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(b) "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is from January 1 through March 31, 2nd Quarter is from April 1 through June 30, 3rd Quarter is from July 1 through September 30 and the 4th Quarter is from October 1 through December 31.

(2) Water supply systems serving travelers' accommodations and hostels shall comply with Oregon Administrative Rules for Public Water Systems, OAR 333-061-0005 through 333-061-0095, and must be:

(a) Regulated as a Public Drinking Water System under OAR 333-061, or;

(b) Water systems serving travelers' accommodations and hostels that are not regulated under OAR 333-061 as a Public Drinking Water System must meet the requirements in section (3) below.

(3) Unregulated Public Drinking Water Systems:

(a) Plan Review. All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(b) Surface Water Sources. New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(c) Sampling frequency:

(A) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(B) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(ii) Inorganic Samples: One time sampling required for new facilities before beginning operation.

(d) MCL Violations. An item is not considered a violation until confirmed by second sample taken within 24 hours. Four repeat samples must be taken within 24 hours of the original sample for a sample result above the maximum contaminant level (MCL).

(A) Total coliform: Report positive total coliform samples to the Department within 24 hours of being notified of the positive sample.

ADMINISTRATIVE RULES

(B) Fecal coliform. Any positive fecal coliform sample must be reported to the Department within 24 hours.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Department must be in place before serving public.

(C) Inorganic Samples. One time sampling is required for new facilities. Additional testing is not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(D) Nitrate: Sample must be submitted for testing annually

(i) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(ii) When a test on a sample is reported to exceed the MCL for nitrate, public notification is required. Bottled water must also be provided to public upon request.

(E) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(e) Sample collection methods.

(A) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(B) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are also used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030(Table 1);

(ii) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level.

(iii) Test results: Sample results must be submitted to the Local Public Health Authority by the 10th of the month following the sampling period.

(iv) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(f) Public Notice. All public notification must be posted conspicuously on site and must include:

(A) A description of the violation or situation of concern;

(B) Corrective actions taken to improve water quality;

(C) Any potential adverse health effects;

(D) The population at risk;

(E) The alternative measures in place to provide safe drinking water.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0085

Building Plumbing

All building plumbing shall comply with the applicable requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New water supply distribution systems, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2000 Oregon Plumbing Specialty Code.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-030-0120

Fire Safety

(1) Permanent buildings within the organizational camp which are accessible to entry by the campers shall meet the requirements of the 2004 Oregon Fire Code. Fire escape plans and/or routes shall be communicated to campers prior to overnight occupancy.

(2) Buildings with an occupancy of more than 12 persons shall be provided with at least two separate and independent means of emergency exit, located as far apart as possible but in no case closer than 50 percent of the longest dimension of the building.

(3) Where wood burning stoves or combustible fuel heaters are used in sleeping quarters, a carbon monoxide detector that meets the Consumer

products Safety Commission's UL-2034 specification shall be provided and kept in good working order.

(4) Smoke detectors, in good working order shall be provided in all buildings used for sleeping by camp participants or staff.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0002

Definitions

As used in these rules 333-031-0002 to 333-031-0085, unless otherwise required by context:

(1) "Administrator" means the Assistant Director for Health.

(2) "Approval or Approved" means approved in writing.

(3) "Camping Space" means an area of ground within a recreation park intended for the accommodation of a recreational vehicle, camping vehicle, tent vehicle, tent or other individual camping unit on a temporary basis.

(4) "Camping Vehicle" means either a vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use and which is intended for human occupancy and is being used for vacation and recreational purposes, but not for residential purposes, and is equipped with plumbing, sink or toilet.

(5) "Campground" provides facilities and space for tents, tent vehicles, camping vehicles, or recreational vehicles.

(6) "Division" means Health Services of the Department of Human Services.

(7) "Hostel" means an establishment having beds rented or kept for rent on a daily or weekly basis to travelers for a charge or fee paid or to be paid for rental or use of facilities and which are operated, managed or maintained under the sponsorship of a non-profit organization which holds a valid exemption from federal income taxes under 26 USC Sec. 501.

(8) "Organizational Camp" includes any area designated by the person establishing, operating, managing or maintaining the same for recreational use by groups or organizations which include but are not limited to youth camps, scout camps, summer camps, day camps, nature camps, survival camps, athletic camps, camps which are operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations. Organizational camps are distinguished from recreation parks by the existence of organized group activities comprising the majority of activities by all participants rather than individual and family recreation.

(9) "Overnight Camping" means the activity of using a camping space for overnight accommodation.

(10) "Permanently affixed thereto" as used in these rules includes but is not limited to affixation as evidenced by: permanent water, sewer, and electrical connections; wheels removed; permanent foundations; or towing assembly removed.

(11) "Picnic Park" means any recreation park which is for day use only and provides no recreation vehicle or overnight camping spaces.

(12) "Recreation Park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking or overnight camping by the general public or any segment of the public. "Recreation park" includes but is not limited to area open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to those areas divided into two or more lots, parcels, units or other interests for purposes of such use. "Recreation park" excludes sites that have units for human occupancy permanently affixed thereto but includes an area that has camping spaces available to be moved onto for transitory use.

(13) "Recreational Vehicle" means a camping vehicle.

(14) "Tent Vehicle" is any camping vehicle intended for overnight occupancy but not equipped with plumbing, sink, or toilet.

(15) "Tourist Facility" means any travelers' accommodation, hostel, picnic park, recreation park and organizational camp.

(16) "Travelers' Accommodation" includes any establishment, which is not a hostel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

(17) "Unregulated Small Drinking Water System" means a facility licensed under the authority of these rules that is not regulated under OAR 333-061, Public Water Systems. These systems must comply with the requirements of OAR 333-031-0004.

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

ADMINISTRATIVE RULES

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; HD 18-1987(Temp), f. & ef. 10-22-87; HD 7-1988, f. & cert. ef. 4-18-88; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0004

Water Supply

(1) Definitions applicable to this rule:

(a) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(b) "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is from January 1 through March 31, 2nd Quarter is from April 1 through June 30, 3rd Quarter is from July 1 through September 30 and the 4th Quarter is from October 1 through December 31.

(2) Water supply systems serving travelers' accommodations and hostels shall comply with Oregon Administrative Rules for Public Water Systems, OAR 333-061-0005 through 333-061-0095, and must be:

(a) Regulated as a Public Drinking Water System under OAR 333-061; or

(b) Water systems serving travelers' accommodations and hostels that are not regulated under OAR 333-061 as a Public Drinking Water System must meet the requirements in section (3) below.

(3) Unregulated Public Drinking Water Systems:

(a) Plan Review. All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(b) Surface Water Sources. New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(c) Sampling frequency:

(A) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(B) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(ii) Inorganic Samples: One time sampling required for new facilities before beginning operation.

(d) MCL Violations. An item is not considered a violation until confirmed by second sample taken within 24 hours. Four repeat samples must be taken within 24 hours of the original positive sample for a sample result above the maximum contaminant level (MCL).

(A) Total coliform: Report positive total coliform samples to the Department within 24 hours of being notified of the positive sample.

(B) Fecal coliform. Any positive fecal coliform sample must be reported to the Department within 24 hours.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Department must be in place before serving public.

(C) Inorganic Samples. One time sampling is required for new facilities. Additional testing is not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(D) Nitrate: Sample must be submitted for testing annually

(i) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(ii) When a test on a sample is reported to exceed the MCL for nitrate, public notification is required. Bottled water must also be provided to public upon request.

(E) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(e) Sample collection methods.

(A) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(B) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are also used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030(Table 1);

(ii) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level.

(iii) Test results: Sample results must be submitted to the Local Public Health Authority by the 10th of the month following the sampling period.

(iv) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(f) Public Notice. All public notification must be posted conspicuously on site and must include:

(A) A description of the violation or situation of concern;

(B) Corrective actions taken to improve water quality;

(C) Any potential adverse health effects;

(D) The population at risk;

(E) The alternative measures in place to provide safe drinking water.

(4) The water distribution system shall be designed, constructed, approved and maintained in compliance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New water supply distribution systems, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2000 Oregon Plumbing Specialty Code**.

(5) No owner or operator of an establishment covered by these regulations shall supply common drinking cups or vessels.

(6) Where drinking fountains are provided, they shall be of an approved angle jet type with adequate water pressure at all times.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0006

Sewage and Liquid Waste Disposal

(1) Sewage and waste water shall be disposed of into a public sewerage system or in a manner approved by the Department of Environmental Quality, OAR 340-071-0100 to 340-071-0600.

(2) All sewage collection systems when provided shall be designed, constructed, approved and maintained in compliance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division, and, where applicable, the additional statutes, rules and standards set forth by the Department of Environmental Quality. New sewage collection systems and recreational vehicle waste disposal stations, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2000 Oregon Plumbing Specialty Code**.

(3) No liquid wastes shall be discharged onto the ground or allowed to accumulate on the ground surface.

(4) In lieu of individual sewer connections, at least one kitchen waste water disposal facility shall be provided for the recreation park. A kitchen waste water disposal facility shall:

(a) Discharge into a public sewerage system.

(b) If such a system is not available then liquid wastes shall be disposed of in a manner approved by the Department of Environmental Quality, OAR 340-071-0100 through 340-071-0600.

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

Stat. Auth.: ORS 446

Stats. Implemented:

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0010

Fire Protection and the Elimination of Accident Factors

(1) Electrical installations shall comply with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New electrical installations or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2002 Oregon Electrical Specialty Code**.

(2) Local building ordinances shall be complied with.

(3) Every gas water heater, and every other gas fired appliance except gas plates and gas ranges, installed or serviced for use in any rental unit, shall be effectively vented as required by the State Fire Marshal.

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(4) Liquefied petroleum gas storage tanks shall conform in construction, design, installation, and operation with the rules of the State Fire Marshal.

(5) All boilers and pressure vessels shall be approved and maintained in accordance with the applicable state statutes and rules of the Department of Commerce.

(6) An approved ASME pressure relief valve shall be installed on all hot water tanks.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0012

Bath and Toilet Room

(1) Toilet, handwashing and bathing facilities shall be maintained to meet the following requirements:

(a) Illumination and ventilation shall be provided in accordance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New Toilet, handwashing, and bathing facilities, or facilities remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2004 Oregon Structural Specialty Code** and the **2004 Oregon Mechanical Specialty Code**;

(b) Floors and walls shall be smooth, impervious to water and easily cleanable;

(c) Shower walls, ceilings and/or partitions shall be impervious to water. Where a wall and a floor join, an effective, watertight union shall be maintained;

(d) Bathtub and shower floor areas shall be finished with non-slip, impervious, easily cleaned surfaces and sloped to effectively drain all waste water. Wooden racks or duck boards over shower floors are prohibited;

(e) Where glass bath or shower doors are used, such doors shall be made of safety glass.

(2) All plumbing installations must be designed, constructed, approved and maintained in compliance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New water supply distribution systems, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the **2000 Oregon Plumbing Specialty Code**.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0018

Supplemental Services and Swimming Pools

(1) Eating and drinking establishments, commissaries, mobile units, and vending machines operated in conjunction with recreation parks shall be operated in compliance with the Department's Food Sanitation Rules, OAR 333-150-0000 (1/2002).

(2) All swimming pools, spa pools and wading pools located at or operated in a recreation park shall comply with the respective Rules of the Department:

(a) Public Swimming Pools and Wading Pools OAR 333-060-0005 through 333-060-0225; and

(b) Public Spa Pools OAR 333-062-0005 through 333-062-0185.

(3) Ice provided by recreation parks shall comply with OAR 333-150-0000 sections 3-202.16 and 3-303.12.

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HB 129, f. 12-3-59; HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; PH 1-2005, f. & cert. ef. 1-14-05

333-031-0066

All Toilets

(1)(a) Toilets shall be provided in all recreation parks in the following ratios: Number of picnic spaces, camping spaces or car parking spaces — Number of Toilets: [Table not included. See ED. NOTE.]

(b) The location of toilets shall be indicated by appropriate signs.

(2) If flush toilets are provided, the building containing them shall be constructed in accordance with OAR 333-031-0012 and the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New flush toilet facilities, or facilities remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2000 Oregon Plumbing Specialty Code.

(3) If pit privies or chemical toilets are provided, they shall be constructed, located, and maintained in accordance with the requirements of the Department of Environmental Quality OAR 340-071-0100 through 340-071-0600.

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

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446

Hist.: HB 231, f. 12-22-69; HD 7-1985(Temp), f. & ef. 4-30-85; HD 27-1985, f. & ef. 10-28-85; PH 1-2005, f. & cert. ef. 1-14-05

333-150-0000

Food Sanitation Rule

(1) Authority and Purpose.

(a) This rule is authorized by ORS 624.100.

(b) This rule establishes definitions, sets standards for management and personnel, food protection, and equipment and facilities, water supply, sewage disposal, provides for food establishment plan review, and employee restriction to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

(2) Incorporation by Reference. The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 is adopted and incorporated by reference.

(3) Deletions. The following sections, paragraphs or subparagraphs of the 1999 FDA Food Code are deleted in their entirety: 1-201.10(B)(36), 2-103.11(H), 3-201.16, 3-301.11(C), 3-401.11(D)(3), 4-301.12(C)(5), (D) and (E), 4-501.115, 4-603.16(B) and (C), 8-302.11, 8-302.14(E), 8-401.10(B), 8-401.20, 8-402.20(A)(3), 8-402.40, 8-406.11, and Annex 1 through 8.

(4) Additions and Amendments.

(a) Amend subparagraph 1-201.10(B)(1)(a) to read: "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals or approved by the Department of Human Services.

(b) Add a new subparagraph 1-201.10(B)(7.1) to read: "Catering" means the preparation of food in an approved food establishment and the transportation of such food for service and consumption at some other site.

(c) Add a new subparagraph 1-201.10(B)(9.1) to read: "Close" means to summarily stop the operation of a food establishment pursuant to ORS 624.085.

(d) Add a new subparagraph 1-201.10(B)(10.1) to read: "Code" shall have the same meaning as rule.

(e) Add a new subparagraph 1-201.10(B)(11.1) to read: "Combination Food Service Establishment" means any food establishment located within a single structure or at a single site, but which is engaged in activities which are subject to licensing or inspecting requirements of both the Department of Human Services and the Oregon Department of Agriculture, and the regulated activities are common to the same operator.

(f) Add a new subparagraph 1-201.10(B)(12.1) to read: "Commissary" means a commissary catering establishment, restaurant, or any other place in which, food, beverage, ingredients, containers, or supplies are kept, handled, packaged, prepared or stored, and from which vending machines or mobile units are serviced.

(g) Add a new subparagraph 1-201.10(B)(12.2) to read: "Complete Inspection" means any inspection conducted at the election of the licensing agency evaluating for all items on the inspection form.

(h) Add a new subparagraph 1-201.10(B)(12.3) to read: "Condiments" means garnishes, toppings, or seasonings that are added to a food to enhance or compliment the flavor, such as diced onions, dice tomatoes, hot sauce, ketchup, mayonnaise, mustard, relish, salt, shredded cheese and sugar.

(i) Add a new subparagraph 1-201.10(B)(18.1) to read:

"Critical violations" means those items weighted zero (0), four (4) or (5) points on the Inspection Report or the Inspectional Guide.

(j) Add a new subparagraph 1-201.10(B)(18.2) to read: "Critical violations creating an imminent danger to public health" means those critical violations in which at least one of the following conditions exists:

(a) Food and drink is spoiled, unwholesome, or contaminated with pathogenic or fecal organisms, toxic chemicals, insect or rodent parts or excreta, or other harmful substances or articles;

(b) Potentially hazardous foods have been kept at temperatures above 45 degrees F. and below 140 degrees F. for four (4) hours or more;

(c) Food employee has a reportable disease or medical condition under § 2-201.11.

(k) Add a new subparagraph 1-201.10(B)(18.3) to read: "Critical violations creating a potential danger to public health" means all critical violations other than those that create an imminent danger to public health.

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(l) Add a new subparagraph 1-201.10(B)(18.4) to read: "Critical violations creating a significantly increased risk for foodborne illness" include:

- (a) Potentially hazardous foods at improper temperatures.
- (b) Cross contamination of raw to ready to eat foods.
- (c) Poor personal hygiene and handwashing.

(m) Add a new subparagraph 1-201.10(B)(18.5) to read: "Danger to public health" is a condition which is conducive to propagation or transmission of pathogenic organisms or, a chemical or physical hazard which presents a reasonably clear possibility that the public is exposed to physical suffering or illness.

(n) Amend subparagraph 1-201.10(B)(25)(a) to read: "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, meat tenderizer, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(o) Amend subparagraph 1-201.10(B)(31) to read: Food Establishment

(a) "Food establishment" means an operation that prepares, packages, serves, stores, vends, or otherwise provides food for human consumption.

(b) "Food establishment" includes but is not limited to:

(i) Bars, bed and breakfast facilities, cafeterias if open to the public, catered feeding locations, caterers, coffee shops, commissaries, conveyance used to transport people, hospitals if open to the public, hotels, microbreweries, motels, private clubs if open to the public, restaurants, satellite sites, senior citizen centers, snack bars, taverns, vending locations, warehouses, or similar food facilities;

(ii) An operation that is conducted in a mobile food unit, temporary food establishments, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for the food.

(iii) The premises of a fraternal, social, or religious organization where food is prepared for the public.

(iv) Except as specified in 1-201.10(B)(31)(c)(xiv), school food service that is provided by a private person, business, or organization; and that serve persons other than enrolled students, invited guests or staff.

(v) That relinquishes possession of food to a consumer directly through a restaurant takeover order.

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that offers only whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A private home where food is prepared or served for family and guests, and where the public is not invited.

(v) A private home that receives catered or home-delivered food.

(vi) An establishment licensed and inspected by the Oregon Department of Agriculture.

(vii) An establishment or organization that prepares or sells the following food items shall be exempt from licensure and the provisions of ORS 624.010 to 624.120, and 624.310 to 440:

(A) Candy, candied apples, cookies and non-potentially hazardous confections;

(B) Commercially prepackaged ice cream and frozen desserts;

(C) Commercially pickled products, jerky, nuts, nutmeats, popcorn, and prepackaged foods such as potato chips, pretzels, and crackers;

(D) Unopened bottled and canned non-potentially hazardous beverages to include alcoholic beverages;

(E) Coffee and tea, with non-potentially hazardous ingredients; and

(F) Other food items as determined by the Department of Human Services.

(viii) Private vehicles used for home deliveries.

(ix) Personal chef who prepares food for an individual or private dinner party at the resident's home. The personal chef may purchase food from a grocery store, but shall not prepare food in advance at a location other than the resident's home. The personal chef may use his or her own equipment, utensils and spices.

(x) Continental breakfast served by a tourist facility licensed under ORS 446 and that is limited to the following: individual containers of commercially prepared juices; commercially prepared non-potentially hazardous pastries; whole uncut fresh fruit with peel, coffee and tea with non-potentially hazardous ingredients.

(xi) Except as specified in 1-201.10(B)(31)(b)(i), mobile food units that are operated by a market, are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xii) Except as specified in 1-201.10(B)(31)(b)(i), outdoor barbecues operated by a market that are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xiii) Food service that is provided by a state, county, or other governmental entity.

(xiv) Except as specified in 1-201.10(B)(31)(b)(iv), school food service that is provided by a state, county, or other governmental entity; or is providing food to students, teachers, other school staff, and invited guests.

(xv) Any person holding a "one-day, special retail beer or special retail wine license" for a private residence; or anyone who possesses a "temporary" license from the Oregon Liquor Control Commission who serves alcoholic beverages to the public, but serves only foods exempted under 1-201.10(B)(31)(c)(vii) and uses single-service articles.

(xvi) A bed and breakfast facility with two or less rooms for rent on a daily basis.

(p) Amend subparagraph 1-201.10(B)(32)(a) to read: "Food processing plant" means a commercial operation or a domestic kitchen licensed by the Oregon Department of Agriculture that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

(q) Amend subparagraph 1-201.10(B)(41) to read: "Imminent health hazard" means the same as 1-201.10(B)(18.1).

(r) Add subparagraph 1-201.10(B)(45.1) to read: "License" means the same as permit for the purposes of this rule.

(s) Add subparagraph 1-201.10(B)(45.2) to read: "License holder" means the same as permit holder for the purposes of this rule.

(t) Add subparagraph 1-201.10(B)(46.1) to read: "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(u) Add subparagraph 1-201.10(B)(49.1) to read: "Outdoor Barbecue" means an open-air preparation by a restaurant of food by cooking over an open fire utilizing either a permanent or portable grill, where the purpose of barbecuing is to impart a unique flavor to the food.

(v) Add subparagraph 1-201.10(B)(65.1) to read: "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is January 1 through March 31, 2nd Quarter is April 1 through June 30, 3rd Quarter is July 1 through September 30 and the 4th Quarter is October 1 through December 31.

(w) Add subparagraph 1-201.10(B)(66.1) to read: "Recheck Inspection" means:

(a) An inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections; or

(b) An inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.

(x) Add subparagraph 1-201.10(B)(69.1) to read: "Repeat violation" means a violation of a rule which is the same specific problem or process as indicated on the Food Service Inspection Report occurring in two consecutive semi-annual inspections.

(y) Add subparagraph 1-201.10(B)(73.1) to read: "Semi-annual inspection" means an unannounced complete inspection conducted twice during the calendar year; one in each half of the year, but not less than 90 days or more than 270 days apart.

(z) Amend subparagraph 1-201.10(B)(87) to read: "Temporary food establishment" means the same as ORS 624.010(6).

(aa) Amend subparagraph 1-201.10(B)(89) to read: "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; food temperature measuring devices; trays used with high-chairs; and probe-type price or identification tags used in contact with food.

(bb) Add subparagraph 1-201.10(B)(92.1) to read: "Violation" means any condition which fails to meet a requirement of ORS Chapters 624 or this rule.

(cc) Add subparagraph 1-201.10(B)(92.2) to read: "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units, or commissaries are stored.

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(dd) Amend section 2-102.11 to read: Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by compliance with this Code, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, a corporate training program approved by the Department of Human Services, or by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(ee) Adopt paragraphs 2-102.11(A) through (O) without changes.

(ff) Amend paragraph 2-301.12(A) to read: Except as specified in ¶ (B) of this section and § 2-301.13, food employees shall clean their hands in a lavatory that is equipped as specified under § 5-202.12 by using a cleaning procedure of approximately 20 seconds that includes:

(A) Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms for at least 10 to 15 seconds, followed by;

(B) Thorough rinsing under clean, running water.

(gg) Amend section 2-301.13 to read:

(A) After defecating, contacting body fluids and discharges, or handling waste containing fecal matter, body fluids, or body discharges, and before beginning or returning to work, food employees shall wash their hands twice using the cleaning procedure specified in § 2-301.12.

(B) Except when one handwashing lavatory is allowed under ¶ 5-203.11(A), after using the toilet facility food employees shall wash their hands twice, first at a handwashing lavatory in the toilet facility and again at a handwashing lavatory in the food preparation area.

(hh) Amend section 2-301.16 to read:

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be used according to labeled directions and be applied to hands that are cleaned as specified under § 2-301.12.

(B) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

(ii) Amend paragraph 2-402.11(A) to read: Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(jj) Amend paragraph 3-201.11(B) to read: Except as specified in ¶¶ (I) and (J) of this section, food prepared in a private home may not be used or offered for human consumption in a food establishment.

(kk) Add paragraph 3-201.11(G) to read: Game meat which has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.

(ll) Add paragraph 3-201.11(H) to read: Except as required in 3-201.11(A) through (G) of this section and in accordance with ORS 624.035, any person, business or volunteer group may donate food to a benevolent organization that meets the requirements in ORS 624.015. The Internal Revenue Service (IRS) will issue a "letter of determination" that should be used as the basis for assessing compliance with benevolent status of ORS 624.015. The person, business or volunteer group making the donation shall inspect the food to ensure its fitness for human consumption and discard all food that is unwholesome. The following donated food items are approved for use by benevolent organizations:

(A) Commercially prepared foods, canned goods, and milk products, marine and freshwater fishery products or meat animals; i.e., cattle, sheep, goats, equine, swine, poultry or rabbits obtained from facilities licensed by the Oregon Department of Agriculture or the Department of Human Services according to ORS 603.616, and Chapters 621, 622, 624, 625 and 635;

(B) Home baked bread, rolls, pies, cakes, doughnuts or pastries not having perishable fillings, icings, toppings or glazes;

(C) Fresh fruit and produce from private gardens or commercial growers;

(D) Salvageable food which has lost the label or which has been subjected to possible damage due to accident, fire, flood, adverse weather or similar cause. Reconditioning of salvageable food shall be conducted according to the 1984 Model Food Salvage Code recommended by the Association of Food and Drug Officials and U.S. Department of Health and Human Services;

(E) Other food as may be approved by the Department of Human Services upon prior notification by the donor or benevolent organization;

(F) Unless alternative language has been approved by the regulatory authority, a notice shall be posted in public view that says: "NOTICE: Food served at this location may not have been inspected by the health department."

(mm) Add paragraph 3-201.11(I) to read: Privately donated breads, rolls, pies, cakes, doughnuts or other pastries not having perishable fillings, icings, toppings or glazes may be used in temporary food establishments operated by benevolent organizations for fund-raising events, provided they meet the requirements under 3-201.11(H)(6).

(nn) Add paragraph 3-201.11(J) to read: Food prepared in a private home that is licensed as a home processor by the Oregon Department of Agriculture.

(oo) Add subparagraph 3-201.17(A)(5) to read: Except as specified in (A)(1) through (4) of this section,

(a) Game meat donated to a charitable organization shall be inspected by employees of the Oregon Department of Agriculture, Department of Fish and Wildlife, or State Police as provided for in ORS 619.095 may be served for human consumption by that charitable organization.

(b) As used in subparagraph (a) of this section:

(i) Charitable organization means the Adult and Family Services Division, State Office for Services to Children and Families, Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the Department of Fish and Wildlife.

(ii) Game meat includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

(pp) Add section 3-201.18 to read: Outdoor Barbecuing.*

(A) Outdoor barbecuing by a food establishment shall be allowed as a part of the operation when conducted on the premise or in the immediate vicinity of the food establishment.

(B) Enclosure of an outdoor barbecue shall not be required unless necessary to protect food from contamination.

(qq) Amend section 3-301.11 to read:

(A) Food employees shall wash their hands as specified under §§ 2-301.12 and 2-301.13.

(B) Food employees shall minimize bare hand contact with food and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.S

(rr) Amend paragraph 3-304.12(F) to read: In a container of water if the container is cleaned at a frequency specified under subparagraph 4-602.11(D)(7); and

(A) The water is maintained at a temperature of 60°C (140°F) or above; or

(B) At 5°C (41°F) or less.

(ss) Add paragraph 3-304.15(E) to read: Effective March 1, 2003, the use of latex gloves in food service establishments is prohibited.

(tt) Add section 3-306.15 to read: Outdoor Barbecue, Serving Consumers.

(A) Consumers may not serve themselves from an outdoor barbecue.

(B) The food employee may serve:

(i) An employee who brings a container or plate from the food establishment to the barbecue and who returns the food to the food establishment for further processing or service; or

(ii) The consumer directly.

(C) Except for non-potentially hazardous condiments, such as hot sauces, ketchup, mayonnaise, mustard, pepper, relish, salt, and sugar, no other food may be served outside of the food establishment.

(uu) Add section 3-307.12 to read: Protection from Contamination, Use of Private Vehicles for Food Deliveries.

(A) Private vehicles may be used for food deliveries if the food is packaged so that it is protected from contamination under Part 3-3, and adequate means are provided for maintaining proper food temperatures under § 3-501.16.

(B) Private vehicles shall not be used in any activity that is incompatible with safe and sanitary transportation of food.

(vv) Amend subparagraph 3-401.11(D)(2) to read: The consumer requests that the food be prepared in a raw, rare, or undercooked state.

(ww) Amend subparagraph 3-501.16(C)(2) to read: No later than January 1, 2007, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less.

(xx) Amend paragraph 3-501.17(F) to read: Paragraphs (C) and (D) of this section do not apply to:

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(A) Whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing;

(B) Hard cheeses that are manufactured with a moisture content not exceeding 39 percent as specified under 21 CFR 133.150 and meets the temperature requirements specified under ¶ 3-501.16(B). Examples include Asiago medium, Asiago old, Cheddar, Gruyere, Parmesan, Reggiano, Romano, and Sap sago.

(C) Semisoft cheeses containing more than 39 percent but less than 50 percent moisture as specified in 21 CFR 133.187 and meets the temperature requirements specified under ¶ 3-501.16(B). Examples include Asiago fresh and Soft, Blue, Brick, Caciocavallo Siciliano, Colby with not more than 40% moisture, Edam, Gorgonzola, Gouda, Limburger, Monterey, Monterey Jack, Muenster, Pasteurized process cheese, Provolone, Swiss and Emmentaler.

(D) Pasteurized process cheese manufactured according to 21 CFR 133.169, labeled as containing an acidifying agent and meets the temperature requirements specified under ¶ 3-501.16(B).

(E) Cheeses that are not exempt for date marking include soft cheeses. Examples include Brie, Camembert, Cottage, Ricotta, and Teleme.

(yy) Add section 3-502.11 to read: A food establishment shall obtain a variance from the regulatory authority as specified in § 8-103.10 and under § 8-103.11 before smoking food as a method of food preservation rather than as a method of flavor enhancement; curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; packaging food using a reduced oxygen packaging method except as specified under § 3-502.12 where a barrier to *Clostridium botulinum* in addition to refrigeration exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

(zz) Add section 3-502.13 to read: Breeding Requirements.

(A) When food is being breaded, the breading operations shall meet the requirements under § 3-501.16.

(B) In breading operations where the breading is done in batches:

(i) The used breading shall be sifting with a fine mesh sieve to remove meat fragments and all clumps of moist breading.

(ii) The breading equipment or utensils shall be cleaned as specified under § 4-602.11.

(aaa) Amend section 3-603.11 to read: Except as specified in ¶¶ 3-401.11(C) and 3-801.11(D), the food establishment may offer or a consumer may request an animal food such as beef, eggs, fish, lamb, milk, or shellfish to be served in a ready-to-eat form that is raw, undercooked, or not otherwise processed to eliminate pathogens; or as a raw ingredient in another ready-to-eat food.

(bbb) Amend paragraph 4-501.16(B) to read:

(B) If a warewashing sink is used to launder wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under § 4-501.14.

(1) If wiping cloths are washed at the warewashing sink, they shall be washed in the wash compartment, and

(2) Sinks used to wash or thaw food shall be washed, rinsed, and sanitized both before and after use.

(ccc) Amend subparagraph 4-602.11(D)(7) to read: The utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues and in-use utensils are intermittently stored in a container of water in which the water is maintained at:

(a) 60°C (140°F) or more, or

(b) 5°C (41°F) or less.

(ddd) Amend section 5-102.11 to read:

(A) Except as specified under § 5-102.12, water from a public water system shall meet 40 CFR 141-National Primary Drinking Water Regulations and OAR 333-061.

(B) The following drinking water standards apply to licensed food establishments that are not regulated under OAR 333-061,:

(1) Sampling frequency:

(a) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(b) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(ii) Inorganic Samples: One time sampling required for new facilities before beginning operation.

(5) MCL Violations: An item is not considered a violation until confirmed by second sample taken within 24 hours. Four repeat samples must be taken within 24 hours of the original positive sample for a sample result above the maximum contaminant level (MCL).

(a) Total coliform: Report positive total coliform samples to the Department within 24 hours of being notified of the positive sample.

(b) Fecal coliform: Any positive fecal coliform sample must be reported to the Department within 24 hours.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Department must be in place before serving public.

(c) Inorganic Samples: One time sampling required for new facilities. Not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(d) Nitrate: Sample annually

(i) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(ii) Public notification is required.

(iii) Bottled water must be provided to public upon request.

(e) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(6) Sample collection methods:

(a) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(b) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are also used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030(Table 1);

(ii) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level;

(iii) Test results: Sample results must be submitted to the Local Regulatory Authority by the 10th of the month following the sampling period.

(c) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(7) Public Notice: All public notification must be posted conspicuously on site and must include:

(a) A description of the violation or situation of concern;

(b) Corrective actions taken to improve water quality;

(c) Any potential adverse health effects;

(d) The population at risk;

(e) The alternative measures in place to provide safe drinking water.

(8) Surface Water Sources: New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(9) Plan Review: All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(eee) Amend section 5-104.12 to read:

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(i) A supply of containers of commercially bottled drinking water;

(ii) One or more closed portable water containers;

(iii) An enclosed vehicular water tank;

(vi) An on-premises water storage tank; or

(v) Piping, tubing, or hoses connected to an adjacent approved source.

(B) The regulatory authority may grant a temporary variance from requirements of Subparts 5-101, 5-102, and 5-103 by continuing or re-issuing previously issued permits where:

ADMINISTRATIVE RULES

(i) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;

(ii) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and

(iii) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.

(fff) Amend paragraph 5-203.11(A) to read: Except as specified in (B) and (C) of this section, at least 1 handwashing lavatory or the number of handwashing lavatories necessary for their convenient use by employees in areas specified under § 5-204.11 shall be provided. Food establishments opened prior to July 1, 1965 are exempt from this requirement provided that employees can meet the requirements under §§ 2-301.12 and 2-301.13.

(ggg) Amend paragraph 5-203.11(C) to read: An adequate number of handwashing stations shall be provided for each temporary food establishment to include:

(A) A minimum of one enclosed container that has a minimum water capacity of five gallons;

(B) A spigot that can be opened to provide a constant flow of water;

(C) Soap;

(D) Water;

(E) Paper towels; and

(F) A collection container for wastewater.

(hhh) Amend section 5-203.12 to read:

(A) Except as specified in (B) of this section, toilet facilities shall be installed according to ORS 455.010 through 455.895 (1998 Oregon Structure Specialty Code, 2000 Amendments) for the number of toilets.

(B) Food establishments with occupancy of 15 or less to include both employees and patrons may have only one toilet fixture and adjacent lavatory on the premises.

(iii) Amend section 5-302.16 to read: A food grade hose shall be used for conveying drinking water from a water tank and shall be:

(jjj) Adopt paragraphs 5-302.16(A) through (E) as written.

(kkk) Amend section 6-402.11 to read:

(A) Except for (B) and (C) of this section, toilet rooms shall be conveniently located and accessible to employees during all hours of operation and shall be an integral part of the building.

(B) Toilet facilities for the customer are required only in establishments constructed or extensively remodeled after May 11, 1974.

(C) Food establishments limited to drive-in or handout service are not required to provide toilet rooms facilities for the customer.

(lll) Add paragraph 8-101.10(C) to read: Plans submitted shall be reviewed and commented on by a sanitarian registered in accordance with ORS 700.

(mmm) Amend section 8-103.10 to read:

(A) The Department may grant a variance from requirements of this Code as follows:

(i) Where it is demonstrated to the satisfaction of the Department that strict compliance with the rule would be highly burdensome or impractical due to special condition or cause;

(ii) Where the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules; and

(iii) Where such alternative measures are provided which in the opinion of the Department will provide adequate public health and safety protection.

(B) Such variance authority is not conferred upon any Local Public Health Authority notwithstanding contractual authority in administration and enforcement of the food service statutes and rules;

(C) The applicant must include all necessary information to support the variance request, which may include, but is not limited to, required testing, challenge data and research results;

(D) If a variance is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment;

(E) The Department will review variances at least triennially;

(F) Revocation or denial of the variance request shall be subject to the appeal process provided under ORS 183.

(nnn) Amend subparagraph 8-201.13(A)(2) to read: A variance is required as specified under § 3-502.11, ¶ 4-204.110(B), or subparagraph 3-203.12(B)(2)(b); or

(ooo) Amend paragraph 8-302.14(A) to read: The name, mailing address, telephone, number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(ppp) Amend paragraph 8-303.30(C) to read: Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS 183.

(qqq) Amend subparagraph 8-304.11(G)(2) to read: The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of 12 consecutive months, or

(rrr) Amend paragraph 8-304.11(H) to read: Upgrade or replace refrigeration equipment if the circumstances under subparagraphs (G)(1)-(3) of this section occurs first, or by no later than the time specified under ¶ 3-501.16(C);

(sss) Amend paragraph 8-304.11(J) to read: Accept notices issued and served by the regulatory authority as may be authorized under ORS 183 and 624; and

(ttt) Amend paragraph 8-304.11(K) to read: Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under ORS 183 and 624.

(uuu) Amend paragraph 8-401.10(C) to read: For temporary food establishments:

(A) Except for Subparagraph (C)(2) of this section, the regulatory authority shall inspect at least once during the operation of a temporary food establishment.

(B) For benevolent temporary food establishments, the regulatory authority shall either:

(AA) Inspect; or

(BB) Provide a consultation.

(vvv) Amend paragraph 8-403.10(A) to read: (A) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 8-302.14(C), inspection date, and employee food safety cards; and

(www) Amend section 8-403.20 to read: The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, and 8-405.11.

(xxx) Amend paragraph 8-405.11(B) to read: Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct critical Code violations or HACCP plan deviations.

(yyy) Amend paragraph 8-501.20(C) to read: (C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS 624.

(zzz) Amend paragraph 8-501.30(C) to read: (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS 183.

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

Stat. Auth.: ORS 624.100

Stats. Implemented: ORS 624.100

Hist.: HD 20-1986, f. 12-22-86, ef. 2-2-87; HD 6-1989, f. 9-6-89, cert. ef. 9-7-89; HD 10-1992, f. 10-2-92, cert. ef. 10-5-92; HD 19-1994, f. & cert. ef. 7-1-94; HD 16-1995, f. 12-28-95, cert. ef. 1-1-96; OHD 24-2001, f. 10-31-01, cert. ef. 1-1-02; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04; PH 15-2004, f. & cert. ef. 4-9-04; PH 1-2005, f. & cert. ef. 1-14-05

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Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 24-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Adopted: 461-165-0082, 461-170-0130, 461-180-0085, 461-180-0125

ADMINISTRATIVE RULES

Rules Amended: 461-110-0110, 461-110-0750, 461-115-0140, 461-115-0190, 461-115-0530, 461-115-0651, 461-135-0400, 461-135-0405, 461-135-0510, 461-135-0780, 461-135-0832, 461-140-0110, 461-140-0120, 461-145-0130, 461-145-0240, 461-145-0320, 461-145-0330, 461-150-0050, 461-155-0020, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0030, 461-160-0055, 461-160-0550, 461-160-0580, 461-160-0620, 461-165-0100, 461-170-0010, 461-170-0100, 461-170-0101, 461-175-0210, 461-175-0340, 461-180-0020, 461-180-0040, 461-180-0050, 461-180-0090, 461-195-0531
Subject: Rule 461-110-0110 is being amended to add another definition of homeless for the FS program.

Rule 461-110-0750 is being amended to add language stating that additional individuals will be excluded from the GA and GAM benefit groups.

Rule 461-115-0140 is being amended to change the term Division to Department and to expand the limitation for who can be an authorized representative to contractors involved with the eligibility and issuance processes for the Food Stamp Program.

Rule 461-115-0190 is being amended to remove language stating that all medical programs based on a disability may extend the application processing time frame to 90 days and beyond. This specific policy only applies to the OSIPM program when the disability determination is made by the Department.

Rule 461-115-0530 is being amended to establish that the initial certification period for all eligible clients under the Oregon Health Plan (OHP) consists of the month containing the effective date for starting medical benefits and the following six months.

Rules 461-115-0651, 461-160-0030 and 461-160-0055 are being amended because the USDA is allowing FS households with the Medicare-Approved Drug Discount Card to use the pre-discount prescription expense as a medical deduction instead of the actual cost.

Rule 461-135-0400 is being amended to clarify that both parents must be full time students or employed and meet the requirements of the program.

Rule 461-135-0405 is being amended to clarify policy on specific exceptions to the presumption of eligibility when an ERDC client's child receives child care under a contract between a Head Start agency and the Department.

Rule 461-135-0510 is being amended because federally subsidized housing for the elderly, disabled or blind is not considered an institution for residents who receive benefits under Title I, II, X, XIV or XVI of the Social Security Act.

Rules 461-135-0780, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 are being amended to reflect the Congressionally-approved cost-of-living increase for recipients of Social Security/SSI.

Rule 461-135-0832 is being amended to make the definition of "permanently and totally disabled" the same as ORS 412.510(3).

Rules 461-140-0110, 461-140-0120 and 461-145-0130 are being amended to differentiate among the TANF (TANF-PLS), Tribal TANF and UI (NCP-PLS) JOBS Plus programs.

Rule 461-145-0240 is being amended to add the term "sales" to the rule which is consistent with the State Medicaid Plan amendment approved by the Health Care Financing Administration in Transmittal 89-7, Attachment 2.6A Page 12. The amendment identifies an income producing sales contract as having no countable equity value for medical assistance, however the rule does not include the term "sales" in the title.

Rule 461-145-0320 is being amended to include information on how to count viatical settlements.

Rule 461-145-0330 is being amended to clarify how home equity and reverse annuity mortgage loans are counted for FS, OSIP, OSIPM and QMB. This rule is also being amended because currently it lends itself to errors of interpretation if the whole rule is not read.

Rule 461-150-0050 is being amended to eliminate contradictory policy related to benefit adjustments for clients that use prospective budgeting. The correct way to treat benefit adjustment is in OAR 461-150-0020.

Rule 461-155-0020 is being amended to clarify that biological or adoptive children are not included in the adjusted number in household for OSIP/OSIPM.

Rule 461-160-0550 is being amended to specify that income deductions are intended for the financial group.

Rule 461-160-0620 is also being amended to add language to define the income deductions allowed for GA and GAM clients in long term care or waived services.

Rule 461-165-0082 is being adopted because Food Stamp households in Clackamas, Columbia, Multnomah and Washington counties are eligible to receive FS as a cash benefit deposited into an EBT account, by direct deposit or by check, if they are 65 years of age or older or are eligible to receive SSI benefits under Title XVI of the Social Security Act.

Rule 461-165-0100 is being amended because the food stamp benefit issuance dates have changed since the advent of Electronic Benefit Transfer (EBT).

Rule 461-170-0010 is being amended to stipulate that anytime a food stamp household reports a change to one program they have reported the change for all programs.

Rule 461-170-0100 is being amended to only allow a food stamp case to use the monthly reporting system when a companion public assistance case is using the monthly reporting system.

Rule 461-170-0101 is being amended to only allow a food stamp case to expand the use of the semi-annual reporting system to more food stamp households including those with zero income, homeless and migrant or seasonal farm workers.

Rule 461-170-0130 is being adopted to establish eligibility time frames for benefit groups during the redetermination process when the Department is required to act on a timely reported change that could end medical benefits or could result in a reduction of medical benefit package.

Rule 461-175-0210 is being amended to remove obsolete policy on holding food stamp benefits.

Rule 461-175-0340 is being amended to indicate the type of notice required when a client requests to withdraw, close or reduce food stamp benefits.

Rule 461-180-0020 is being amended to change the effective date for a reported change that will increase food stamp program benefits.

Rule 461-180-0040 is being amended to replace an obsolete rule reference.

Rule 461-180-0050 is being amended as part of the implementation of HB 2696, which calls for the Department to establish standards for JOBS support service payments. The Department is amending this rule to specify the effective date for closing a JOBS support service payment.

Rule 461-180-0085 is being adopted to establish eligibility time frames for benefit groups when the Department initiates a redetermination of eligibility and needs additional information to determine eligibility.

Rule 461-180-0090 is being amended to change the policy for determining the effective date for starting medical benefits for clients eligible under the OHP-OPU program of the Oregon Health Plan. The OHP-OPU program (also called OHP Standard) provides medical assistance to low-income nonpregnant adults.

Rule 461-180-0125 is being adopted to add new policy on when to reopen food stamp benefits when the case is closed due to mail returned by the post office marked undeliverable, no forwarding address.

Rule 461-195-0531 is being amended to change when an overpayment may be written for an initial month of benefits.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0110

Terms Used in Determining Eligibility

The following terms are used in the eligibility determination process:

(1) *Child* includes natural, step, and adoptive children. The term child does not include an unborn.

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(a) For EXT, MAA, MAF, REFM, and TANF, the term dependent child means the following:

(A) A person who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(B) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(b) For ERDC, a *child* need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(c) For FS, a child is an adult and minor children living with their parent(s).

(d) For GA, GAM and OSIP, a child is a person under the age of 18.

(e) For OHP, child means a person, including a minor parent, under the age of 19.

(f) For OSIPM and QMB, child means an unmarried person living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 21 and attending full time secondary, post-secondary or vocational-technical training designed to prepare the person for employment.

(2) Community-based care is any of the following:

(a) Adult foster care — Room and board and 24-hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more physically handicapped or socially dependent people.

(e) Specialized living facility — Identifiable services designed to meet the needs of persons in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(3) Custodial parents means parents who have physical custody of their child(ren). Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(4) For FS, disabled means a person who meets any of the following:

(a) Receives state GA, OSIP, SSI, VA (for nonservice or service-connected disability rated as total), railroad or governmental benefits based on disability.

(b) Is a veteran considered in need of Aid and Attendance benefits by the VA.

(c) Is the surviving spouse or child of a veteran and is considered permanently incapable of self-support under Title 38 of the United States Code.

(d) Receives SSB based on blindness or disability.

(e) Receives a state or federally administered benefit for a disability considered permanent that meets SSA criteria.

(5) Disqualified means an individual cannot receive program benefits because they have not cooperated in fulfilling some eligibility requirement. Actions that can disqualify an individual include not cooperating with JOBS, JOBS Plus or OFSET, failing to provide an SSN or failure to pursue assets. In some cases, a disqualified individual can make their filing group ineligible for benefits.

(6) Domestic violence shelters are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(7) For FS, elderly means a person 60 years of age or older.

(8) In the FS program, a person is homeless if the person does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:

(a) A supervised shelter that provides temporary accommodations.

(b) A halfway house or residence for people who may become institutionalized.

(c) A temporary accommodation in another person's or family's residence for 90 days or less.

(d) A place not designed to be or ordinarily used as a place for people to sleep, such as a hallway, bus station, or similar place.

(9) Ineligible means a person cannot receive program benefits because they do not meet some eligibility requirement that is beyond their control; not because they refuse to fulfill the requirement. A person may be ineligible for benefits because of age, alien status, student status (for FS) or because a disqualified member of the filing group makes them ineligible.

(10) Long-term care is the system through which the Department provides required financial benefits, specialized living arrangements, and a broad range of social and health services to eligible aged, blind or disabled adults for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(11) Marriage means legal marriage uniting two people. Legal marriage is:

(a) One recognized as legal by state statute of the state where the marriage occurred, including common-law marriage if recognized as legal in a state where the couple previously resided.

(b) A cultural marriage if it occurred in a country that recognizes it as legal.

(12) For FS, a migrant farmworker is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of an FS household fits the definition of migrant farmworker at any time during the redetermination period, budget the household according to the policy on migrant farmworkers.

(13) Nonstandard living arrangements are those in which a person does not live in their own home or requires special services to remain in their home.

(14) Parent means the biological or legal (step or adoptive) mother or father of a person or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The person is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(15) For all programs except FS, primary person means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For GA, GAM, OSIP, OSIPM and QMB, the client or their spouse.

(d) For OHP, REF and REFM, the applicant, caretaker, caretaker relative or parent.

(16) For FS, primary person means:

(a) An adult in the filing group who is designated by the group to serve as the primary person.

(A) A child of any age cannot be the primary person when more than one generation lives together, and an adult who is the parent or fulfilling the role of parent is employed, work-registered for FS or receiving TANF or UC.

(B) Where there is no adult, the group can designate another responsible person in the filing group.

(b) Once the primary person has been designated, the filing group cannot choose a different person to be the primary person during the same certification period or during an OFSET or job quit disqualification period, unless there is a change in the composition of the household group.

(17) Safe homes are private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

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(18) For FS, seasonal farmworkers are people employed in agricultural employment of a seasonal or temporary nature. If any member of an FS household fits the definition of seasonal farmworker at any time during the redetermination period, budget the household according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

(19) Sibling means the brother or sister of a person. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(20) Spouse means a person who is legally married to another person. In the ERDC and FS programs, spouse includes a person who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(21) Standard living arrangement means people living in what is normally considered a single family dwelling (such as a house, apartment, motel room or trailer) without needing special services to remain in their home.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 30-1992 (Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-110-0750 Benefit Group

(1) For people not assumed eligible (see OAR 461-135-0010), and except as provided in section (2) of this rule, the benefit group consists of the people from the need group who:

(a) Meet all nonfinancial eligibility requirements;

(b) Have resources below the resource limit; or

(c) Have income below the Income Limits/Payment Standards.

(2) In the GA and GAM programs, the following persons are not in the benefit group:

(a) A person receiving or deemed to be receiving SSI or SSDI benefits.

(b) A person who meets the non-disability eligibility requirements under Title II of the Social Security Act.

(3) For people assumed eligible (see OAR 461-135-0010), the benefit group consists of the people who are in the benefit group of the program used to assume eligibility.

(4) In the OHP-OPU program, a person can choose to be or not to be a member of the benefit group, subject to the following conditions:

(a) If a person chooses not to be in the benefit group at the time of application, the person will not receive benefits and will not be subject to the OHP premium requirements. If the person wishes to join the benefit group after the group is certified, the group must reapply (see OAR 461-115-0530).

(b) If a person chooses to be in the benefit group at the time of application, the person will receive benefits with the benefit group and will be subject to the OHP premium requirements.

(c) Once a benefit group has been found eligible, a person in the group may be excluded from it, upon request of the person, if premium payments for months after January 2003 are current. Premium payments are current if the premiums billed for the months prior to the month of request have been paid and:

(A) If the request is made prior to the 21st of a month, the premium for that month has been paid.

(B) If the request is made after the 20th of a month, the premium for that month and the following month have been paid.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-115-0140

Authorized Representative or Alternate Payee; FS

(1) In the FS program, none of the following may serve as authorized representative or alternate payee:

(a) A person disqualified for fraud (unless he or she is the only adult member of the case).

(b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept FS benefits.

(c) Unless authorized by the Department's Food Stamp Program Administrator or designee, an employee of the Department or an employee of a contractor involved in the certification and issuance processes for food stamp benefits.

(d) A provider of meals for the homeless.

(2) An authorized representative or alternate payee who knowingly misrepresents the filing group's circumstances or misuses FS benefits is subject to penalty as follows:

(a) For treatment programs for drug addicts or alcohol abuse or licensed RCFs acting as the authorized representative, the facility may be prosecuted under applicable federal or state law.

(b) For all other authorized representatives and alternate payees, the Department may prohibit the person from serving as a representative or payee for one year.

(3) Except as provided by this rule or by OAR 461-115-0090, a client may select his or her authorized representative or alternate payee.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-115-0190

Application Processing Time Frames; Not Assessment, FS, HSP or TA-DVS

(1) For all programs except Assessment, EA, FS, and TA-DVS and medical assistance programs based on disability, the Department determines eligibility and sends a decision notice not later than the 45th day after the date of request. The Department may extend the period for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the client has no control over the information.

(b) Other circumstances beyond the control of the client prevent the Department from making the decision within the 45-day period.

(c) The Department must determine whether a person who has applied for OSIPM is blind or disabled. In this case, the Department determines eligibility and sends a decision notice not later than the 90th day after the date of request. The Department may extend this period for any of the following reasons:

(A) The Department cannot reach a decision because the client or an examining physician or psychologist has not taken an action necessary for the decision to be made.

(B) There is an administrative or other emergency beyond the Department's control that impairs its ability to make the decision.

(2) For EA, the Department determines eligibility within one working day of the date of application or as soon thereafter as verification of emergent need is completed. Verification of all other factors may be waived if it would delay the client's receipt of assistance.

(3) For support service payments in the JOBS program authorized by OAR 461-190-0211, the Department determines eligibility as follows:

(a) If the client is receiving a TANF grant — not later than the 30th day after the date of request.

(b) If the client is not receiving a TANF grant — in time to meet the need for which the request is made.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-115-0530

Certification Period; OHP

(1) The OHP *certification* period is the period for which a client is certified eligible for the program. For applicants, the initial certification period consists of the month containing the effective date for starting med-

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ical benefits (described in OAR 461-180-0090) and the following six months. Subsequent *certification periods* are for six months.

(2) A client's OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(3) To establish a new certification period, an OHP benefit group must complete a redetermination of eligibility and be found eligible.

(4) When a person wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group is ineligible, the original benefit group remains eligible for the remainder of its *certification period*.

(5) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(6) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(7) A pregnant woman found eligible for the OHP-OPP program is not assigned a certification period — she is eligible for the period described in OAR 461-135-0010.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-115-0651

Required Verification and When to Verify; FS

(1) Each of the following eligibility factors must be verified when a client initially applies for food stamp benefits and when a change in one of the factors is required to be reported.

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) Alien status.

(d) Social Security Number (SSN) or application for an SSN.

(e) In a case being evaluated for disqualification due to a job quit or reduction of work hours — the reason for the job quit or reduction in hours.

(f) Countable income.

(g) Medical expenses, if they are used as a deduction. Verification of a Medicare-approved drug discount card is required to use the actual, pre-discounted expense of a prescription as a deduction.

(h) Disability, if a student claims unfitness for employment but the disability is not obvious.

(i) An order to pay child support and the amount actually paid.

(j) Any factor for which the Department has conflicting or incomplete information.

(2) If the client does not provide the required verification for medical expenses, court-ordered child support, or any eligibility factor for which the Department requests verification, the claimed expenses are not used to determine the food stamp benefit.

(3) In addition to the verification required by section (1) of this rule, the income for a client must be verified:

(a) Each month for a client in the monthly reporting system.

(b) Every six months for a client in the semi-annual reporting system.

(4) A client is allowed a minimum of 10 days to provide requested verification.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.111, 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-135-0400

Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program, at least one *caretaker* (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on com-

mission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months.

(2) In the ERDC-SBG program:

(a) At least one *caretaker* must be a student without a bachelor's degree who is an undergraduate who has obtained a high school diploma or GED and has been formally admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and registered for or attending at least twelve quarter hours — or an equivalent number of credit hours in a semester system — that count toward graduation.

(b) A caretaker who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per academic year; or

(B) Two semesters per academic year.

(c) Students may use ERDC-SBG benefits for school- or employment-related child care needs during an absence from school or during a term in which they are attending school less than full time as defined in subsection (a)(A) of this section if:

(A) They intend to attend school full time the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) For students on the semester system, the summer break period.

(d) Students must maintain good standing according to the standards of the institution they are attending.

(e) Students must complete at least 36 quarter hours — or an equivalent number in a semester system — that count toward graduation each academic year.

(f) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(c) The unemployed adult is unavailable to provide care while participating in requirements of a case plan other than requirements associated with post-secondary education.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-135-0405

ERDC; Children in the Head Start Program

(1) The following provisions apply when an ERDC client's child receives child care through a Head Start agency:

(a) The Head Start agency is considered the provider of child care.

(b) If the Head Start agency uses another provider for the child care, that provider must meet the requirements in OAR 461-165-0160 and following.

(c) The payment made by the Department on behalf of the child is made only to the Head Start agency. The child is ineligible for child care payments for care not provided under the contract between the Head Start agency and the Department.

(2) The following provisions apply when an ERDC client's child receives child care under a contract between a Head Start agency and the Department:

(a) Once the Department makes a child care payment for the child under the contract, the child is presumed to meet the ERDC eligibility requirements until the next August 31, unless:

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(A) The child's caretaker has been found ineligible for ERDC under OAR 461-135-0415 for failure to make a copayment;

(B) The client was found eligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined; or

(C) The client fails to meet the requirements of the locally prepared agreement among the client, the Head Start program, and the Department.

(b) For any month in which the child is eligible to be served under a contract and the client complies with a plan developed jointly by the client, the Head Start agency, and the Department (plan), the Department waives the client's copayment for the child, in whole or in part, if the waiver is provided for in the contract.

(c) For any month in which the client's child is eligible to be served under a contract and the client complies with a plan, the Department waives the copayment with respect to the child's siblings, in whole or in part, if the waiver is provided for in the contract.

(3) The Department will not make a child care payment for a child in a Head Start program if the child's caretaker has been found ineligible for ERDC under OAR 461-135-0415 for failure to make a copayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 33-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-135-0510

Residents of Institutions; FS

(1) In the FS program, people who live in an institution that provides them with at least 50 percent of their meals are treated as follows:

(a) A person in a general hospital, state institution, intermediate care facility, or semi-skilled or skilled nursing facility is not eligible.

(b) A resident of a residential care facility can receive benefits only if:

(A) The facility is public or nonprofit, serves no more than 16 residents, and is licensed by the State of Oregon according to regulations issued under Section 1616(e) of the Social Security Act;

(B) The resident applies through an authorized representative who is an employee of the facility, unless the facility determines that the resident can apply on his or her own;

(C) The person is blind or disabled (see OAR 461-110-0110(4)); and

(D) The person meets all other FS eligibility requirements.

(2) The following are not considered institutions:

(a) Domestic violence shelters.

(b) Public or private nonprofit shelters for homeless people.

(c) Federally subsidized housing for the elderly, disabled, or blind recipients of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, but is over income because of SSB cost-of-living increases after July 1977, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIPM is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) To determine the SSB amount the client received when last eligible for SSI or the state supplement, the cost-of-living increases for SSB are deducted from the current SSB level. The amount of the increase is determined by multiplying the current SSB amount by the number that corresponds to the month the client last received SSI (see table in section (4) of this rule). The resulting total is added to any other countable income.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Table not printed See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-135-0832

Estate Administration; Definitions

Effective July 18, 1995, for purposes of ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. § 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0835 through 461-135-0845 to recoveries and claims made pursuant to ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340.

(1) Assets means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) Assign means a Person who acquires an interest in Real or Personal Property or an Asset pursuant to a written or oral assignment of such Real or Personal Property or Asset from a Person with the legal right to assign it.

(3) Bona Fide Purchaser for Value means any Person who provides consideration, including money or property, to a seller or transferor of Real Property or Personal Property equal to the fair market value of the Real or Personal Property sold or transferred.

(4) Consideration Furnished Test means the method by which the ownership of Real or Personal Property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(5) Convincing Evidence includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(6) Disabled child means a natural or adopted son or daughter of the deceased client, of any age, who met SSI disability criteria and was permanently and totally disabled, as defined in ORS 412.510(3), at the time the Department's claim was asserted, and who presented evidence to the Department substantiating the disability within two years after the Department asserted the claim.

(7) Estate means:

(a) With respect to the collection of payments made for services provided on or after July 18, 1995, all Real Property, Personal Property or other Assets wherever located in which a deceased individual had any Legal Title or ownership or beneficial interest at the Time of Death, including Real Property, Personal Property or Assets conveyed by the deceased individual to a Survivor, Heir or Assign of the decedent through Joint Tenancy, Tenancy In Common, Survivorship, Life Estate, Living Trust, an annuity purchased on or after April 1, 2001, or other similar arrangement.

(b) With respect to the collection of payments made for services provided before July 18, 1995, all Real and Personal Property and other Assets included within an individual's estate as such estate is defined by applicable state probate law.

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(8) Heir means any individual, including the surviving spouse, who is entitled under Intestate Succession to the Real Property, Personal Property, and Assets of a decedent who died wholly or partially Intestate.

(9) Interest means any form of legal, beneficial, equitable or ownership interest.

(10) Intestate means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(11) Intestate Succession means succession to Real Property, Personal Property or Assets of a decedent who dies Intestate or partially Intestate.

(12) Joint tenancy means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(13) Legal Title means legal ownership by a Person.

(14) Life Estate means an Interest in Real or Personal Property that terminates upon the death of a measuring life.

(15) Living Trust means a revocable inter vivos trust.

(16) Medical Institution means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(17) Ownership Documents means any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or Legal Title held by a Person.

(18) Permanently Institutionalized means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(19) Person means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(20) Personal Property means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(21) Real Property means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(22) Recipient of Property means:

(a) Any Survivor, Heir, Assign, devisee under a will, beneficiary of a trust, transferee or other Person to whom Real Property, Personal Property or other Assets pass upon the death of the decedent either by law, Intestate Succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such Real Property, Personal Property or Asset, or proceeds from the sale thereof, through any form of conveyance, that is not a Bona Fide Purchaser for Value.

(23) Survivor means any Person who, as a co-tenant, is automatically entitled to an expanded share of Real or Personal Property upon the death of a fellow co-tenant.

(24) Survivorship means an interest in Real or Personal Property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(25) Tenancy in Common means ownership of Real or Personal Property by an individual together with one or more other Persons which ownership Interest shall not pass by Survivorship upon the death of the individual.

(26) Time of Death means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall Time of Death be construed to mean a time after which an Interest in Real or Personal Property or other Assets may:

(a) Pass by Survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(27) Value means the fair market value as of the Time of Death of the Medicaid recipient or the Time of Death of the surviving spouse, if estate recovery is deferred until the surviving spouse dies. Fair market value is the price at which Real or Personal Property would change hands between a willing buyer and a willing seller. In the event the Real or Personal Property was not reported to the Department by the deceased Medicaid recipient, the

Value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 411.105

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-140-0110

Periodic Income

Periodic income received on a regular basis is either counted as earned or unearned income, depending on the source or is excluded, as follows:

(1) For FS and TANF clients in a filing group that includes at least one member who is working under a TANF JOBS Plus agreement, periodic income is *excluded*.

(2) For FS clients not covered under section (1) of this rule and for ERDC clients, periodic income is counted in one of two ways. The client is given a choice either to average the income over the applicable period or to have the income counted in the month it is expected to be received.

(3) For OSIP-EPD and OSIPM-EPD clients, periodic income received during a certification period is averaged among the months in the certification period.

(4) In all other programs, periodic income is counted in the month received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-140-0120

Lump-Sum Income

Lump sum income is treated as follows if it is received by a recipient or received by an applicant who has signed an application for program benefits:

(1) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs, lump-sum income is a resource.

(2) In the ERDC and EXT programs, lump-sum income is excluded.

(3) In the OHP program:

(a) If the *lump-sum income* is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the lump-sum income exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(4) In the Food Stamp program:

(a) Lump-sum income not exceeding \$30 a quarter is excluded income.

(b) If lump-sum income exceeds \$30 in a quarter, the entire amount is a resource.

(c) For Food Stamp clients in a filing group that includes at least one member who is working under a TANF JOBS Plus agreement, lump-sum income is excluded.

(5)(a) In the GA and GAM programs, the lump-sum income described in subsection (b) of this section is excluded. After all exclusions are taken, the remaining lump-sum income is counted as unearned income. If the lump-sum income puts the client over the payment standard, the client is ineligible for the period of time provided for in OAR 461-140-0130.

(b) The following lump-sum income is excluded:

(A) The first \$50 received in a month.

(B) The income the client turns over to the Department as reimbursement for previous assistance.

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(6) For OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB, lump-sum income is treated as follows:

(a) Lump sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource.

(b) The following lump sum income is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

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(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(c) For OSIP-EPD and OSIPM-EPD, lump-sum income is a resource. Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-145-0130

Earned Income; Treatment

(1) Generally, earned income is countable in determining eligibility for programs, subject to the following specific provisions.

(2) A flexible benefit used to pay for child care or health insurance costs is excluded if it is not reimbursed by the Department or allowed as an earned income deduction. JOBS Plus income is earned income and is treated as follows:

(a) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(b) In the FS program:

(A) JOBS Plus income earned by an NCP-PLS client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under an NCP-PLS or TANF-PLS JOBS Plus agreement are counted.

(c) For programs other than FS and TANF, NCP-PLS and TANF-PLS income is counted.

(d) For all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(3) In the MAA, MAF, SAC and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(4) In the ERDC and OHP programs, earned income of a child is excluded.

(5) In the FS program, the following types of income are excluded:

(a) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(A) Attending elementary or high school;

(B) Attending GED classes recognized by the local school district;

(C) Completing home-school elementary or high school classes recognized by the local school district; or

(D) Too young to attend elementary school.

(b) In-kind earned income.

(c) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(6) In the MAA, MAF, OHP, SAC and TANF programs, earned in-kind income is excluded (see OAR 461-145-0280).

(7) Welfare-to-Work work experience income is treated as follows:

(a) In the MAA, MAF and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-145-0240

Income-Producing Contract

(1) The equity value of an income-producing sales contract is treated as follows:

(a) In the GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF programs, it is a countable resource.

(b) In the EA, ERDC, FS, OHP, OSIP, OSIPM, and QMB programs, it is excluded.

(2) In all programs except MAA, MAF, REF, REFM, SAC, and TANF, income received from the contract, minus necessary costs, is counted as unearned income. The deductible, necessary costs are the same as the costs deductible under OAR 461-145-0920.

(3) In the MAA, MAF, REF, REFM, SAC, and TANF programs, income received from the contract is excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-145-0320

Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income. A deduction is allowed, not to exceed \$1,500, for the cost of the deceased person's last illness and burial if these costs were not otherwise insured.

(2) The value of a life insurance policy is treated as follows:

(a) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the equity value of the life insurance policy is excluded.

(b) Clients eligible for OSIPM under OAR 461-135-0771 are allowed an exclusion up to \$1,000 from the total equity value of burial arrangements with a licensed funeral director (plus accrued interest) and life insurance policies. The value in excess of \$1,000 is counted as a resource.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, the total equity value of life insurance policies owned by the client or the client's spouse is excluded if the total face value of all policies is less than or equal to \$1,500. If the total face value of all policies is more than \$1,500, the entire equity value is counted as a resource.

(d) All term insurance is excluded.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs, the equity value of a policy acquired through a viatical settlement is excluded. A viatical settlement allows a third party to acquire the life insurance policy from a terminally ill person at an agreed upon percentage of the life insurance policy face value.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-145-0330

Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) Educational loans are treated according to OAR 461-145-0150.

(3) Except in the OSIP, OSIPM, and QMB programs, this rule applies only if there is a written loan agreement that stipulates when the loan is due and is signed and dated before the borrower receives the proceeds of the loan.

(4) In the OSIP, OSIPM, and QMB programs, this rule applies whether the loan agreement is written or oral.

(5) Interest received on a loan is unearned income.

(6) For all programs except FS, GA, and GAM, the following are excluded:

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(a) Loans obtained by the financial group, except as provided in section (2) of this rule for clients in the OSIP, OSIPM, and QMB programs.

(b) Payments made to the financial group on the principal portion of a loan the group has made to someone else.

(7) In the FS program, cash on-hand from a loan is a resource.

(8) In the GA and GAM programs, the following are considered unearned income:

(a) Loans obtained by the financial group.

(b) Payments made to the financial group on a loan the group has made to someone else.

(9) In the FS, OSIP, OSIPM, and QMB programs, the proceeds of a home equity loan or reverse annuity mortgage are excluded if received in regular, monthly payments. The proceeds not excluded under this rule are treated as *lump sum* income under OAR 461-140-0120.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-150-0050

Use of Prospective or Retrospective Eligibility and Budgeting; GA, OSIP, OSIPM, QMB

Determine how and when to use prospective or retrospective eligibility and budgeting for GA, GAM, OSIP, OSIPM, and QMB as follows:

(1) For GA, GAM, OSIP (except OSIP-EPD and OSIP-IC), OSIPM (except OSIPM-EPD and OSIPM-IC), and QMB:

(a) For the initial month, use prospective eligibility and budgeting. Exclude money received from a nonrecurring source before the date of application. If any money remains after the date of application, count it as a resource.

(b) For ongoing months, use prospective eligibility and prospective budgeting for unearned income and stable earned income. Use retrospective budgeting for varying earned income.

(2) In the OSIP-EPD and OSIPM-EPD programs, quarterly budgeting is used as follows:

(a) For initial eligibility, a quarter begins the first full month that a client earns income. The quarter will be for three consecutive months. Eligibility begins no later than the date of request, notwithstanding any other eligibility requirements.

(b) For the initial quarterly period, prospective eligibility is used for earned income. Prospective budgeting is used for earned and unearned income. Unearned income received from a nonrecurring source prior to the date of application is excluded, and the remaining balance is a resource.

(c) For changes reported during a certification period, prospective eligibility is used for earned income. Prospective budgeting is used for earned and unearned income.

(d) For redeterminations of eligibility, the last month of eligibility plus the two prior months are used to constitute the quarter, unless prospective eligibility would be more indicative of future eligibility. If prospective eligibility is used, the last month of eligibility plus the following two months are used.

(3) For OSIP-IC and OSIPM-IC, the budget month is the initial month of eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-155-0020

Prorated Standards; Adjusted Number in Household

Prorated standards are used only in the no-adult tables and the non-SSI/OSIP table. Prorated standards are not applied to cases in which a client receives services described in OAR chapter 411, division 015. The no-adult tables are used when there are no adults in TANF need groups. Prorated standards are based on the number of people in the need group, compared to the adjusted number in the household group. The adjusted number in the household is determined by taking the total number of persons in the household minus the following people:

(1) Unborn, unless included in the need group.

(2) Clients receiving long-term care or waived home and community-based care.

(3) Foster children.

(4) Children receiving adoption assistance.

(5) Live-in attendants who live with the filing group solely to provide necessary medical or housekeeping services and are paid to provide these services.

(6) Landlords and tenants. A landlord-tenant relationship exists if one person pays another at fair market value for housing and if:

(a) The filing group lives independently from the landlord or tenant;

(b) The filing group has and uses sleeping, bathroom, and kitchen facilities that are separate from the landlord or tenant; and

(c) If bathroom or kitchen facilities are shared, the housing must be a commercial establishment that provides either room or board or both for fair market value compensation.

(7) In the OSIP and OSIPM programs only:

(a) The biological and adoptive children of either spouse.

(b) Recipients of EXT, GA, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, or TANF.

Stat. Auth.: ORS 411.070

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1998, f. & cert. ef. 10-1-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2004 federal poverty level for a family of one. This 250 percent limit equals \$1,940 per month or \$23,280 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$920 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp)

ADMINISTRATIVE RULES

f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-155-0270

Payment Standard for NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in nonstandard living arrangements, the OSIP/OSIPM Payment Standard is allocated as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-155-0300

Shelter-in-Kind Standard

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$362 for total shelter or \$217 for housing costs only.

(b) Living with others, \$170 for total shelter or \$102 for housing costs only.

(2) For a couple:

(a) Living alone, \$442 for total shelter or \$265 for housing costs only.

(b) Living with others, \$162 for total shelter or \$97 for housing costs only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-160-0030

Overview of Costs

(1) Costs incurred by the client, that the client has a legal responsibility to pay, are deductible from income in accordance with the rules in this division of rules.

(2) The following costs are not deductible:

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in-kind benefit, except that in the Food Stamp program the pre-discount expense for a prescription purchased through the use of a Medicare-approved drug discount card is deductible.

(b) A cost that is paid by a person or company outside the financial group or that is written off by a medical facility. These are referred to as third-party payments.

(c) The cost for a service provided by someone in the filing group, such as child care provided by the father while the mother works.

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1990, f. & cert. ef. 2-16-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-160-0055

Medical Costs That are Deductible

For FS clients who are elderly or disabled, and for clients in the GA, GAM, OSIP and OSIPM programs, medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and as follows:

(1) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(2) The cost of a medical service is deductible if it is—

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(3) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for a person who was a member of the household group immediately prior to entering a hospital or a nursing home certified by the state.

(B) Services of an attendant, home health aid, housekeeper or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed assistance animals (such as a Seeing Eye Dog, Hearing Dog or Housekeeper Monkey) and their training, food and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

(F) The actual, pre-discounted expense of a prescription purchased with a Medicare-approved drug discount card.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-160-0550

Income Deductions; GA, GAM, QMB and Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community

(1) This rule is used to determine adjusted income for all GA, GAM, and QMB clients and for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Do not receive SSI; and

(c) Do not receive Title XIX waived services.

(2) To determine adjusted income, deductions from the financial group's income are made in the following order:

(a) One standard deduction of \$20.

(b) One standard earned income deduction of:

(A) \$65 for GA, GAM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB clients who are not blind; or

(B) \$85 for GA, GAM, OSIP-AB, OSIPM-AB, and QMB clients who are blind.

(c) An income deduction for documented impairment-related work costs for:

(A) OSIP-AB, OSIP-AD, OSIPM-AB and OSIPM-AD clients; and

(B) QMB clients under age 65.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs, and QMB clients less than the age of 65.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-160-0580

Excluded Resource; Community Spouse Provision On or After 10/1/89 (Except OSIP-EPD and OSIPM-EPD)

In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

ADMINISTRATIVE RULES

(1) Whether the couple lives together or not, determine if the couple's resources make the institutionalized spouse eligible or ineligible for OSIPM as follows:

(a) Step 1: Determine what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Use OSIP policy to determine which of the couple's resources were countable resources. The rules used to determine whether a community spouse's resources are countable are the same rules used with respect to an OSIP or OSIPM applicant or recipient.

(B) Combine both spouses' countable resources.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) Step 2: Calculate one half of what the couple's combined countable resources were at the beginning of the continuous period of care. Treat the community spouse's half of the couple's combined resources as a constant amount when determining eligibility.

(c) Step 3: Determine the community spouse's resource allowance. The community spouse's resource allowance is the largest of the three following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$95,100.

(B) \$19,020 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule, (OAR 461-160-0580(1)(c)(C) and (1)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance.

(d) Step 4: Determine what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. Use the procedure in Step 1.

(e) Step 5: Subtract the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) Step 6: Compare the remaining resources to the OSIP resource standard for one person. If the remaining resources are at or below the standard, the institutionalized spouse is eligible. If the remaining resources are above the standard, the institutionalized spouse is not eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$95,100) plus the OSIP resource standard for one person.

(B) \$19,020 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See section (1)(c)(C) of this rule for definition of court-ordered community spouse resource allowance.)

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620(5).

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The greater of the personal needs allowance and the applicable OSIP standard for the institutionalized spouse.

(2) Once eligibility has been established, resources equal to the community spouse's resource allowance (from section (1)(c) above) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of

that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060, 411.700

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for clients specified in subsection (a) as explained in subsections (a) through (i) of this rule. The client's liability is determined according to subsection (j).

(a) Deductions are made in the order below for clients who do not receive SSI and who:

(A) Reside in or are entering a long-term care facility; or

(B) Receive Title XIX waived services.

(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for clients in long-term care.

(B) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for clients who receive waived services.

(e) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(A) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(B) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(C) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,561 is added to the amount over \$468 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,377.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,561. To determine the eligible dependent's income allowance:

ADMINISTRATIVE RULES

(i) The eligible dependent's monthly income is deducted from \$1,561.
(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the dependent's income.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less.

(2) The deduction used to determine adjusted income for GA and GAM clients in long-term care or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for clients who are not blind; or

(b) One standard earned income deduction of \$85 for clients who are blind.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-165-0082

FS Cash-Out

Food Stamp households in Clackamas, Columbia, Multnomah, and Washington counties receive FS benefits in cash if all persons in the filing group are 65 years of age or older or are eligible to receive SSI benefits under Title XVI of the Social Security Act.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-165-0100

Issuance Date of Benefit

(1) For all programs except EA and FS:

(a) An authorized cash payment check is dated on the first day of the payment period or as soon as practicable thereafter.

(b) Checks and medical cards are mailed so they can be delivered to the client on the first day of each month except in the following cases:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Cases with no special needs or service coding; these cases receive the \$1.70 OSIP payment in advance for the benefit period, from the date of eligibility to the end of the calendar year.

(D) If the first day of the month falls on Sunday or a holiday, the check is mailed in time for the client to receive it on Saturday or the mail day preceding the holiday.

(E) Checks redirected to the branch office may be released during the last workday preceding a weekend or holiday.

(c) Benefits issued by EBT will be available on the first day of each month, except for the following:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Benefits held by the branch office.

(2) EA clients must receive their checks, either direct or vendor, in time to meet their emergent needs.

(3) FS benefits are available as follows:

(a) FS benefits issued by EBT are available in the EBT account on the day of the month corresponding to the last digit of the client's case number except for the following:

(A) The benefits for the initial month of eligibility for a new or reopened case.

(B) The benefits for a case in the monthly reporting system.

(C) The benefits for the seventh month of the certification period for a case in the semi-annual reporting system.

(b) FS benefits issued through the FS cash-out are available as follows:

(A) Benefits accessed through an EBT account are available on the first day of the month.

(B) Checks are mailed on the first day of the month.

(C) Direct-deposit funds are available on the third working day of the month.

(4) For FS changes that could not be made in time to adjust the monthly allotment, a supplement is issued within 10 days of the date the change was reported.

(5) For OSIPM, a medical ID card is mailed on the first of each month to clients receiving Title XIX waived services who contribute to their services by paying their excess income into a maintenance trust and agency account. The client's medical card is not held until the payment is received. If payment is not received before the end of the payment month, consider QMB for the following month.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-170-0010

Reporting Changes; When Changes Must be Reported

(1) When a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) Changes reported outside the MRS or SRS must be reported within 10 days of occurring. A change of income is considered to occur as follows:

(A) For earned income, the change occurs upon the client's receipt of the first paycheck from a new job, on the client's receipt of the first paycheck reflecting a change in the rate of pay, or on the last day of employment in the case of a job separation.

(B) For unearned income, the change occurs the day the client receives the new or changed payment.

(b) Changes required to be reported through the MRS must be reported on the Monthly Report Change form designated by the Department and according to MRS requirements. Non-income changes must be reported according to OAR 461-170-0015.

(c) Clients using APR must report changes according to OAR 461-170-0015 and 461-170-0020. For clients using APR who report changes in amount of income outside the Periodic Review form, act on the change as soon as notice requirements allow.

(d) Clients using the semiannual reporting system (SRS) must report changes according to OAR 461-170-0020.

(2) For all programs, changes are considered reported effective the date the information is received by a DHS office.

(3) Changes reported for one program are considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-194, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-170-0100

Criteria for Using MRS

(1) A filing group is not subject to the requirements of the monthly reporting system (MRS) unless it is required to participate by section (2) or (4) of this rule.

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(2) For MAA, REF, REFM and TANF, the following filing groups must participate in the MRS, unless they are specifically excluded by section (5) of this rule:

(a) Filing groups that are in the MRS for another program.

(b) Filing groups that have countable earned or unearned income that is not the same every month and cannot be anticipated, averaged, converted, or annualized.

(3) For FS, the filing group can only participate in the MRS if it is in the MRS for another program.

(4) For GA, GAM, OSIPM and QMB, a filing group not specifically excluded by section (5) of this rule must participate in the MRS if it has varying earned or unearned income that cannot be averaged, converted or annualized.

(5) The following filing groups are excluded from participating in the MRS:

(a) FS and TANF filing groups that include a member working under a JOBS Plus agreement.

(b) Filing groups in the EA, ERDC, EXT, MAF, SAC and TA-DVS programs.

(c) FS filing groups in which any of the following is true:

(A) At least one member is a migrant or seasonal farm worker.

(B) The members are homeless.

(C) Each adult member is elderly or disabled, and no financial group member has earned income.

(D) At least one member is receiving ERDC.

(E) The group resides on an Indian Reservation.

(d) OHP filing groups for their OHP benefits. They may be in the MRS for their other program benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 70-1989, f. 11-30-89, cert. ef. 12-1-89; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-170-0101

Semiannual Reporting System (SRS); FS

(1) OAR 461-170-0101 through -0104 establish and explain the semi-annual reporting system (SRS) used in the Food Stamp program.

(2) Clients certified to receive food stamps for six months or longer may participate in SRS.

(3) A filing group may participate in SRS if the certification period is no longer than six months and the group:

(a) Contains a migrant or seasonal farm worker; or

(b) Contains only homeless individuals.

(4) A filing group may not participate in SRS and is removed from SRS if the group:

(a) Is composed only of elderly or disabled people who have no earned income; or

(b) Contains a person who is receiving benefits from the ERDC program.

Stat. Auth.: 411.816

Stats. Implemented: 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-170-0130

Acting on Reported Changes; EXT, GAM, MAA, MAF, OSIPM, SAC

(1) When an EXT, GAM, MAA, MAF, OSIPM, or SAC client is required by this division of rules to report a change in circumstances and reports timely a change that could reduce or end medical benefits, the Department must review the benefit group for other medical program eligibility prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, the benefit group remains eligible from the date the change was reported until the Department determines eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-175-0210

Notice Situation; Client Moved or Whereabouts Unknown

(1) To end benefits if a client has moved out of state, send the following notice:

(a) For ERDC, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, SAC, and TANF:

(A) Send a timely continuing benefit decision notice to clients who have moved out of state. For clients in MRS, send a continuing benefit decision notice if the move is reported in the Monthly Change Report.

(B) Send a basic decision notice if the client becomes eligible for benefits in another state.

(b) For FS, no decision notice is required if the Department determines that the benefit group has moved out of Oregon.

(2) If Department mail or benefits have been returned with no forwarding address, give clients their benefits if their whereabouts become known during the period covered by the returned benefits. See OAR 461-165-0130 for when FS benefits can be sent out of state. If the client's whereabouts are unknown, end benefits by sending the following notice to their last known address:

(a) For all programs except FS, a basic decision notice.

(b) For FS, no notice is required.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-175-0340

Notice Situation; Voluntary Action

(1) The following criteria are used to determine if a decision notice must be sent when the filing group states they wish to withdraw their request for benefits, or the benefit group states they wish to reduce or to no longer receive benefits:

(a) For all programs except FS:

(A) If the request is made by phone or in person, a timely continuing benefit decision notice is sent.

(B) If the request is signed by the primary person, another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(b) For FS:

(A) If the request is made by phone to end or reduce benefits, a timely continuing benefit decision notice is sent.

(B) If the request is made in person to reduce benefits, a basic decision notice is sent.

(C) If the request to reduce benefits is signed by the primary person, another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(D) If the request to end benefits is signed by the primary person, another adult member of the filing group, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a basic decision notice is sent.

(E) If the client withdraws a signed request for benefits, a basic decision notice is sent.

(2) In the FS program, a timely continuing benefit decision notice is sent if the benefit group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0020

Effective Dates; Changes in Income or Deductions that Cause Increases

For all programs, except for cases using APR, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits.

(1) For a change reported through the MRS, the effective date is the first of the payment month.

(2) For a change not reported through the MRS, the effective date is one of the following:

(a) In the EXT, GA, MAA, MAF, SAC and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(b) In the OSIP program, the effective date for an anticipated change is:

(A) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

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(B) Ten days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

(c) In the FS program, the effective date when verification is not requested is the first of the month following the date the change was reported. If verification is requested, the effective date for the change is:

(A) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(B) The first of the month following the date the verification is received by the Department, if received after the verification due date.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0040

Effective Dates; Changes in Special or Service Need

(1) The effective date for a special need is the date of request for the special need item.

(2) The effective date for long-term care is the date the service plan is implemented. A service plan is considered implemented when:

(a) The client employs a client-employed provider (see OAR 411-031-0040) or the client contracts with an in-home service agency, and the provider or agency is an enrolled Medicaid provider; or

(b) The client is placed in a licensed community-based setting or Medicaid-certified nursing facility.

(3) Payment for long-term care will be authorized:

(a) For applicants — from the date of request for applicants who have met all the financial, nonfinancial and service eligibility requirements; and

(b) For recipients — upon authorization of the Department.

(4) The effective date for a termination of or a decrease in service or a special need is the later of the following:

(a) The end of the ten-day timely-continuing-benefit-notice period; and

(b) The day of change in a special need or the termination date of a service plan.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0050

Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

This rule explains the effective date for closing or suspending benefits for the entire benefit group and the effective date for ending JOBS support service payments. The effective date is determined as follows:

(1) When prospective eligibility is used, the effective date for closing or suspending benefits is:

(a) For all cash and medical benefits for benefit groups in the MRS, the last day of the budget month.

(b) For cash and medical benefits for benefit groups not in MRS and for FS, the last day of the month in which the notice period ends.

(2) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(3) When prospective budgeting is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(4) When an absent parent enters an ongoing TANF household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(5) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(6) In the OHP program, the effective date for closing benefits is:

(a) The last day of the month in which the benefit group becomes ineligible;

(b) The date the program ends; or

(c) For cases not covered by subsection (a) or (b) of this section, the last day of the certification period.

(7) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(a) The date the related JOBS activity is scheduled to end.

(b) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0085

Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OSIPM, SAC

When the Department initiates a redetermination of eligibility, the Department must review the filing group for other medical program eligibility prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, the benefit group remains eligible from the date the review is initiated until the Department determines eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0090

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs, if the client completes the application within the time period described in OAR 461-115-0190, it is the date the client requests benefits or, if the client does not meet all eligibility requirements on the date of request, the first day following the date the client requests benefits on which all eligibility requirements are met. See OAR 461-135-0875 and 461-180-0140 regarding retroactive eligibility for some medical programs.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.

(3) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-180-0125

Effective Dates; Reopen FS After Returned Mail

Food Stamp benefits may be reopened effective the first of the month when mail is returned by the U.S. Post Office marked "undeliverable, no forwarding address" in the following situation:

(1) The food stamp benefits ended as of the last calendar day of the prior month;

(2) The reason for the case closure was mail returned, no forwarding address; and

(3) The client contacted the Department within the first calendar month following the case closure with a new mailing address.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

461-195-0531

Establishment of Overpayments

(1) The Department will not establish an administrative technical overpayment if the client was willing and able to meet the eligibility requirements and would have been eligible for the same amount of benefits had the requirements been met.

(2) The Department will establish an overpayment for the initial month of eligibility only when:

(a) The client withheld material information;

(b) The client provided false information;

(c) The Department failed to use income reported as received or anticipated in determining the client's benefits; or

(d) The error was due to an error in computation by the Department.

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(3) In the TA-DVS program, the Department will establish an overpayment only if an IPV in the TA-DVS program has been established.

Stat. Auth.: ORS 411.060, 411.660, 411.816

Stats. Implemented: ORS 411.630, 411.635, 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05

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

Adm. Order No.: SPD 36-2004

Filed with Sec. of State: 12-23-2004

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Rules Adopted: 411-070-0442

Rules Amended: 411-070-0359, 411-070-0428, 411-070-0465

Rules Repealed: 411-070-0440, 411-070-0446

Subject: This rule change permanently adopts reimbursement methodology for nursing facility per diem rates. A change to the method of determining reimbursement rates for the basic and complex medical rates paid to Nursing Facilities for Medicaid clients was allowed by H.B. 2747, passed during the 2003 legislative session and was adopted as a Temporary Rule after receipt of necessary federal approvals. These rule changes expired on November 24, 2004. As a result rule number 411-070-0441 has been retired and has been permanently adopted as rule number 411-070-0442. The scope and intent of those temporary rules have not changed.

These rules establish revised methods to determine the rates and to allocate the provider tax to cost centers for the purpose of the Medicaid cost reports required from nursing facilities, which receive Medicaid reimbursements. House Bill 2747 approved the long-term care tax and reimbursement changes be made retroactively to July 1, 2003.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-070-0359

Allowable Costs

(1) Allowable costs are the necessary costs incurred for the customary and normal operation of a facility, to the extent that they are reasonable and related to resident care.

(a) Interest — Interest on debt related to the provision of resident care services is an allowable expense, except on or after July 1, 1984, interest expense related to that portion of the acquisition price of a long-term care facility that exceeds the depreciable basis (Rule 411-070-0375) will not be reimbursable. That portion of interest expense related to property or equipment must be reported in accordance with Rule 411-070-0359(1)(B), effective 07/01/2003.

(b) Rent or Lease Payments — Payments for the lease or rental of land, buildings, and equipment are to be reported. Payments for lease agreements entered into with a related party are limited to the lower of actual costs or the lease payments. These costs must be reported in accordance with Rule 411-070-0359(1)(B), effective 07/01/2003.

(c) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Lease-hold improvements may be amortized. Depreciation and amortization must be calculated on a straight line basis and prorated over the estimated useful life of the asset. Effective 07/01/2003, these costs must be reported in accordance with Rules 411-070-0359(1)(B), 411-070-0365, 411-070-0375 and 411-070-0385.

(d) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident care activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, will be allowable.

(e) Compensation of Owners — Owner's compensation in accordance with Rule 411-070-0330 is allowable.

(f) Payroll Taxes — The employer's portion of payroll taxes is reimbursable.

(g) Employee Benefits — Employee benefits that are made available to all employees, are for the primary use of the employees, are generally considered by the industry as reasonable and important benefits to provide employees, are not taxable as wages, and are allowable to the extent of employer participation.

(h) Supplies — Cost of supplies used in resident care or providing services related to resident care are allowable.

(i) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident care are reimbursable. The allowance for mileage reimbursement will not exceed the amount determined reasonable by the Internal Revenue Service for the period reported. Allowable out-of-state travel is restricted to Washington, Idaho and Northern California, no farther south than San Francisco. One out of state/contiguous area trip per year for two employees will be allowed, as long as it relates to resident care.

(j) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(k) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(l) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident care and the sound conduct and operation of the facility.

(m) Taxes — Property taxes on assets used in rendering resident care are allowable. Long Term Care Facility taxes paid on patient days are allowable, effective 07/01/2003.

(n) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident care. Self-insurance costs are allowable only when expense is actually incurred.

(o) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident care.

(p) Education & Training — Registration, tuition and book expense associated with education and training of personnel is allowed provided it is related to resident care. The costs associated with training and certifying nurse aides are not allowable for inclusion in the annual Nursing Facility Financial Statement. These costs are reimbursed separately by the Department, per OAR 411-070-0470.

(q) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(r) Accounting, Auditing, and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(s) Licenses, Dues, and Subscriptions — Fees for facility licenses, dues in professional associations, and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff professional use are allowable.

(t) Legal Fees — Legal fees directly related to resident care are allowable. Legal fees related to non-allowable costs are not allowable. (For example, legal fees to collect non-Medicaid bad debts would not be allowable.) Legal fees claimed as related to resident care must be explained and listed on Schedule A. Fees related to legal and administrative actions to resolve a disagreement with the state will be allowable if the action is resolved in the provider's favor, and the judge/hearings officer does not order the State to pay the provider's legal fees.

(u) Management Fees — Management fees are allowable provided they meet the criteria for Rule 411-070-0350, Management Fees.

(v) Postage and Freight — Postage expense is considered an office supply cost. Freight will be posted to the same account as the item purchased.

(w) Food — Food products and supplements used in food preparation are allowable.

(x) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provision are allowable.

(y) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(z) Consultant Fees — Consultant fees are allowable provided they meet the criteria for Rule 411-070-0320, Consultants.

(A) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

(B) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(C) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(D) Home Offices Costs — Home office costs are allowable in accordance with Rule 411-070-0345.

(E) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(F) Criminal Records Checks — Costs of criminal record checks of facility employees if mandated by federal or state law.

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(2) Exceptions to the items listed in Section (1) of this rule must be approved in writing to be allowable. Exceptions will not be granted for the following items:

- (a) Amortization of non-competitive agreement;
- (b) Good will;
- (c) Federal and other governmental income taxes;
- (d) Penalties and fines;

(e) Costs of services and items otherwise reimbursable through the Office of Medical Assistance Programs, other third party payors (see Rule 411-070-0359(3)), or the resident's personal funds.

(f) The cost related to the functioning of Corporate Boards of Directors.

(g) Advertising for purposes of soliciting potential residents, except for listings in the yellow pages (see Rule 411-070-0359(1)(q)).

- (h) The cost of salaries and supplies devoted to religious activities.
- (i) Gifts and contributions.

(3) Third Party Payors. The purpose of this section is to assure that facilities are not paid twice, once through the Medicaid all-inclusive rate and again through a third party payor, for providing a service. This section includes both allowed and non-allowed costs.

(a) Facilities must bill third party payors for nursing facility services whenever payment from a third party payor is or may be available. Examples of such payors are Medicare, Veterans Administration, insurance companies or a private resident when the items are not included in the basic rate.

(b) The Department will provide and update a summary listing of those items that may be billed to Medicare Part B for eligible residents. The costs for these items are not allowable for inclusion in the Nursing Facility Financial Statement for the purpose of establishing total facility per day costs.

(c) For Medicaid residents who are not Medicare Part B eligible, the costs of the items on the list provided by the Department per Section (3)(b) of this rule will be used to establish an add-on to the costs per resident day not to exceed the maximum direct care ceiling. These costs will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be added to the facility's per resident day direct care cost.

(d) Revenues received from third party payors, on behalf of Medicaid residents, for items other than those on the Medicare Part B list must be reported on the Nursing Facility Financial Statement. These revenues will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be used to reduce the facility's per resident day direct care costs.

(e) Facilities must submit as an attachment to their Nursing Facility Financial Statement a list showing name, case number, and total dollars expended or other allocation methodology approved in advance by the Department for the listed Medicare Part B eligible items per client for Medicaid residents not eligible for Medicare or other third party payments. Facilities may elect to use an allocation method to determine the dollars expended as long as the Department approves of the method thirty days in advance of the facility's fiscal year end. The Department will approve or reject the allocation method in writing within 30 days from the receipt of the facility's request for approval. The Department's approval of the allocation method continues from year to year unless notified in writing by the Department. Once an allocation method is approved, other facilities may use this method by notifying the Department of their intent to adopt this method thirty days in advance of the facility's fiscal year end. This attachment will be required for all reporting periods with an ending date after December 31, 1992.

(f) Failure to bill or collect from third party payors whenever appropriate will not cause these expenses to be considered allowable.

(g) Therapies provided by facility employees are allowable or not allowable as indicated below:

(A) Therapy expenses for non-Medicare eligible Medicaid residents may be included in the calculation in Subsection (3)(c) of this rule.

(B) The facility must establish a methodology that clearly indicates the approach taken to identify these allowable costs. This allocation method must be approved by the Department as described in Subsection (3)(e) of this rule.

(C) The portion of the therapist(s) costs that will be allowed in computing the base direct care rate includes:

(i) Therapies provided to Medicare Part B eligible residents that are not reimbursed by Medicare because the person's condition is no longer improving; and

- (ii) Other services performed but not required by physician orders.

(D) The following categories of therapy services are not allowable except as otherwise allowed under Section (3) of this rule:

(i) Medicare Part A or Part B reimbursed services for Medicaid and other clients;

(ii) Privately reimbursed services, including insurance;

(iii) Services reimbursed by the Veterans Administration;

(iv) Services to non-Medicare eligible Medicaid residents except to the extent otherwise allowed under Section (3) of this rule; and

(v) Services reimbursed by any third party.

(h) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355) and are non-allowable on the Nursing Facility Financial Statement.

(i) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355), are non-allowable on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070, 736, 21, OL 2003

Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 4-1992, f. & cert. ef. 6-24-92; SSD 13-1992, f. 12-31-92, cert. ef. 1-1-93; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04

411-070-0428

Cost Center Expenses

(1) For purposes of establishment of payment rates under the system in effect on June 30, 1997, allowable expenses are divided into two categories for rate setting purposes. The categories are composed of the following accounts:

(a) Indirect Costs:

(A) Property Costs:

(i) 452 — Interest;

(ii) 453 — Rent — Building;

(iii) 454 — Lease — Equipment;

(iv) 455 — Depreciation — Building;

(v) 456 — Amortization — Land Improvement;

(vi) 457 — Depreciation — Building Improvement;

(vii) 458 — Depreciation — Equipment;

(viii) 459 — Amortization — Leasehold Improvement;

(ix) 461 — Miscellaneous Property.

(B) Administrative and General:

(i) 411 — Administrator;

(ii) 412 — Assistant Administrator;

(iii) 415 — Other Administrative Salaries;

(iv) 443B — Employee Benefits and Taxes;

(v) 425 — Office Supplies;

(vi) 426 — Communications;

(vii) 427 — Travel;

(viii) 429 — Advertising — Help Wanted;

(ix) 431 — Public Relations;

(x) 432 — Licenses — Dues — Subscriptions;

(xi) 433 — Accounting and Related Data Proc.;

(xii) 435 — Legal Fees;

(xiii) 450 — Long Term Care Facility Tax, effective 07/01/2004.

(xiii) 436 — Management Fees;

(xiv) 441 — Bad Debts;

(xv) 439 — Other Interest Expense;

(xvi) 445B — Education and Training;

(xvii) 446 — Contributions;

(xviii) 447 — Donated Services;

(xix) 448 — Freight;

(xx) 449 — Miscellaneous.

(C) Other Operating Support:

(i) 443D, E, F, G — Employees Benefits and Taxes;

(ii) 451 — Real and Personal Property Taxes;

(iii) 460 — Insurance;

(iv) 511 — Compensation — Repair and Maintenance;

(v) 512 — Heat and Electricity;

(vi) 515 — Water — Sewer — Garbage;

(vii) 516 — Maintenance Supplies and Service;

(viii) 521 — Compensation — Dietary;

(ix) 527, 537, 547 — Purchased Services;

(x) 528 — Dietary Supplies;

(xi) 531 — Compensation — Laundry;

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- (xii) 532 — Linen and Bedding;
- (xiii) 538 — Laundry Supplies;
- (xiv) 541 — Compensation — Housekeeping;
- (xv) 548 — Housekeeping Supplies;
- (xvi) 519, 529, 539, 549 — Miscellaneous.
- (b) Direct Costs:
 - (A) Food — 522 — Food;
 - (B) Direct Care Compensation:
 - (i) 443H — Employee Benefits and Taxes;
 - (ii) 601 — Compensation — Director of Nursing Services;
 - (iii) 611 — Compensation — Registered Nurses;
 - (iv) 621 — Compensation — LPNs;
 - (v) 631 — Compensation — Other Nursing;
 - (vi) 701 — Compensation — Physician;
 - (vii) 711 — Compensation — Pharmacy;
 - (viii) 721 — Compensation — Laboratory;
 - (ix) 731 — Compensation — X—Ray;
 - (x) 741 — Compensation — Activities and Recreation;
 - (xi) 751 — Compensation — Rehabilitation;
 - (xii) 761 — Compensation — Religious;
 - (xiii) 771 — Compensation — Other Services;
 - (xiv) 781 — Compensation — Other;
 - (xv) 787 — Purchased Services.
 - (c) Direct Care Supplies:
 - (i) 445I — Education and Training;
 - (ii) 625 — Medical Record Supplies;
 - (iii) 629 — Nursing Supplies;
 - (iv) 639 — Oxygen Supplies;
 - (v) 719 — Physician Fees;
 - (vi) 723 — Drugs and Pharmaceuticals — NH;
 - (vii) 728 — Drugs and Pharmaceuticals — Presc.;
 - (viii) 729 — Pharmacy Supplies;
 - (ix) 739 — Laboratory Supplies and Fees;
 - (x) 749 — X—Ray Supplies and Fees;
 - (xi) 759 — Activity and Recreational Supplies;
 - (xii) 769 — Rehabilitation Supplies and Fees;
 - (xiii) 782 — Utilization Review;
 - (xiv) 789 — Consultant Fees;
 - (xv) 799 — Miscellaneous.

(2) The allocation methods, identified in Rule 411-070-0430, will be used where allocation among separate levels of payment or activities is appropriate.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: SSD 10-1986, f. & ef. 7-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04

411-070-0442

Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Needs Add-on Rate.

(1) The rates are determined for the first year of each biennium, the Rebasing Year, and the second year of each biennium, the Non-Rebasing Year.

(a) The Rebasing Year.

(A) Determination of allowable costs. The Basic Rate is based on the Statements received by the Department by September (or postmarked by October 31, if an extension of filing has been approved by the Department) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. The Department desk reviews or field audits these Statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation.

(B) Adjustment of allowable costs to mid-point of first year of biennium. For each facility, its allowable costs, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the Base Year (e.g., for the biennium beginning July 1, 2003, the Base Year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(C) Calculation of Allowable Costs Per Medicaid Day. For each facility, its Allowable Costs Per Medicaid Day is determined using the allowable costs as inflated and resident days excluding pediatric days as reported in the Statement.

(D) Ranking by Allowable Costs Per Medicaid Day. The facilities are ranked from highest to lowest by the facility's Allowable Costs Per Medicaid Day.

(E) Determination of Basic Rate. The Basic Rate will be determined by ranking the Allowable Costs Per Medicaid Day by facility and identifying the Allowable Cost Per Day at the applicable percentage. If there is no Allowable Cost Per Day at the applicable percentage, the Basic Rate is determined by interpolating the difference between the Allowable Costs Per Day that are just above and just below the applicable percentage to arrive at a Basic Rate at the applicable percentage.

(i) The Applicable Percentage for the period beginning July 1, 2003 through June 30th, 2005 is at the 63rd percentile.

(ii) The Applicable Percentage for the period beginning July 1st, 2005 is at the 70th percentile.

(b) The Non-Rebasing Year. On July 1 of each Non-Rebasing year, the Basic Flat Rate will be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) Complex Medical Needs Add-On Rate. The Complex Medical Needs Add-On Rate is 40 percent of the Basic Rate for the Rebasing Year and the Non-Rebasing Year.

Stat. Auth.: ORS 410, 411
Stats. Implemented: OL 2003, ORS 736, 24
Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04

411-070-0465

Uniform Chart of Accounts

The following account definitions will be used to classify the dollar amounts on the Nursing Facility Financial Statement (NFFS). The account balance is to be reported in whole dollars under the facility gross column on the NFFS and referenced by the providers' chart of accounts number. It is the provider's responsibility to ensure that the balances reported reconcile to their fiscal year statements and general ledger balances with any differences explained on Schedule A to Form SDS 35 or SDS 35A. The provider is responsible for making adjustments to these accounts for non-allowable items and amounts using the adjustment column to arrive at the net allowable balance. Each adjustment is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(1) Current Assets — The following accounts include cash and other assets reasonably expected to be realized in cash or sold, or consumed during the normal nursing facility operating cycle, or within one year when the operating cycle is less than one year.

(a) 101 — Cash on Hand — This account balance represents the amount of cash on hand for petty cash funds.

(b) 102 — Cash in Bank — This account balance represents the amount in a bank checking account.

(c) 103 — Cash in Savings — This account balance represents the amount accumulated in a savings account.

(d) 104 — Resident Cash — This account balance represents the amount of resident funds entrusted to the provider and held as cash on hand in the bank.

(e) 109 — Accounts Receivable — This account balance represents the amounts due from or due on behalf of all residents at the end of the fiscal period being reported.

(f) 110 — Notes Receivable — This account balance represents the current balance of amounts owed to the facility (payee) that are covered by a written promise to pay at a specified time, and is signed and dated by the maker.

(g) 111 — Allowance for Doubtful Accounts — This account balance represents amounts owed to the facility and estimated to be uncollectible.

(h) 115 — Employee Advances — This account balance represents amounts paid in advance to employees for salaries or wages that will be liquidated in the next payroll cycle following the closing date of the financial statement.

(i) 120 — Inventory Nursing Supplies — This account balance represents the cost value of supplies on hand at the end of the reporting period, to be used in providing nursing care.

(j) 122 — Inventory Food — This account represents the cost value of food that is on hand at the end of the reporting period.

(k) 124 — Inventory — Other Supplies — This account balance represents the cost value of general operating supplies, such as laundry, housekeeping and maintenance supplies that are on hand at the end of the reporting period.

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(l) 125 — Prepaid Expenses — This account balance represents the cost value of paid expenses not yet incurred covering regularly recurring costs of operation like rent, interest, and insurance.

(m) 149 — Other Current Assets — This account balance comprises all current assets not identified above. Each item in this account, including short-term savings certificates, must be explained on Schedule A to Form SDS 35 or SDS 35A.

(2) Non-Current Assets — The balances of the following accounts represent Assets not recognized as current.

(a) 151 — Land — This account balance represents the acquisition cost and other costs, like legal fees and excavation costs that are incurred to put the land in condition for its intended use.

(b) 153 — Building(s) — This account balance represents the acquisition cost of permanent structures and property owned by the provider used to house residents. It includes the purchase or contract price of all permanent buildings and fixed equipment attached to and forming a permanent part of the building(s).

(c) 154 — Allowance for Depreciation — This account balance represents the accumulation of provisions made to record the expiration in the building(s) life attributable to wear and tear through use, lapse of time, obsolescence, inadequacy or other physical or functional cause. The straight line method is the only recognized depreciation method for cost reimbursement.

(d) 155 — Land Improvements — This account balance represents the acquisition cost of permanent improvements, other than buildings that add value to the land. It includes the purchase or contract price.

(e) 156 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(f) 157 — Building Improvements — This account balance represents the acquisition cost of additions or improvements that either add value to or increase the usefulness of the building(s). It includes the purchase or contract price.

(g) 158 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(h) 161 — Equipment — This account balance represents the acquisition cost of tangible property of a permanent nature, other than land, building(s) or improvements, used to carry on the nursing facility operations. It includes the purchase or contract price.

(i) 162 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(j) 165 — Leasehold Improvements — This account balance represents the acquisition cost of any long-lived improvements or additions to the property being leased that will belong to the owner (lessor) at the expiration of the lease.

(k) 166 — Allowance for Amortization — This account is of the same nature and is used in the same manner as Account 154 except the cost of improvements or additions will be amortized over the lesser of the expected benefit life or the remaining life of the lease.

(l) 181 — Investments — This account balance represents the value of assets unrelated to the nursing facility operation. The detail of this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(m) 187 — Goodwill — This account balance represents the value of goodwill identified with the purchase of assets.

(n) 199 — Other — Non-Current Assets — This account balance comprises all non-current assets not identified above. Each item in this account, including long-term savings certificates, must be explained on Schedule A to Form SDS 35 or SDS 35A.

(3) Current Liabilities — The balances of the following accounts are considered current liabilities.

(a) 201 — Accounts Payable — This account balance represents the liabilities for goods and services received but unpaid at the end of the reporting period.

(b) 202 — Accounts Payable — Resident Account — This account balance represents the amount owed to residents for the cash entrusted to the facility in Account 104.

(c) 203 — Notes Payable — Other — This account balance represents the current portion of the amount owed by the facility that is covered by a written promise to pay at a specified time and is signed and dated by the facility (maker).

(d) 204 — Notes Payable to Owner — This account balance represents notes payable to the owner(s) and is of the same nature and is used in the same manner as Account 203.

(e) 205 — Accrued Interest Payable — This account balance represents the liabilities for interest accrued at the end of the reporting period but not payable until a later date.

(f) 207 — Other Accrued Payable — This account is of the same accrual nature and is used in the same manner as Account 205 and is to be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(g) 208 — Payroll Payable — This account balance is the accrued payroll, less withheld payroll taxes and other deductions, payable to employees at the end of the reporting period.

(h) 217 — Payroll Tax Payable — This account balance is the employer's share of accrued payroll taxes payable at the end of the reporting period.

(i) 218 — Payroll Deductions Payable — This account balance is the employee's share of accrued payroll taxes withheld from the employer's gross pay payable at the end of the reporting period.

(j) 219 — Deferred Income — This account balance represents the liability for revenue collected in advance.

(k) 229 — Other Current Liabilities — This account balance comprises all current liabilities not identified above. The nature and purpose of amounts included in this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(4) Long-Term Liabilities — The balances of the following accounts are considered long-term liabilities.

(a) 231 — Long-Term Mortgage Payable — This account balance represents the amount owed by the facility that is secured by a mortgage or other contractual agreement providing for conveyance of property at a future date.

(b) 233 — Long-Term Notes Payable — This account is of the same nature and is used in the same manner as Account 203 except the liability extends beyond one year.

(c) 234 — Long-Term Notes Payable Owner — This account is of the same nature and is used in the same manner as Account 204 except the liability extends beyond one year.

(d) 249 — Other Long-Term Liabilities — This account comprises all long-term liabilities not identified above. The amount and nature of items in this account must be explained on Schedule A to Form SDS 35 or SDS 35A.

(5) Net Worth — The balances of the following accounts represent the amount by which the facility's assets exceed its liabilities.

(a) 251 — Capital Stock — This account balance represents the amount of cash or property received in exchange for the corporation's capital stock.

(b) 255 — Retained Earnings — This account balance represents the amount of capital resulting from retention of corporate earnings.

(c) 261 — Capital Account — This account balance represents the book value of the proprietor or partner(s) equity in the facility.

(d) 265 — Drawing Account — This account balance represents the owners withdrawals of funds during the reporting period that were not paid as part of the payroll.

(e) 290 — Net Profit (Loss) — This account balance is the facility's revenue minus expenses for the reporting period.

(6) Resident Revenue — These accounts include revenue for routine service charges exclusive of ancillary charges. The intent is for revenue to be reported in gross, exclusive of any cost offsets. Routine service charges are to be reported in the following accounts:

(a) For cost reports filed for periods that end prior to July 1, 1997:

(A) 301A — Private Resident — NF Payment Category 4 — This account includes revenue for NF Payment Category 4 routine private resident care.

(B) 301B — Private Resident — NF Payment Category 2 — This account includes revenue for NF Payment Category 2 routine private resident care.

(C) 301C — Private Resident — Other — This account includes revenue for other than private NF Payment Category 4 or 2 residents and is to be explained on Schedule A to Form SDS 35 or SDS 35A. Private heavy cost resident revenue would be included in this account.

(D) 302A — Medicaid Resident — NF Payment Category 4 — This account includes revenue from all sources for NF Payment Category 4 Medicaid residents.

(E) 302B — Medicaid Resident — NF Payment Category 5 — This account includes revenue from all sources for NF Payment Category 5 Medicaid Residents.

(F) 302C — Medicaid Resident — NF Payment Category 2 — This account includes revenue from all sources for NF Payment Category 2 Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 3 — This account includes revenue from all sources for NF Payment Category 3 Medicaid residents.

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(H) 302E — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(I) 302F — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1 through 5 and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(J) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(K) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(b) For cost reports filed for periods that end on and after July 1, 1997:

(A) 301A — Private Resident — Complex Medical Needs — This account includes revenue for Complex Medical Needs routine private resident care. These are private pay residents whose medical needs correspond to the Medicaid complex medical needs criteria.

(B) 301B — Private Resident — Basic Rate — This account includes revenue for basic rate routine private resident care. These are private pay residents whose medical needs correspond to the Medicaid basic rate needs criteria.

(C) 301C — Private Resident — Other — This account includes revenue for other than private Complex Medical Needs and Basic Rate residents and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(D) 302A — Medicaid Resident — Complex Medical Needs — This account includes revenue from all sources for Complex Medical Needs Medicaid residents.

(E) 302B — Medicaid Resident — Pediatric — This account includes revenue from all sources for Pediatric Medicaid Residents.

(F) 302C — Medicaid Resident — Basic Rate — This account includes revenue from all sources for Basic Rate Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(H) 302E — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1, Basic Rate, Complex Medical Needs and Pediatric and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(I) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(J) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SDS 35 or SDS 35A.

(7) Ancillary Revenue — These accounts include revenue for professional and non-professional services and supplies not included in Section (6) of this rule. Revenue other than that described above must be reported as gross revenue and related expenses to be reported in the appropriate expense accounts. Ancillary service charges are to be reported in the following accounts:

(a) 323 — Nursing Supplies — This account includes revenue from the sale of nursing supplies or services.

(b) 328 — Prescription Drugs — This account includes revenue from the sale of prescription drugs.

(c) 329 — Laboratory — This account includes revenue from laboratory services provided.

(d) 330 — Physical Therapy — This account includes revenue from physical therapy services provided.

(e) 331 — Speech Therapy — This account includes revenue from speech therapy services.

(f) 332 — Occupational Therapy — This account includes revenue from occupational therapy services.

(g) 341 — X-Ray — This account includes revenue from X-Ray services.

(h) 351 — Personal Purchases — This account includes revenue from residents for personal purchases.

(i) 361 — Barber and Beauty — This account includes revenue from residents for barber and beautician services.

(j) 399 — Other Ancillary — Items and amounts included in this account must be described on Schedule A to Form SDS 35 or SDS 35A.

(8) Other Revenue — These accounts include other revenue, exclusive of resident and ancillary revenue. The intent is for revenue to be reported in gross and the related expenses reported in the appropriate expense accounts. Other revenues are classified as follows:

(a) 803 — Grants — This account includes revenue amounts received in the reporting period from public and privately funded grants and awards.

(b) 805 — Donations — This account includes donations in the form of cash or goods and services received during the reporting period.

(c) 811 — Interest — This account includes revenue from any interest bearing note, bank account, or certificate.

(d) 813 — Staff & Guest Food Sales — This account includes revenue from facility food sales to individuals other than residents of the facility.

(e) 814 — Concession Sales — This account includes revenue from vending machines or for resale items not reported in Accounts 813 and 351.

(f) 815 — Equipment Rental Income — This account includes revenue from equipment rentals.

(g) 819 — Miscellaneous Other Revenue — Items and amounts, including revenues for Nurse Aide Training and Competency Evaluation, Mental Health revenues received from local governments, and Workers Compensation refunds, included in this account are to be described on Schedule A to Form SDS 35 or SDS 35A.

(9) Property Expenses — These accounts are for reporting property expenses.

(a) 452 — Interest — This account is for reporting all interest expense except other interest expense in Account 439.

(b) 453 — Rent Building — This account is for reporting all building rent or lease expenses.

(c) 454 — Leased Equipment — This account is for reporting all equipment rental and lease expense, except for other operating support and oxygen concentrators.

(d) 455 — Depreciation — Building — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 153.

(e) 456 — Depreciation — Land Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 155.

(f) 457 — Depreciation — Building Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 157.

(g) 458 — Depreciation — Equipment — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 161.

(h) 459 — Amortization — Leasehold Improvement — This account is for reporting amortization, for the reporting period, associated with assets capitalized in Account 165 and Account 166.

(i) 461 — Miscellaneous — Property — This account is for reporting other property costs, such as amortization of organizational costs, and items of equipment less than \$1,000 that are for general use.

(10) Administrative and General Expenses — These accounts report expenses for administration of the facility and the business office, and items not readily associated with other departments.

(a) 411 — Compensation — Administrator — This account is for reporting all the compensation received by the licensed administrator of the facility. Compensation includes salary, bonuses, auto, moving, travel and all other allowances paid directly or indirectly by the facility.

(b) 412 — Compensation — Assistant Administrator — This account is to be used for reporting all compensation of the individual who is identified as, and has the specific duties of, Assistant Administrator.

(c) 415 — Compensation — Other Administrative — This account is for reporting all of the compensation received by administrative, clerical, secretarial, accounting, supply and personnel.

(d) 443B — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 attributable to administrative compensation expenses.

(e) 420 — Concession Expense — This account is for reporting expenses of non-medical, non-resident care items sold to the residents and non-residents including items sold through vending machines.

(f) 422 — Funeral & Cemetery Supplies & Services — This account is for reporting all expenditures associated with funeral and cemetery supplies and services.

(g) 423 — Personal Purchase — This account is for reporting all expenditures for personal items purchased for individual residents.

(h) 425 — Office Supplies — This account is for reporting expenses of all office supplies except those chargeable to Account 625. Materials include stationery, postage, printing, bookkeeping supplies, and office supplies.

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(i) 426 — Communications — This account is for reporting all telephone, telegraph service, communication, cable television fees and paging system charges.

(j) 427 — Travel — This account is for reporting all transportation costs associated with vehicles used for resident care or resident recreation, exclusive of insurance and depreciation and for reporting all other travel expenses such as lodging and meals for conferences, conventions, workshops, or training sessions.

(k) 429 — Advertising — Help Wanted — This account is for reporting all help wanted advertising expense.

(l) 430 — Advertising — Promotional — This account is for reporting all expenditures of the facility related to promotional advertising including yellow page advertising.

(m) 431 — Public Relations — This account is for reporting all expenditures related to public relations.

(n) 432 — Licenses, Dues & Subscriptions — This account is for reporting all fees for facility licenses; dues in professional associations; and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff use.

(o) 433 — Accounting & Related Data Processing — This account is for reporting all accounting, payroll, and other data and report processing expenses.

(p) 435 — Legal Fees — This account is for reporting all legal fees and expenses. Legal fees must be reported in conformance with OAR 411-70-359(1)(t).

(q) 436 — Management Fees — This account is for reporting all management fees charged to the facility, including management salaries and benefits at the home office.

(r) 439 — Other Interest Expense — This account is for reporting interest expense not attributable to the purchase of the facility and equipment.

(s) 441 — Bad Debts — This account is for reporting the expense recorded from recognizing a certain portion of accounts receivable as uncollectible.

(t) 445C — Education & Training — This account is for reporting registration, tuition, materials, and manual costs for training the staff included in Accounts 411, 412, 415, and 433.

(u) 446 — Contributions — This account is for reporting the expense of any gift or donation.

(v) 449 — Miscellaneous — This account is for reporting general administrative operating expenses not specifically included in other general administrative operating expense accounts. Entries must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(w) 450 — Long Term Care Facility Tax, effective 07/01/2003.

(11) Other Operating Support Expenses — The following accounts are included in this category.

(a) 443D, 443E, 443F, 443G — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 identified with Repair and Maintenance Salaries in Account 511, dietary salaries in Account 521, laundry salaries in Account 531, and housekeeping salaries in Account 541.

(b) 451 — Real Estate & Personal Property Taxes — This account is for reporting real estate and personal property tax expenses for the facility.

(c) 460 — Insurance — This account is for reporting all insurance expenses other than employee insurance expenses reportable in Account 440, Payroll Taxes, and Account 442, Employee Benefits.

(d) 511 — Compensation — Maintenance & Repair Employees — This account is for reporting all compensation received by employee(s) responsible for providing facility repair and maintenance.

(e) 512 — Heat & Electricity — This account is for reporting all facility heating and lighting expenses.

(f) 515 — Water, Sewer and Garbage — This account is for reporting all water, sewer and garbage expenses.

(g) 516 — Maintenance Supplies & Services — This account is for reporting all expenses required for building and equipment maintenance and repairs including preventative maintenance and not capitalized. All balances in Accounts 516E, 516F, 516G, and 516I will be consolidated in Account 516D prior to submission to the Department.

(h) 521 — Compensation — Dietary Employees — This account is for reporting all compensation received by employee(s) providing dietary services.

(i) 527 — Purchased Services — This account is for reporting all non—employee services required in the dietary, laundry and housekeeping department operations including dietary consulting expenses.

(j) 528 — Dietary Supplies — This account is for reporting the expense of all supplies, dishes and utensils, and non-capitalized equipment utilized within this department, exclusive of food.

(k) 531 — Compensation — Laundry Employees — This account is for reporting all compensation received by employees responsible for providing laundry services.

(l) 532 — Linen and Bedding — This account is for reporting the expense of all linen and bedding utilized within the facility.

(m) 538 — Laundry Supplies — This account is for reporting the expense of all supplies utilized by the laundry.

(n) 541 — Housekeeping Salaries — This account is for reporting all compensation received by employees responsible for providing housekeeping services.

(o) 548 — Housekeeping Supplies — This account is for reporting the expense of all supplies utilized to provide housekeeping services.

(p) 549 — Miscellaneous — This account is for reporting other operating support expenses not specifically included in an identified account, including lease and rent expenses attributable to other operating support services. Entries must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(12) Food — 522 Food — This account is for reporting all food products and supplements used in food preparations.

(13) Direct Care Operating Expenses — These accounts include compensation, supplies and services used in providing direct resident care.

(a) Compensation

(A) 443H Employee Benefits & Taxes — This account is for reporting the allocated portion of Account 443 attributable to this area.

(B) 601 Compensation — Director of Nursing Services — This account is for reporting all compensation received by employee(s) responsible for directing the nursing services of the facility.

(C) 611 Compensation — Registered Nurses — This account is for reporting all compensation received by registered nurse employees of the facility who provide nursing care, other than the Director of Nursing Services. If a Registered Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(D) 621 Compensation — Licensed Practical Nurses — This account is for reporting all compensation received by Licensed Practical or Licensed Vocational Nurse employees of the facility who provide nursing care. If a Licensed Practical Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(E) 631 Compensation — Other Nursing Employees — This account is for reporting all compensation received by aides, attendants, orderlies and other non-licensed, non-professional employees who provide nursing care. If such employees provide nursing care part of the time and carry out other duties the rest of the time, these employees' compensation will be allocated to the appropriate account based on time spent on each activity.

(F) 701 Compensation — Physicians — This account is for reporting all compensation received by physicians providing resident medical care.

(G) 711 Compensation — Pharmacy Employees — This account is for reporting all compensation of licensed pharmacists and technicians employed by the facility.

(H) 721 Compensation — Laboratory Employees — This account is for reporting all compensation of pathologists and technicians employed by the facility to provide laboratory services.

(I) 731 Compensation — X-Ray Employees — This account is for reporting all compensation of radiologists and technicians employed by the facility to provide X-Ray services.

(J) 741 Compensation — Activities & Recreational Employees — This account is for reporting all compensation of employees engaged in the planning and carrying out of resident recreational activities.

(K) 742 Compensation — Social Workers — This account is for reporting all compensation of social workers and assistants employed to provide social service activities.

(L) 751 Compensation — Rehabilitation Employees — This account is for reporting all compensation of occupational and physical therapists, and technicians, and aides employed to provide resident rehabilitation activities or services. This account will be subdivided in accordance with OAR 411-070-0359(3)(g) on Schedule A to Form SDS 35 or SDS 35A.

(M) 761 Compensation — Religious Employees — This account is for reporting all compensation for individuals employed who provide religious services.

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(N) 771 Compensation — Other Service Employees — This account is for reporting all compensation for ward clerks and medical records clerks employed by the facility.

(O) 781 Compensation — Other Employees — This account is for reporting all compensation for dentists, barbers, beauticians, research, and other non-identified personnel employed by the facility and must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(P) 787 Purchased Services — This account is for reporting the expense attributable to employment agencies that provide part-time employees on a fee and salary basis for direct care. The expenses will be allocated to the appropriate payroll account in the adjustment column.

(b) Direct Care Supplies and Services

(A) 625 — Medical Records Supplies — This account is restricted to materials used in resident charting.

(B) 445I — Education & Training — This account is for reporting registration, tuition, and book expense associated with education and training of direct care personnel.

(C) 629 — Nursing Supplies — This account is for reporting all medical supplies consumed by this department, exclusive of oxygen, used in providing direct care.

(D) 639 — Oxygen Supplies — This account is for reporting the expense of all oxygen (gas) and concentrator rentals.

(E) 646 — Nursing Assistant (Aide) Training and Competency Evaluation — This account is for reporting all expenses associated with OAR 411-070-0470 (which excludes salaries of nurse aide trainees).

(F) 719 — Physician Fees — This account is for reporting all expenditures for physician treatment, care and evaluation of the resident.

(G) 723 — Drugs and Pharmaceuticals — Nursing Home — This account is for reporting all expenditures meeting the criteria of 411-070-0085(2)(j).

(H) 728 — Drugs & Pharmaceuticals — Prescriptions — This account is for reporting all expenditures for legend drugs and biologicals prescribed by a licensed physician and not meeting the criteria of 411-070-0090.

(I) 729 — Pharmacy Supplies — This account is for reporting the expense of all materials utilized in the facility pharmacy operation.

(J) 739 — Laboratory Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility laboratory operation and fees paid for non-employee pathologist and laboratory technician services.

(K) 749 — X-Ray Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility X-Ray department and fees for non-employee radiologists and X-Ray technician services.

(L) 759 — Activities & Recreational Supplies — This account is for reporting the expense of all materials, except transportation, used in providing resident recreational activities.

(M) 769 — Rehabilitation Supplies & Fees — This account is for reporting the expense of all materials used in providing occupational and physical therapy including fees for non-employee related services. This account must be subdivided in accordance with OAR 411-070-0359(3)(I) on Schedule A to Form SDS 35 or SDS 35A.

(N) 782 — Utilization Review — This account is for reporting the expenses of all non-employee fees associated with utilization review.

(O) 789 — Consultants — This account is for reporting all expenditures for consultant fees, including travel and lodging, exclusive of dietary and management consultants and must be explained in detail on Schedule A to Form SDS 35 or SDS 35A.

(P) 799 — Miscellaneous — Expenses reported in this account, including supplies for barber and beauty, must be explained in detail on Schedule A to Form SDS 35 or SDS 35A. The cost of non-employee Barber and Beautician services will be reported in this account.

(14) Payroll Taxes & Employee Benefits — These accounts are for reporting payroll taxes and employee benefits.

(a) 440 — Payroll Taxes — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment, Workers Compensation and other payroll taxes not withheld from the employee's pay.

(b) 442 — Employee Benefits — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners and gifts. Established vacation, holiday and sick pay programs and child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account.

(c) 443 — Employee Benefits and Taxes — This account is for reporting the sum of Accounts 440 and 442 and is allocated to the specific sub-

accounts by actual cost of the payroll category, or by percentage of the payroll category amount to the total facility payroll.

(d) These costs may be allocated on a percentage basis equivalent to the payroll distribution or on an actual basis by cost center. All facility payroll taxes and employee benefits will be allocated by the same method, if actual is not used.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0460 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04

Adm. Order No.: SPD 37-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 12-30-04

Notice Publication Date: 11-1-04, 12-1-04

Rules Adopted: 411-002-0175

Subject: Chapter 411, Division 002, Rule 0175, the AAA equity rule has been permanently adopted clarifying the budgeting methodology used for Type B Area Agencies on Aging that have elected to have employees transferred to employment by the Area Agency through a transfer agreement. The rule describes the methods for calculating the total annual budget for the Type B Transfer AAA's.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-002-0175

Methodology To Determine Budget Levels for Type B Area Agencies on Aging That Have Elected To Have Employment Transfer

(1) Definitions:

(a) A "Type B Transfer AAA" means a Type B Area Agency on Aging that has elected to have employees transferred to employment by the Area Agency by transfer agreement.

(b) A "Title XIX funded position" means a position that is funded, in part, by Federal funds through Title XIX of the Social Security Act.

(c) "SPD Allocated Positions" means the position categories allocated to SPD field offices. These are the categories of positions to be included for the Equity comparison.

(d) "Annual OPE" means the benefit rate as calculated by DHS. The resulting rate is used to calculate the amount of OPE per type of position.

(e) "Indirect Cost Rate" means the percentage rate used to calculate costs allocated to Type B Transfer AAA offices for indirect costs, including State Government Service Charges and Infrastructure Charges. An established indirect cost rate will not be amended in the middle of the biennium. The initial indirect cost rate is set at 17.78% of the sum of Salary and OPE expenses. The indirect cost rate will be re-based to be effective the first day of the first biennium after the Department of Administrative Services (DAS) changes rates that it publishes in its Price List.

(2) Each Type B Transfer AAA shall provide an updated staff report to DHS not later than January 31 each year. The Type B Transfer AAA shall provide the information that DHS requests in the form that DHS prescribes.

(3) The following steps will be used to calculate the annual budget for the Type B Transfer AAAs:

(a) The updated staff report will be sorted to separate Title XIX funded positions from others. Positions that are not Title XIX funded are not included in the calculation.

(b) SPD will publish a list of Title XIX funded job categories not later than January 15 each year.

(c) The Title XIX funded positions are sorted by job category. Levels within a single job category are combined.

(d) Average step in the salary range and average salary are calculated for each job category.

(e) Management staffing will be added in the same ratio and at the same salary ranges that DHS would staff an SPD field office.

(f) Each Type B Transfer AAA will be afforded an opportunity to review the information derived in steps (a) through (d) above. Revisions may be made to the information as a result of that review.

(g) Reviewed information from steps (a) through (e) will be used to determine calculate average step in the salary range for each job category for each Type B Transfer AAA.

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(h) An adjustment is made to equate the number of salary steps in the Type B Transfer AAA salary range for each job category to the DHS salary range for each job category.

(i) The adjusted average step in the salary range is used to determine the average DHS salary for each job category.

(j) The monthly salary is multiplied by 12 and converted to an average annual salary for each job category.

(k) The Annual OPE rate is multiplied by the average annual salary for each job category to produce the average annual OPE for each job category.

(l) The sum of the average annual salary and the average annual OPE for each job category is multiplied by the number of FTE determined in steps (a) through (e) above. The product is the Total Annual Salary Plus OPE to be used in determination of the budget level.

(m) The Total Annual Salary Plus OPE is multiplied by the Indirect Cost Rate to determine aggregate annual indirect costs.

(n) The DHS standard Services and Supplies costs for field office employees is multiplied by the number of FTE to determine aggregate Services and Supplies (S&S) costs.

(o) The total annual Type B Transfer AAA annual budget level is the sum of (Total Annual Salary Plus OPE) + (aggregate annual indirect costs) + (aggregate S&S costs).

(4) The total annual Type B Transfer AAA annual budget level determined above will be reduced by 5%.

(5) DHS will use the methodology outlined in Sections (3) and (4) above when determining funding levels to recommend to the Governor for the Type B Transfer AAAs.

(6) Notwithstanding Section (5), in determining the funding levels of Type B Transfer AAAs to recommend to the Governor for the 2005-2007 biennium, DHS shall reduce the total annual Type B Transfer AAA annual budget level by 8%.

Stat. Auth.: ORS 410
Stats. Implemented: ORS 410.210 - 410.300
Hist.: SPD 37-2004, f. & cert. ef. 12-30-04

Adm. Order No.: SPD 38-2004(Temp)

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05 thru 6-30-05

Notice Publication Date:

Rules Amended: 411-340-0020, 411-340-0130

Subject: Effective 01/01/05 temporary rule OAR 411-340-0130, Exceptions to Basic Benefit Financial Limits, provides for an additional exception to the Basic Benefit financial limits for extraordinary need as provided within current budgetary planning, limits, and authority. This rule amendment is necessary to insure that individuals with developmental disabilities in Support Service Brokerages receive adequate services to meet their support needs. Additionally, temporary rule OAR 411-340-0020 allows for temporary change in definitions to conform with the language in OAR 411-340-0130.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-340-0020

Definitions

As used in OAR 411-340-0010 through 411-340-0180:

(1) "Abuse" means:

(a) Except for Provider Organizations listed in OAR 411-340-0020(1)(b), one or more of the following:

(A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(b) Activities described in OAR 411-320-0020(2)(b) through (c)(F) for Provider Organizations qualifying to be paid with support services funds as:

(A) 24-Hour Residential Programs licensed under OAR chapter 411, division 325;

(B) Adult Foster Homes licensed under OAR 309-040-0000 through 309-040-0100;

(C) Employment and Alternative to Employment programs certified under OAR chapter 411, division 345; or

(D) Supported Living Services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(4) "Administrator" means the Assistant Director, Department of Human Services, and Administrator of Seniors and People with Disabilities or that person's designee.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Basic Benefit" means the type and amount of Support Services available to each eligible individual, specifically:

(a) Access to Support Service Brokerage services listed in OAR 411-340-0120(1)(a) through (g) and, if required,

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (p) with no more than:

(A) \$9600 per Plan Year from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services waiver; and

(B) An amount equal to the state's General Fund contribution to the maximum amount available per Plan Year to a Medicaid recipient per OAR 411-340-0020(6)(b)(A) from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(7) "Basic Supplement" means the amount of support services funds in excess of the Basic Benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203. A Basic Supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (B).

(8) "Basic Supplement Criteria Inventory" means Form DHS 0203, the written inventory of an individual's circumstances which is completed and scored by the Brokerage to determine whether the individual is eligible for annual support service funds in excess of the Basic Benefit due to extraordinary long-term need.

(9) "Certificate" means a document issued by the Department to a Support Services Brokerage or to a Provider Organization that certifies the Brokerage or Provider Organization is eligible to receive State funds for these services.

(10) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication method.

(11) "Chore services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture for safe access and egress. These services are provided when no one in the household is capable of either performing, or paying for, the services and when no other relative, caregiver, landlord, community/volunteer agency, or third-party payer is capable of or responsible for their provision.

(12) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(13) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(14) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the

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individual's support plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs. Supports are available to individuals who live alone, with roommates, or with family. The services include support designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(15) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(16) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

(a) 24-hour residential services including, but not limited to, care provided in a group home, in a foster home, or through a supported living program; or

(b) Supports provided to an individual in the individual or family home that cost more than \$20,000 in funds designated by the Department specifically for that purpose for individuals with developmental disabilities per Plan Year for the July 1, 2001 through June 30, 2003 biennium or more than \$20,000 plus any legislatively-approved cost-of-living increments per Plan Year for each biennium thereafter.

(17) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(18) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(19) "Emergent status" means a temporary, unpredictable situation when an individual enrolled in a Support Service Brokerage may be allowed to receive Department-paid support exceeding \$20,000 per year to remain in his or her home or family home or to enter a short-term out-of-home residential placement without exiting Support Services. An individual will only be considered in emergent status if he or she is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the CDDP of the individual's county of residence has determined that the individual meets criteria for crisis or diversion services according to OAR 411-320-0160. Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS Chapter 427 and imminent risk of loss of the individual's community support sys-

tem. Services to maintain the individual in the community and stabilize the situation are crisis/diversion services according to OAR 411-320-1060, which may include short-term residential placement services indicated in the individual's Support Service Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan. Length of emergent status may only be authorized by the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis/diversion funds. In no case will emergent status for an individual exceed two hundred seventy (270) consecutive days in twelve (12) consecutive months.

(20) "Employer-related supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(21) "Entry" means admission to a Department-funded developmental disability service provider.

(22) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual; modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(23) "Environmental Modification Consultant" means either an Independent Provider or a Provider Organization paid with support services funds to provide advice to an individual, the individual's legal representative, or the individual's Personal Agent about the environmental accessibility adaptation required to meet the individual's needs.

(24) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(25) "Family," for determining individual eligibility for Support Services Brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(26) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home. This service includes: instruction about treatment regimens and use of equipment specified in the Individual Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions; and counseling for the fam-

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ily to relieve the stress associated with caring for an individual with disabilities. This service is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or rehabilitative support needs. The training is not provided to paid caregivers.

(27) "Fiscal Intermediary" means a person or agency that receives and distributes Support Services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(28) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(29) "Grievance" means a formal complaint by an individual, individual's legal representative, or a person acting on his/her behalf about services or employees of a Support Service Brokerage or Provider Organization.

(30) "Habilitation services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports, and community inclusion supports.

(31) "Home" means an individual's primary residence that is not licensed or certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(32) "Homemaker services" means support consisting of general household activities such as meal preparation and routine household care provided by a trained homemaker. The services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(33) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(34) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(35) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Support Service funds who personally provides services to the individual.

(36) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(37) "Individual Support Plan" or "ISP" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals. This ISP is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The ISP articulates decisions and agreements made through a person-centered process of planning and information-gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(38) "Integration" is defined in ORS 427.005 and means use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(39) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person or agency authorized by the court to make decisions about services for the individual.

(40) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the coun-

ty declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(41) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(42) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(43) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(44) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(45) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(46) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1)(a) through (g), who meets the requirements of OAR 411-340-0150(4)(a) through (b), and who is:

(a) A trained employee of a Support Service Brokerage; or

(b) A person who has been engaged under contract to the Brokerage to allow the Brokerage to meet responsibilities in geographic areas where Personal Agent resources are severely limited.

(47) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(48) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(c) The process helps the individual and those significant to the individual to identify, use, and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(49) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(50) "Plan Year" means twelve (12) consecutive months used to calculate an individual's annual Basic Benefit. Unless otherwise set according to conditions of OAR 411-340-0120(4)(h) or 411-340-0130(4)(b)(G), the initial Plan Year begins on the start date specified on the individual's first ISP after enrollment in a Brokerage after that ISP is approved and signed by the CDDP authorizing implementation; subsequent Plan Years begin on the anniversary of the start date of this initial plan.

(51) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(52) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(53) "Primary Caregiver" means the person identified in an individual's ISP as providing the majority of care and support for an individual in the individual's home.

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(54) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(55) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(56) "Provider Organization Director" means the employee of a Provider Organization responsible for administration and provision of services according to these rules.

(57) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(58) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(59) "Respite Care" means short-term care and supervision provided because of the absence, or need for relief of, persons normally providing the care to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as 8-hours-a-day, 5-days-a-week services or are provided to allow caregivers to attend school or work:

(a) Temporary Respite Care, which is provided on less than a 24-hour basis, and

(b) 24-Hour Overnight Care, which is provided in segments of 24-hour units that may be sequential.

(60) "Restraint" means any physical hold, device, or chemical substance which restricts, or is meant to restrict, the movement or normal functioning of an individual.

(61) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(62) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom — The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority — The ability for a persons with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy — The arranging of resources and personnel — both formal and informal — that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility—The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(63) "Social Benefit" or "Social Service" means a service solely intended to assist an adult with disabilities to function in society on a level comparable to that of an adult who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social serv-

ices does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved ISP.

(64) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home. Special diets can include: high caloric supplements; gluten-free supplements; diabetic, ketogenic or other metabolic supplements. Special diets are ordered by a physician and periodically monitored by a dietician. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(65) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances, which enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. It does not include items not of direct medical or remedial benefit to the individual. All items meet applicable standards of manufacture, design, and installation.

(66) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other Support Services listed in OAR 411-340-0130(6)(a) through (p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social/sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revise the plan as needed.

(67) "Speech and Language Therapy Services" means the services of a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(68) "Support" means assistance individuals require — solely because of the effects of disability — to maintain or increase independence, achieve community presence and participation, and improve productivity. This assistance is flexible and subject to change with time and circumstances.

(69) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(70) "Support Services" means the services of a Support Services Brokerage listed in OAR 411-340-0120(1)(a) through (g) as well as the uniquely determined activities and purchases arranged through the Brokerage. Support Services:

(a) Complement the existing formal and informal supports that exist for an individual living in his or her own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an ISP; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(71) "Support Service Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities, using the principles of self-determination described in OAR 411-340-0020(62).

(72) "Support Service Brokerage Director" or "Brokerage Director" means the employee of a publicly- or privately-operated Support Service Brokerage who is responsible for administration and provision of services according to these rules.

(73) "Support Service Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Department to be added to an individual's ISP to describe crisis/diversion services an individual is to

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receive while he or she is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the CDDP of the individual's county of residence.

(74) "Support Service Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each Support Service Brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1)(a) through (d) for such groups.

(75) "Support Services Funds" means public funds designated by the Support Services Brokerage for assistance with the purchase of supports according to each ISP.

(76) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of support services resources for individuals served by a Brokerage and described in OAR 411-320-0010 through 411-320-0200.

(77) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(78) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610-430.670, 427.005-427.007, 417.340-417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05

411-340-0130

Using Support Services Funds to Purchase Supports

(1) Approved written plan required. A Support Services Brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP which:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of support services funds, if any, which may be required to purchase the remainder of necessary supports and which are within the Basic Benefit limits, unless authorized for supplement to the Basic Benefit according to OAR 411-340-0130(4)(a) through (e); and

(d) Has been approved for implementation by the CDDP Support Specialist.

(2) Assistance is a social benefit. Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits as defined in OAR 411-340-0020(63).

(3) Limits of financial assistance. Assistance with purchase of individual supports in any Plan Year as defined in OAR 411-340-0020(50) is limited to the Basic Benefit as defined in OAR 411-340-0020(6) unless individual circumstances meet the conditions of the exceptions indicated in OAR 411-340-0130(4)(a) through (e).

(a) Basic Benefit distribution for full Plan Year. Individuals must have access throughout the Plan Year to the total annual amount of support services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic Benefit distribution adjustments. The Department may require that annual Basic Benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a Plan Year or when, for any reason, an individual's ISP is developed and written to be in effect for less than twelve months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for twelve calendar months. The monthly Basic Benefit limit will be applied each month for the remainder of the Plan Year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial Plan Year, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the individual's ISP be in effect for twelve months. The monthly Basic

Benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs must be based on written guidelines for costs of frequently used services published and updated periodically by the Department.

(A) Department guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the Brokerage's own documented survey.

(B) The Support Service Brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) Exceptions to Basic Benefit financial limits. Exceptions to the Basic Benefit annual Support Services fund limit may be only as follows:

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of sixty (60) or greater on the Basic Supplement Criteria Inventory Form DHS203 may have access to more than the Basic Benefit Support Services fund limit in order to purchase necessary supports. The Basic Supplement Criteria Inventory, Form DHS 0203, specifies scoring levels and applicable maximum available funding.

(A) For Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost which is less than the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium; and

(B) For individuals who are not Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost which is less than the state's General Fund contribution to the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rates; and

(C) The Brokerage Director, or a designee from Brokerage management and administration, must administer the Basic Supplement Criteria only after receiving Department-approved training. The Brokerage Director or designee must score Basic Supplement Criteria according to written and verbal instruction received from the Department.

(D) The trained Brokerage Director or designee must administer the Basic Supplement Criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The Brokerage Director or designee must send written notice of findings regarding eligibility for a supplement to the Basic Benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the Director and with the individual's Personal Agent in attendance if desired; and

(ii) A notice of appeal processes under 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from Employment and Alternative to Employment, Semi-Independent Living, and Self-Directed Support services according to Department-designated schedule of group enrollments under OAR 411-340-0110(2). Support service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in Support Services Brokerages may, for a limited amount of time, exceed the Basic Benefit financial limits. To qualify, individuals must be enrolled in Employment and Alternative to Employment services regulated by OAR chapter 411, division 345, enrolled in Semi-Independent Living Services regulated by OAR 309-041-0015 through 0024, or receive Self-Directed Support services regulated by OAR 309-041-1110 through 1170 during the month prior to enrollment in a Support Services Brokerage and the Department's annual cost of this previous service must exceed the financial assistance available through the Basic Benefit.

(A) Each qualified individual transferring from Employment and Alternative to Employment Services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage;

(B) Each qualified individual transferring from Employment and Alternative to Employment Services beginning July 1, 2003, and who does not have any other Department-paid residential support services prior to that date, may have access to support services funds in an amount each

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month equal to the Department's previous Employment and Alternative to Employment monthly costs for the individual, as negotiated according to Department guidelines:

(i) For three hundred sixty-five (365) days, if he or she is a Medicaid recipient eligible for waiver services; or

(ii) For one hundred eighty (180) days, if he or she is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from Semi-Independent Living services may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage; and

(D) Each qualified individual transferring from Self-Directed Support services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to financial assistance authorized by his or her current Self-Directed Support Plan for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Brokerage when the individual is a Medicaid recipient choosing to receive Support Service waiver services and for no more than ninety (90) calendars days from date of enrollment in the Brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(E) Upon individual enrollment in the Brokerage, the Brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the Basic Benefit.

(F) The Support Services Brokerage must complete assessment, identify resources, and develop a new individualized plan and budget during this period with a goal of reducing Support Services fund annual costs to less than or equal to financial assistance available in the Basic Benefit.

(G) At any point during the individual's first year of enrollment in the Brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the Basic Benefit, the individual's new Plan Year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP Support Specialist.

(c) Prior-authorized crisis/diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis/diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the Basic Benefit. Use of crisis/diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis/diversion services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for crisis/diversion services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for crisis/diversion services in the individual's county of residence, depending on the source of crisis/diversion funds, to meet the short-term need.

(B) Although costs for crisis/diversion services may bring the individual's total Plan Year cost temporarily at or above the minimum allowable Plan Year cost of in-home Comprehensive Services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may Plan Year expenses at or above the minimum for Comprehensive Services make the individual eligible for Comprehensive Services.

(i) Individuals placed in emergent status due to receiving crisis/diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive Support Services from, the Support Service Brokerage while both crisis/diversion services and Support Services are required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the Support Service Brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's Personal Agent must participate with CDDP or regional crisis/diversion staff in efforts to stabilize supports and return costs to the Basic Benefit or approved supplement levels, documenting reviews of effectiveness at least every ninety (90) days while the individual is receiving crisis/diversion services.

(d) Conversions from other Department-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through Department contract from a Department-regulated residential, work, or day habilitation service to support services funds, or to Comprehensive In-Home Support funds regulated by OAR chapter 411, division 330 prior to enrollment in a Support

Service Brokerage, may have access to the amount specified in the Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in OAR 411-340-0130(4)(b).

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS 427. Individuals whose support funds were specifically assigned through Department contract to Self-Directed Support Services prior to the date designated by the Department for transfer of the individual from Self-Directed Support services to a Support Service Brokerage may have access to the amount specified in the Department contract as available for the individual's use.

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from Department waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from the Department's Home and Community-Based waiver services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015(4)(c) will have limited access to support service funds, as described in OAR 411, division 340. The amount of support service funds available will be equal to the Department's previous service costs for the individual for no more than three hundred and sixty-five (365) calendar days. The three hundred and sixty-five (365) calendar days begins the date the individual starts receiving support services exclusively through a Support Service Brokerage.

(5) Amount, method and schedule of payment.

(a) The Brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP Support Specialist. The Brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between Brokerage and the individual or individual's legal representative.

(6) Types of supports purchased. Supports eligible for purchase with support services funds are:

(a) Chore services as defined in OAR 411-340-0020(11);

(b) Community inclusion supports as defined in OAR 411-340-0020(13);

(c) Community living supports as defined in OAR 411-340-0020(14);

(d) Environmental accessibility adaptations as defined in OAR 411-340-0020(22);

(e) Family training as defined in OAR 411-340-0020(26);

(f) Homemaker services as defined in OAR 411-340-0020(32);

(g) Occupational therapy services as defined in OAR 411-340-0020(45);

(h) Personal emergency response systems as defined in OAR 411-340-0020(47);

(i) Physical therapy services as defined in OAR 411-340-0020(49);

(j) Respite care as defined in OAR 411-340-0020(59);

(k) Special diets as defined in OAR 411-340-0020(64);

(l) Specialized medical equipment and supplies as defined in OAR 411-340-0020(65) as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080. Support services funds may be used to purchase more of an item than the number allowed

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under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by Medicaid State Plan or private insurance, and the denial has been upheld in applicable Medicaid contested case hearing or private insurance benefit appeals process; and

(B) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase his or her abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which he or she lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him/herself);

(ii) Adaptive beds;

(iii) Positioning devices;

(iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(v) Assistive technology items;

(vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

(vii) Augmentative communication devices;

(viii) Environmental adaptations to control lights, heat, stove, etc.; or

(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(m) Specialized supports as defined in OAR 411-340-0020(66);

(n) Speech and language therapy services as defined in OAR 411-340-0020(67);

(o) Supported employment as defined in OAR 411-340-0020(69); and

(p) Transportation as defined in OAR 411-340-0020(77).

(7) Conditions of purchase. The Brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, Comprehensive Services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

(D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization as defined in OAR 411-340-0020(55) must be certified according to OAR chapter 411, division 340; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-340-0020(51) and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Support Service funds are used to purchase care, training, supervision or other personal assistance for individuals, the Brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in OAR 411-340-0020(1);

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and which may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support Service fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using Support Service funds unless another arrangement is agreed upon by the Brokerage and described in the ISP;

(d) The provisions of OAR 411-340-0130(9) regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the Brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any Department or Brokerage investigation, or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 411-340-0130(8) or 411-340-0140; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the Brokerage or Department, as applicable;

(C) The Brokerage may withhold payments to the provider.

(c) If the Brokerage makes a decision to sanction a provider, the Brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007, 417.340 - 417.348

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05

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Adm. Order No.: SPD 39-2004

Filed with Sec. of State: 12-30-2004

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Certified to be Effective: 1-5-05

Notice Publication Date: 11-1-04

Rules Amended: 411-027-0000

Subject: Chapter 411, Division 027, Rule 0000, Payment Limitations in Community Based Care has been permanently amended effective January 5, 2005. This rulemaking action permanently changes the comparable nursing facility rate to a maximum community-based care rate. It also adopts a maximum community-based care rate for care plans approved under the Title 1915(c) Waiver, and the rule creates a methodology for establishing the maximum community-based care rate.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-027-0000

Payment Limitations in Community-Based Care

(1) Payment for Services:

(a) Department service payments under this rule are limited to home and community-based care services provided under Oregon's Title XIX 1915(c) Waiver for Aged and Disabled Persons.

(b) Community-based care services include, but are not limited to:

(A) In-Home Care Services (client-employed providers and home care agencies);

(B) Residential Care Facility Services;

(C) Assisted Living Facility Services;

(D) Adult Foster Home Services;

(E) Specialized Living Services;

(F) Adult Day Care Services; and

(G) Home-Delivered Meals.

(2) Payment Basis:

(a) Unless otherwise specified, service payment will be based upon each client's assessed need for care as documented by the Seniors and People with Disabilities cluster (SPD) Client Assessment/Planning System (CA/PS).

(b) Payments for community-based care services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income will contribute to the cost of care pursuant to OAR 461-160-0610 and 461-160-0620.

(c) Case plans will be based upon the least costly means of providing adequate care consistent with client choice. Client choice means that the person has a choice of services that are available within the approved Finance and Policy Analysis (FPA) rate schedule. Any services that are available at a rate higher than the FPA schedule will only be a choice if the client meets the criteria in the exception policy in OAR 411-027-0050.

(d) Service delivery area (SDA) and Type B Area Agency on Aging (AAA) staff will monitor the progress of the client. When a change occurs in the client's care needs that may warrant a change in the service payment rate, staff will update the case plan.

(3) Maximum Community-Based Care Rate:

(a) The monthly maximum community-based care rate is established at \$3615.00.

(b) Beginning July 1 2005 and every other year thereafter, the rate will be inflated by the annual change in the DRI Index, as measured in the previous year's fourth quarter.

(c) Finance and Policy Analysis publish the maximum community-based care rate at least annually.

(4) Payment Limitations:

(a) The total continuing cost of, waiver services for a client in a community-based care setting must not exceed the published maximum community-based care rate.

(b) Notwithstanding section (4) subsection (a) of this rule, the Department may authorize service payment rates that exceed the maximum community based care rate when:

(A) There is a specific rehabilitation plan approved by SPD, with goals and a definite time frame for delivery, that will improve the client's self-sufficiency;

(B) SPD determines that intensive convalescent care is required for a limited period of time; or

(C) SPD determines that intensive long-term care or special technology is required, but is otherwise available locally only in an acute care facility (hospital); and

(D) FPA has reviewed the costs of service to be provided and determined their reasonability.

(c) If service payment is authorized under section (3), subsection (b) of this rule:

(A) The case plan shall [must] reflect specific provider responsibilities, the time period for the delivery of services and corresponding payment rate adjustments;

(B) SPD and FPA will give the provider written authorization for the services provided and the time period for delivery; and

(C) SDA and Type B AAA staff will monitor the progress of the client. When a change occurs in the client's care needs that may warrant a change in the service payment rate, staff will update the case plan and recommend an adjustment in the service payment rate to SPD and FPA.

(5) All service payments must be prior authorized by the SDA or Type B AAA local unit or by SPD and FPA.

(a) FPA will publish the established provider payment rate schedule. When FPA has established a rate schedule, SDA and Type B AAA long-term care case managers may prior authorize service payments from that schedule based on the client's living situation and assessed need for care documented on the SPD CA/PS.

(b) Any rate that differs from the FPA published rate based on the client's living situation and assessed need for care must be pre-authorized by FPA and SPD.

(6) The Department will not make payment to a spouse for providing community-based care services except for In-Home Care Services as provided in OAR chapter 411, division 030 (state funded spousal pay program).

(7) Payments for Adult Day Services:

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted adult day services program as defined in OAR 411-66-0000 through 411-66-0020 in accordance with the published rate schedule.

(b) Adult day services may be authorized as part of an overall plan of care for service-eligible clients and may be used in combination with other community-based services if day services is the appropriate resource to meet a special need.

(c) Adult day services may be authorized for payment as a single service or in combination with other community-based care services. Adult day services will not be authorized nor paid for if another provider has been authorized payment for the same service. Payments authorized for adult day services will be included in computing the total cost of care.

(d) The Department will pay for a half day of program services when four or less hours of care are provided, and will pay for a full day of program services when more than four, but less than twenty-four, hours are provided.

(8) Payment For Home Delivered Meals:

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted home delivered meals as defined in OAR 411-66-0000 through 411-66-0020 in accordance with the published rate schedule.

(b) Home-delivered meals may be authorized as part of an overall plan of care for service-eligible clients and may be used in combination with other community-based services if meals is the appropriate resource to meet a special need.

(9) Payments to Assisted Living Facilities (ALF's):

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted Assisted Living Facility as defined in OAR 411-056-0005.

(b) In all instances, placement in ALFs is contingent upon the client meeting the payment levels described in section (7), subsection (c), paragraph (C) of this rule.

(c) Monthly Service Payment Determination:

(A) Monthly service payment for SPD clients is based on degree of impairment in each of the six Activities of Daily Living (ADL) as determined by the SPD CA/PS and the payment levels described in section (7), subsection (c), paragraph (C) of this rule. The initial service plan must be developed prior to admission and must be revised if needed within 30 days. The service plan be reviewed and updated at least quarterly or more often as needed, as per OAR 411-056-0015(2)(g).

(B) Activities of Daily Living (ADL) are weighted for purposes of determining the monthly service payment as follows:

(i) Critical activities of daily living (ADL): toileting, eating and behavior;

(ii) Less critical ADLs: mobility, bathing/personal hygiene and dressing/grooming.

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(iii) Essential factors: Other essential factors considered are medical problems, structured living, medical management and other needs.

(C) Payment (Impairment) Levels:

(i) Level 5 — Client is dependent in three to six ADLs; OR dependent in behavior AND one or two other ADLs.

(ii) Level 4 — Client is dependent in one or two ADLs; OR requires assistance in four to six ADLs plus assistance in behavior.

(iii) Level 3 — Client requires assistance in four to six ADLs; OR requires assistance in toileting, eating and behavior.

(iv) Level 2 — Client requires assistance in toileting, eating and behavior; OR requires assistance in behavior AND eating or toileting.

(v) Level 1 — Client requires assistance in two or more of the critical ADLs; OR requires assistance in any three ADLs; OR requires assistance in toileting, eating or behavior and assistance in at least one other essential factor; OR requires assistance in one critical ADL and one other ADL.

(D) The reimbursement rate for Department clients will not be more than the rates charged private paying clients receiving the same type and quality of care.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 9-1984(Temp), f. & ef. 11-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 10-1985, f. & ef. 8-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 13-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 2-1993, f. 3-19-93, cert. ef. 4-1-93; SSD 9-1993, f. & cert. ef. 12-1-93; SDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDSD 1-1999, f. & cert. ef. 3-1-99; SDSD 2-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 1-2001(Temp) f. & cert. ef. 2-5-01 thru 8-3-01; Suspended by SDSD 5-2001(Temp), f. & cert. ef. 3-8-01 thru 8-3-01; Administrative correction 11-20-01; SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 21-2004(Temp), f. 7-31-04 cert. ef. 8-1-04 thru 1-5-05; SPD 39-2004, f. 12-30-04, cert. ef. 1-5-05

Adm. Order No.: SPD 40-2004(Temp)

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-1-05 thru 6-30-05

Notice Publication Date:

Rules Amended: 411-031-0020, 411-031-0040, 411-031-0050

Subject: Temporary amendments to Chapter 411, Division 031, effective 01/01/2005, include the following three rules:

- 411-031-0020 broadens the definition of “Violations of a drug free workplace” to include the manufacturing or distribution of drugs.

- 411-031-0040 removes the statement that withholding will not be taken for FICA for Spousal Providers in order to comply with IRS requirements and also changes paid leave for live-in Homecare Workers, in order to comply with the Homecare Workers’ collective bargaining agreement.

- 411-031-0050 includes housekeeping changes only and no changes to content or scope of the rule.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-031-0020

Definitions

(1) “Activities of Daily Living” (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) “Adult Protective Services” means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in 411-020-0000 through 411-020-0050.

(3) “Area Agency on Aging” (AAA) means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) “Burden of proof” means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) “Business days” means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) “Case Manager” means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(7) “Client” means the individual eligible for in-home services.

(8) “Client-Employed Provider Program” (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) “Companionship Services” means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(10) “Contracted In-Home Care” means a service provided through a contractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks.

(11) “Contracted In-Home Care Agency” means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(12) “Department” means the Department of Human Services, Seniors and People with Disabilities.

(13) “Evidence” means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(14) “Fiscal Improprieties” means the Homecare Worker committed financial misconduct involving the client’s money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client’s property or money, having the client purchase items for the Homecare Worker, forging the client’s signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(15) “General Household Work” means, according to federal law, housecleaning, chore services, and other household tasks.

(16) “Homecare Worker” (HCW) means a provider, as described in OAR 411-031-0020 and 411-031-0040, who is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes providers in the Spousal Pay Program, Independent Choices Program providers and Personal Care Attendants enrolled through Developmental Disability Services or Mental Health Services are excluded from the term Homecare Worker.

(17) “Hourly Services” means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(18) “Imminent Danger” means there is reasonable cause to believe a person’s life or physical well-being is in danger if no intervention is initiated immediately.

(19) “In-Home Services” means those services that assist a client to stay in his/her own home.

(20) “Lack of skills, knowledge and ability to adequately or safely perform the required work” means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(21) “Live-In Services” means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans should include at least one HCW providing 24-hour care for a minimum of five (5) days in a workweek.

(22) “Minimal Assistance” means the client is able to perform a majority of a task, but requires some assistance.

(23) “Office of Administrative Hearings” means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(24) “Oregon Project Independence” (OPI) means the program of in-home services defined in OAR chapter 411, division 032.

(25) “Preponderance of the evidence” means that one party’s evidence is more convincing than the other party’s.

(26) “Provider” means the individual who actually renders the service.

(27) “Provider enrollment” means a Homecare Worker’s authorization to work as a provider employed by the client, for the purpose of receiving

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ing payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(28) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

(29) "Provider Payments Unit" means the Seniors and People With Disabilities unit responsible for processing provider number requests.

(30) "Respite" means securing a paid temporary replacement worker to perform the authorized duties normally performed by the primary provider, in order to allow the primary provider interim relief from providing care to the client.

(31) "Self-Management" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(32) "Seniors and People With Disabilities (SPD)" means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

(33) "Services are not provided as required," means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(34) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(35) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(36) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted pursuant to Administrative Rules 410, division 007, finding the Homecare Worker unfit.

(37) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client, or manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(38) "Violations of Protective Service and abuse rules" means the Homecare Worker violated protective service and abuse rules as described in 411-020-0002, Section 1. Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05

411-031-0040

Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each client/employer, in cooperation with the case manager, or if present, contracted Registered Nurse, may create a job description for the potential employee. Such descriptions will make it clear that general household work will comprise less than 20% of the live-in employee's time.

(3) Homecare Worker Liabilities: Homecare Workers bear sole responsibility for state and federal income taxes due on earnings as an employee of the client/employer. The Department will not deduct personal income tax withholdings from the Homecare Worker's check. Homecare Workers are not state employees. The only benefits available to Homecare

Workers are those negotiated in the collective bargaining agreement between the Home Care Commission and the Service Employee's International Union, Local 503, OPEU. This agreement does not include participation in the Public Employees Retirement System.

(4) Interruption of Services:

(a) When a client is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider, who is the only live-in provider for a client, may be retained to ensure his/her presence upon the client's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(b) The required meals and lodging expenses of the provider, while providing these services fifty miles or more from the client's residence, will be covered. Such expenses, including mileage allowed under Section (11) of this rule, will be covered by the Office of Medical Assistance Programs, whenever possible.

(5) Selection of Homecare Worker: The client carries primary responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Bureau of Citizenship and Immigration Services Rules.

(6) Employment Agreement: The client/employer retains the full right to establish the employer/employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Department will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by the Department is authorized.

(7) Termination of Employment: Terms of dismissal or resignation notice are the sole responsibility of the employer to establish at the time of employment.

(8) Provider Enrollment

(a) Enrollment Standards: A Homecare Worker must meet all of the following standards to be enrolled with the Department's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must have an acceptable criminal history as defined in OAR chapter 410, division 007.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. DHS Central Office may approve limited enrollment, as described in (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in Section (8)(e) of this rule.

(b) The Department may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal history;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal health care programs; or

(G) The Department has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Clearance rechecks: Criminal History clearance re-checks will be conducted at least every other year from the date the Homecare Worker is enrolled. Re-checks may be conducted at the discretion of the Department/AAA.

(d) Limited enrollment: SPD/AAA may approve a limited enrollment for a Homecare Worker to provide services exclusively to a client or to specific clients. Generally, limited enrollment would be approved for Homecare Workers providing services exclusively to clients who are family members, friends or neighbors. To be authorized to work for clients in general, a Homecare Worker must complete a Criminal History clearance re-check.

(e) Homecare Worker Orientation: Homecare Workers must participate in an orientation arranged through an SPD/AAA office. The orienta-

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tion should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

(B) The Homecare Worker fails to complete a criminal history clearance authorization requested by the Department;

(C) The Homecare Worker informs the Department they will no longer be providing Homecare Worker services in Oregon; or

(D) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) Paid Leave

(a) Live-in Home Care Workers: The Department will authorize one twenty-four hour period of leave each month when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one live-in provider for a client.

(A) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and case manager will coordinate the timely use of these hours. Usage may be in one-hour increments. Accrued leave must be taken while employed as a live-in.

(B) Transferability of Paid Leave: The Homecare Worker retains the right to earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination. Paid leave cannot be cashed out.

(b) Hourly Homecare Workers: On July 1st of each year, active Homecare Workers who worked eighty (80) authorized and paid hours in any one (1) of the three (3) previous months of active employment will be credited with one eight (8) hour block of paid leave to use during the current fiscal year (July 1 through June 30). One eight (8) hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from year to year. Such time off must be utilized in one (1) eight (8)-hour block subject to authorization. If the Homecare Worker's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block. If the leave hours are not used within the fiscal year, the balance will be reduced to zero (0). Homecare Workers will not be compensated for paid leave unless the time off work is actually taken. Hourly paid leave cannot be cashed out.

(10) Department Fiscal and Accounting Responsibility.

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services waiver is prohibited.

(b) Timely Submission of Claims: In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions:

(A) FICA: Acting on behalf of the Client/Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the provider/employee contribution from payments;

(ii) Refund previously withheld amounts when it is determined the provider/employee is not subject to withholdings; and

(iii) Submit the Client/Employer contribution and the amounts withheld from the provider/employee to the Social Security Administration.

(B) Benefit Fund Assessment: The Workers' Benefit Fund assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers'

Benefit Fund assessment rate for each calendar year. DHS calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client/Employer, the Department will:

(i) Deduct the employee/providers' share of the Benefit Fund Assessment rate for each hour or partial hour worked by each paid Homecare Worker.

(ii) Collect the client/employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received.

(iii) Submit the client and provider's contributions to the Workers' Benefit Fund.

(C) The Department will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of Section (10)(c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department will deduct from the provider's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department will pay the deducted amount monthly to the designated labor organization.

(11) Homecare Worker Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Office of Medical Assistance Programs (OMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for OMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the Home Care Commission's bargaining agreement with the Service Employee's International Union. In order to provide Homecare Worker services, the Department must obtain written consent from the Client-Employer for workers' compensation insurance for their employee.

(13) Overpayments

(a) An overpayment is any payment made to a Homecare Worker by the Department that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment: Occurs when the Department failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment: Occurs when the Department overpays the Homecare Worker due to a misunderstanding, unintentional or intentional error.

(C) Fraud Overpayment: The Department of Justice, Medicaid Fraud Unit will determine when fraud has occurred and it has resulted in an overpayment.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, IRS back taxes, and educational loans.

(B) Administrative or Provider Error Overpayments will be collected at no more than five percent (5%) of the Homecare Worker's gross wages.

(C) Fraud Overpayments: The Department of Justice, Medicaid Fraud Unit will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05

411-031-0050

Administrative Review and Hearing Rights

This rule establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

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(1) Exclusions to Appeal and Hearings Rights:

(a) The following are excluded from this administrative review and hearing rights process:

(A) Terminations based on criminal history. The Homecare Worker has the right to a hearing within OAR 410-007-0200 through 410-007-0380.

(B) Homecare Workers that have not worked in the last twelve months. The provider enrollment may become inactivated but will not be suspended or terminated. To activate the provider enrollment number, the HCW must complete an application and criminal history clearance.

(C) Homecare Workers that fail to complete a criminal history recheck.

(D) Homecare Workers that are denied a provider enrollment number at the time of initial application.

(E) Homecare Workers not currently providing services to any clients whose provider enrollment is inactivated while an investigation is being completed.

(F) Homecare Workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal programs.

(b) These rules only apply to Homecare Workers as defined in OAR 411, division 031. These rules do not include any other providers enrolled, licensed or otherwise registered by the Department of Human Services.

(2) Violations Suspending or Terminating Provider Enrollment.

(a) The Department may suspend or terminate the Homecare Worker's provider enrollment number when a Homecare Worker:

(a) Violates the requirement to maintain a drug-free work place;

(b) Has an unacceptable criminal history as defined in OAR chapter 410, division 007,

(c) Lacks the skills, knowledge, and ability to adequately or safely perform the required work,

(d) Violates protective service and abuse rules, as defined in OAR chapter 411, division 020;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Engages in unacceptable conduct at work; or

(h) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal health care programs.

(3) Suspension: The Department may suspend a provider enrollment immediately, prior to the outcome of the administrative review when an alleged violation presents imminent danger to current or future clients. The Homecare Worker may file an appeal of this decision directly to DHS Central Office.

(4) Burden of Proof: The Department of Human Services has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0050.

(5) Administrative Review Process: The Administrative Review process allows an opportunity for the program manager or DHS Central Office to review and reconsider the decision to terminate or suspend the Homecare Worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department changing its decision.

(a) At the time a suspension or proposed termination of the Homecare Worker's provider enrollment is made, the Department will issue a written notice that will include:

(A) An explanation of the reasons for suspension or proposed termination of the provider enrollment;

(B) The alleged violation as listed in OAR 411-031-0050; and

(C) The Homecare Worker's appeal rights, including the right to union representation, and where to file the appeal.

(b) For suspensions or terminations based on substantiated protective services complaint, the letter may only contain the limited information allowed by law.

(c) Informal Conference: At the first level of appeal, an informal conference, (described in OAR 461-025-0325), if requested by the Homecare Worker, will be scheduled with the Homecare Worker and any union representative. The Program Manager, or designee, will meet with the Homecare Worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(d) The Homecare Worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review

within ten (10) business days of the decision affecting the worker. The Homecare Worker may file an appeal in the following order:

(A) The Program Manager (or designee) at the local office;

(B) DHS Central Office;

(C) Office of Administrative Hearings:

(i) A Homecare Worker can file a request for a hearing with the Office of Administrative Hearings if all levels of review have been exhausted, and the Homecare Worker continues to dispute the Department's decision. The request can be filed through the local office with the Office of Administrative Hearings, as described in OAR 137, division 003. The request for the hearing must be filed within 30 calendar days of the written notice from DHS Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings will determine whether the Departments' decision to terminate the provider enrollment number is affirmed or reversed. The ALJ will issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to Homecare Workers by this rule, other than the right to a hearing on the Department's decision to terminate the Homecare Worker's provider enrollment number.

(e) In the first two steps of the administrative review process, a written response of the outcome of the review will be sent to the Homecare Worker within ten business days of the review date.

(f) If the Administrative Review determines that the decision to immediately suspend the provider enrollment was unjustified, the reviewer or designee will contact Provider Payments Unit to restore the provider number. The written response will notify the Homecare Worker that the provider enrollment will be restored from suspended status.

(6) Termination if No Appeal Filed: The decision of the reviewer will become final if the Homecare Worker does not appeal within ten business days of the notice of the decision affecting the Homecare Worker. Once the time period for appeal has expired, the reviewer or designee will contact the Provider Payments Unit to terminate the provider number.

(7) Request for Extension to Deadline: The Department or the Homecare Worker may request an extension of the 10-day deadline for circumstances beyond their control, if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05

Adm. Order No.: SPD 1-2005

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Notice Publication Date: 11-1-04

Rules Amended: 411-015-0015, 411-015-0100

Subject: Effective January 3, 2005, temporary rules in Chapter 411, Division 015, Rules 0015 and 0100 in the Service Priority/Clients Served rules are permanently adopted.

In July 2004 OAR 411-015-0015 was amended to restore services to Service Priority Levels 12 and 13 on a Client Assessment Planning System Assessment following permission from the Oregon Legislature to seek CMS approval. That approval was obtained effective July 1, 2004 and a temporary rule was put into place enabling services for those individuals. Additionally, OAR 411-015-0015 and OAR 411-015-0100 have been permanently amended to include services to those clients who are determined eligible for GA. The 2003 State of Oregon Legislature approved funding to restore services to individuals with severe physical or mental impairments who are waiting for SSI benefits to be approved by the Social Security Administration. This provision was inadvertently dropped during the April, 2004 permanent rulemaking action and was restored through the temporary rulemaking process in August 2004.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-015-0015

Current Limitations

The Department has the authority to establish by Administrative Rule the priority level within which to manage its limited resources. The Department is currently able to serve:

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(1) Persons determined eligible for OSIPM, GA or TANF and are assessed as meeting at least one of the priority levels (1) through (13) as defined in OAR 411-015-0010.

(2) Persons eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.

(3) Persons needing Risk Intervention Services in areas designated to provide such services. Persons with the greatest priority under OAR 411-015-0010 will be served first.

(4)(a) Persons sixty-five years of age or older determined eligible for Developmental Disability services or having a primary diagnosis of mental illness are eligible for nursing facility and community based care services if they meet Sections (1), (2), or (3) of this rule and are not in need of specialized mental health treatment services or other specialized Department residential program intervention as identified through the PASARR or mental health assessment process.

(b) Persons under sixty-five years of age determined eligible for developmental disability services or having a primary diagnosis of mental illness are not eligible for Department nursing facility services unless determined appropriate through the PASARR process.

(c) Persons under sixty-five years of age determined to be eligible for developmental disabilities services or having a primary diagnosis and primary need for service due to mental illness are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915C Waiver for seniors and people with physical disabilities.

(5) Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915(c) Waiver are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Services may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income shall contribute to the cost of care pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 410.060, 410.070 & 411

Stats. Implemented: ORS 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92; Renumbered from former 411-015-0000(4); SSD 1-1993, f. 3-19-93, cert. ef. 4-1-93; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SDP 3-2003(Temp), f. 2-14-03, cert. ef. 2-18-03 thru 6-3-03; SPD 5-2003(Temp), f. & cert. ef. 3-12-03 thru 6-3-03; SPD 6-2003(Temp), f. & cert. ef. 3-20-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 5-2004(Temp), f. & cert. ef. 3-23-04 thru 4-27-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 20-2004(Temp), f. & cert. ef. 7-7-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05

411-015-0100

Eligibility for Nursing Facility or Community-Based Care Services

(1) To be eligible for nursing facility services, Community-based care waiver services for aged and physically disabled, Independent Choices, Spousal Pay, or the Program of All-inclusive Care for the Elderly (PACE), a person must:

(a) Be age 18 or older; and

(b) Be eligible for OSIPM, GA or TANF; and

(c) Meet the functional impairment level within the service priority levels currently served by Seniors and People with Disabilities as outlined in OAR 411-015-0000 and the requirements in OAR 411-015-0015; or

(d) To be eligible to have services paid through the State Spousal Pay Program, the person must meet requirements as listed above in (a), (b), (c), and in addition, the requirements in OAR 411-030-0080.

(2) Persons who are age 17 or younger and reside in a nursing facility are eligible for nursing facility services only. They are not eligible to receive community-based care waiver services, including Spousal Pay or Independent Choices program services.

Stat. Auth.: ORS 410 & 414.065

Stats. Implemented: ORS 410.070

Hist.: SSD 7-1991(Temp), f. & cert. ef. 4-1-91; SSD 13-1991, f. 6-28-91, cert. ef. 7-1-91; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 17-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05

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Rules Amended: 411-045-0000, 411-045-0010, 411-045-0020, 411-045-0030, 411-045-0040, 411-045-0050, 411-045-0060, 411-045-

0070, 411-045-0080, 411-045-0090, 411-045-0100, 411-045-0110, 411-045-0120, 411-045-0130, 411-045-0140

Subject: In order to conform to federal regulations, the rules of Chapter 411, Division 045, the Program of All Inclusive Care for the Elderly (PACE) have been permanently amended effective January 1, 2005. Most of the changes are to the language in the complaints and appeals sections to accommodate/coordinate the state's language and process with federal PACE regulations. Some changes are due to changes in DHS agency names. Criteria were added for determining when an individual cannot live safely in the community and thereby can be denied enrollment into PACE. The remaining changes are housekeeping.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-045-0000

Purpose

(1) The Program of All-inclusive Care for the Elderly (PACE) is a permanent provider type under Medicare that allows states the option to pay for PACE services under Medicaid. The PACE program is capitated by both Medicare and Medicaid to provide all medical and long-term care services.

(2) The intent of these rules is to implement the PACE program as administered by the Department of Human Services and to address the responsibilities of the Department as the state administering agency under 42 CFR 460, that includes additional obligations of coordination with CMS in the administration of the Medicare aspects of the PACE program. The Department will regularly consult with CMS in conducting related responsibilities and in the implementation of the PACE program through the submission of appropriate state plan amendments and the PACE program agreement.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSD 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0010

Definitions

(1) Administrative Hearing — A hearing related to a denial, reduction, or termination of benefits that is held when requested by the PACE participant or his or her representative. A hearing may also be held when requested by a PACE participant who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(2) Advance Directive — A process that allows a person to have another person make health care decisions when he or she cannot make the decision and tells a doctor what life sustaining measures to take if he or she is near death.

(3) Alternate Care Settings — Residential 24 hour care facilities that include, but are not limited to, Residential Care Facilities, Assisted Living Facilities, Adult Foster Homes, and Nursing Facilities.

(4) Americans with Disabilities Act (ADA) — Federal law defining the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(5) Ancillary Services — Those medical services that are medically appropriate to support a covered service under the PACE benefit package. A list of ancillary services and limitations is specified in OMAP's Ancillary Services Criteria Guide.

(6) Appeal — A PACE participant's action taken with respect to any instance where the PACE program reduces, terminates or denies a covered service.

(7) Area Agency on Aging (AAA) — An established public agency within a planning and service area designated under Section 305 of the Older American's Act that has responsibility for local administration of Department programs. AAAs contract with the Department to perform specific activities in relation to PACE programs including processing of applications for Medicaid and determining the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services.

(8) Assessment — The determination of a participant's need for covered services. It involves the collection and evaluation of data by each of the members of the Interdisciplinary Team pertinent to the participant's health history and current problem(s) obtained through interview, observation, and record review. The Assessment concludes with one of the following:

(a) Documentation of a diagnosis providing the clinical basis for a written care plan; or

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(b) A written statement that the participant is not in need of covered services for a particular condition.

(9) Automated Information System (AIS) — A computer system that provides information on the current eligibility status for participants under the Medical Assistance Program.

(10) Care Plan — An individualized, written plan that addresses all relevant aspects of a participant's health and socialization needs that is developed by the Interdisciplinary Team with the participant and the participant's representative involvement. It is based on the findings of the participant's assessments and defines specific service and treatment goals and objectives; proposed interventions; and the measurable outcomes to be achieved. It is reviewed at least every four months or as indicated by a change in the participant's condition.

(11) Centers for Medicare and Medicaid (CMS) — Formerly known as the Health Care Financing Administration (HCFA). The federal agency under the Department of Health and Human Services that is responsible for approving the PACE program and joining the state in signing an agreement with the PACE program once it has been approved as a provider under 42 CFR Part 460.

(12) Clinical Record — The clinical record includes, but is not limited to, the medical, social services, dental, and mental health records of a PACE participant. These records include the Interdisciplinary Team's records, hospital records, and grievance and disenrollment records.

(13) Comfort Care — The provision of medical services or items that give comfort or pain relief to a participant who has a terminal illness. Comfort care includes the combination of medical and related services designed to make it possible for a participant with terminal illness to die with dignity, respect, and with as much comfort as is possible given the nature of the illness. Comfort care includes but is not limited to, pain medication, palliative services, and hospice care including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable comfort care is provided consistent with Section 4751 OBRA 1990 — Patient Self-Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness and intended to prolong life.

(14) Community Standard — Typical expectations for access to the health care delivery system in the PACE participant's community of residence. Except where the community standard is less than sufficient to ensure quality of care, The Department requires that the health care delivery system available to PACE participants take into consideration the community standard and be adequate to meet the needs of PACE participants.

(15) Covered Services — Those diagnoses, treatments, and services listed in OAR 410-141-0520. In addition, all services that would be covered by Medicare must be covered even if they fall below the currently funded line for the Oregon Health Plan. Covered services must also include those services listed in 42 CFR Sections 460.92 and 460.94.

(16) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition; and

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the PACE participant or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a PACE participant.

(17) Dental Emergency Services — Dental services provided for severe pain, bleeding, unusual swelling of the face or gums, or an avulsed tooth.

(18) Department of Human Services (DHS) Oregon's department that administers the Medicaid program and is comprised of Children, Adults and Families (CAF); Health Services (HS) (that includes OMAP and OMHAS); Seniors and People with Disabilities (SPD); Administrative Services (AS); and Policy Analysis (FPA).

(19) Department — For the purposes of this rule, Department will indicate those DHS programs that contract with the PACE program: Seniors and People with Disabilities (SPD), Office of Mental Health and Addiction Services (OMHAS), and the Office of Medical Assistance Programs (OMAP).

(20) Disenrollment — The act of discharging a PACE participant from a PACE program. After the effective date of disenrollment a PACE participant is no longer authorized to obtain covered services from the PACE program.

(21) Emergency Services — The health care and services provided for diagnosis and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(22) Enrollment — A process for the PACE program. A PACE participant's enrollment with a PACE program indicates that the PACE participant must obtain from, or be referred by, the PACE program for all covered services.

(23) Grievance — A PACE participant's or the participant's representative's clear expression of dissatisfaction with the PACE program that addresses issues that are part of the PACE program's contractual responsibility. The expression may be in whatever form of communication or language that is used by the participant or the participant's representative but must state the reason for the dissatisfaction.

(24) Health Management Unit (HMU) — The OMAP unit responsible for adjustments to enrollments and retroactive disenrollments.

(25) Interdisciplinary Team (IDT) — PACE staff and PACE subcontractors with current and appropriate licensure, certification, or accreditation who are responsible for assessment and development of the PACE participant's care plan. These professionals may conduct assessments of PACE participants and provide services to PACE participants within their scope of practice, state licensure or certification. These persons include at least one representative from each of the following groups:

(a) Medical Doctor, Osteopathic Physician, Nurse Practitioner, or Physician's Assistant;

(b) Registered Nurse or a Licensed Practical Nurse supervised by an RN;

(c) Social Worker with a Master's degree or a Social Worker with a Bachelor degree who is supervised by a Master's level Social Worker;

(d) Occupational Therapist or a Certified Occupational Therapy Assistant supervised by an Occupational Therapist;

(e) Recreational Therapist or an Activity Coordinator with two years experience;

(f) Physical Therapist or a Physical Therapy Assistant supervised by a Physical Therapist;

(g) Dietician and Pharmacist as indicated; and

(h) In addition to the positions listed above in paragraphs (25)(a)-(g), the IDT must include the PACE Center Manager, the Home Care Coordinator, Personal Care Attendant and the Driver or Transportation Coordinator.

(26) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended and administered in Oregon by the Department of Human Services.

(27) Medically Appropriate — Services and medical supplies required for prevention, diagnosis or treatment of a health condition that encompasses physical or mental conditions, or injuries, and that are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of a PACE participant or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of Medical services or medical supplies that can be safely provided to a PACE participant in the PACE program's judgment.

(28) Medicare — The federal health insurance program for the aged and disabled administered by the Health Care Financing Administration under Title XVIII of the Social Security Act.

(29) Non-Covered Services — Services or items the PACE program is not responsible for providing or paying for.

(30) Non-Participating Provider — A provider who does not have a contractual relationship with the PACE program, i.e., is not on their panel of providers.

(31) Office of Medical Assistance Programs (OMAP) — The Office of the Department of Human Services responsible for coordinating medical

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assistance programs. OMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of participant eligibility and processes and pays OMAP providers and contractors such as PACE.

(32) Office of Mental Health and Addiction Services (OMHAS) — The unit within the Department of Human Services responsible for the administration of the state's mental health and addiction services programs.

(33) Oregon Health Plan (OHP) — The Medicaid demonstration project that expands Medicaid eligibility. The Oregon Health Plan relies substantially upon a prioritization of health services and managed care to achieve the policy objectives of access, cost containment, efficacy and cost effectiveness in the allocation of health resources.

(34) PACE — The Program of all Inclusive Care for the Elderly (PACE) is a managed care entity that provides medical, dental, mental health, social services, transportation and long-term care services to persons age 55 and older on a prepaid capitated basis in accordance with a signed agreement with the Department and CMS.

(35) PACE Participant — An individual who meets the SPD criteria for nursing facility care and is enrolled in the PACE program. These individuals would be eligible under the following categories:

(a) AB/AD (Assistance to Blind and Disabled) with Medicare — Individuals with concurrent Medicare eligibility with income under current Medicaid eligibility rules;

(b) AB/AD without Medicare — Individuals without Medicare with income under current Medicaid eligibility rules;

(c) OAA (Old Age Assistance) with Medicare — Individuals with concurrent Medicare Part A or Medicare Parts A and B eligibility with income under current Medicaid eligibility rules;

(d) OAA without Medicare — Individuals without Medicare with income under current Medicaid eligibility rules; or

(e) Private — Individuals with or without Medicare with incomes over current Medicaid eligibility.

(36) Participating Provider — An individual, facility, corporate entity, or other organization that supplies medical, dental, or mental health services or items who have agreed to provide those services or items and to bill in accordance with a signed agreement with a PACE program.

(37) Preventive Services — Those services as defined under Expanded Definition of Preventive Services in OAR 410-141-0480 and 410-141-0520.

(38) Primary Care Provider (PCP) — A medical practitioner who has responsibility for supervising and coordinating initial and primary care within his or her scope of practice for PACE participants. Primary Care Providers initiate referrals for care outside their scope of practice that may include consultations and specialist care, and assure the continuity of medically or dentally appropriate care.

(39) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health and long term care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement includes the goals of quality assurance, quality control, quality planning and quality management in health care. Quality of care reflects the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and is consistent with current professional knowledge.

(40) Representative — A person who can assist the PACE participant in making administrative related decisions such as, but not limited to, completing enrollment application, filing grievances, and requesting disenrollment. A representative may be, in the following order of priority, a person who is designated as the PACE participant's health care representative, a court-appointed guardian, a spouse, or other family member as designated by the PACE participant, the Individual Service Plan Team (for developmentally disabled clients), an SPD/AAA case manager or other DHS designee. This definition does not apply to health care decisions unless the representative has legal authority to make such decisions.

(41) Seniors and People with Disabilities (SPD) — A unit within DHS that is the designated State Unit on Aging (SUA) that also administers Medicaid's long-term care program. SPD is responsible for nursing facility and home and community based care waived services for eligible elderly and disabled individuals. SPD includes local offices and the AAAs who have contracted to perform specific functions of the licensing and enrollment processes.

(42) Service Area — The geographic area defined by Federal Information Processing Standards (FIPS) codes, or other criteria determined by the Department, in which the PACE program has agreed to pro-

vide services under the Oregon PACE program Regulations and the Federal PACE Regulations 42 CFR Part 460. This geographic area is defined in the PACE contract with the Department.

(43) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the OMAP member to the most appropriate setting for medically appropriate care.

(44) Urgent Care Services — Covered services required to prevent a serious deterioration of a PACE participant's health that results from an unforeseen illness or an injury and for dental services necessary to treat such conditions as lost fillings or crowns. Services that can be foreseen by the individual are not considered urgent services.

(45) Valid Claim — An invoice received by the PACE program for payment of covered health care services rendered to an eligible PACE participant that:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party;

(b) Has been received within the time limitations prescribed in these rules; and

(c) A "valid claim" is synonymous with the federal definition of a "clean claim" as defined in 42 CFR 447.45(b).

(46) Valid Pre-Authorization — A request, received by the PACE program for approval of covered health care services provided by a non-participating provider to an eligible client, that can be processed without obtaining additional information from the provider of the service or from a third party.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0020

Program Administration

(1) A PACE program must be, or be a distinct part of, one of the following:

(a) An entity of a city, county, state, or tribal government;

(b) A private, not-for-profit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code or 1986; or

(c) A PACE for-profit demonstration program that has been approved by CMS.

(2) The PACE program's service area must be approved by both the Department and CMS.

(3) The PACE program must employ a program director who is responsible for oversight and administration of the program.

(4) The PACE program must employ a medical director who is responsible for the delivery of participant care as well as the performance of the quality improvement program.

(5) The PACE program must notify the Department in writing 90 days before changes in organizational structure, including ownership, take effect. The Department must approve such changes in advance.

(6) A PACE program must have an identifiable governing body (e.g. a board of directors) with full legal authority and responsibility for the following:

(a) Governance and operation;

(b) Development of policies consistent with the mission;

(c) Management and provision of all services;

(d) Establishment of personnel;

(e) Fiscal operations; and

(f) Quality improvement program.

(7) A PACE program must provide training to maintain and improve the skills and knowledge of staff members in each of the PACE positions.

(8) PACE programs are responsible for payment of all covered services. Such services should be billed directly to the PACE program. PACE programs may require providers to obtain pre-authorization to deliver covered services other than emergency services.

(9) Payment by the PACE program to providers for covered services is a matter between the PACE program and the provider, except as follows:

(a) Pre-Authorizations:

(A) PACE programs must have written procedures for processing valid pre-authorization requests received from any provider;

(B) Authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If an authorization for a prescription cannot be completed within the 24 hours, the PACE program must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. The PACE program shall notify providers of such determination within 2 working days of receipt of the request; and

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(C) PACE programs will notify PACE participants of a denial of an authorization request within five working days from the final determination using the Department approved client notice format.

(b) Claims Payment:

(A) PACE programs must have written procedures for processing claims submitted for payment from any source;

(B) PACE programs must pay or deny at least 90% of valid claims within 45 calendar days of receipt and at least 99% of valid claims within 60 calendar days of receipt. PACE programs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt; and

(C) PACE programs must provide written notification of determinations when such determinations result in a denial of payment for services, for which the PACE participant may be financially responsible. Such notice must be provided to the PACE participant and the treating provider within fourteen (14) calendar days of the final determination. The notice to the participant must be a Department-approved notice format and will include information on the PACE program's internal appeals process, and the Notice of Hearing Rights (OMAP 3030) will be attached. The notice to the provider must include the reason for the denial.

(c) PACE programs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PACE program's allowable amount for covered services the PACE participant receives with authorized referrals and for urgent or emergency services from non-participating providers.

(d) PACE programs will pay transportation, meals and lodging costs for the PACE participant and any required attendant for out-of-state services (as defined in OMAP general rules) that the PACE program has arranged and authorized when those services are available within the state, unless otherwise approved by the Department.

(e) PACE programs will be responsible for payment of covered services provided by a non-participating provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider;

(B) The covered service was delivered in good faith without the pre-authorization;

(C) It was a covered service that would have been pre-authorized with a participating provider if the PACE program's referral protocols had been followed; and

(D) The PACE programs will be responsible for payment to non-participating providers according to the PACE program's reimbursement policies.

(10) Under a PACE program agreement and 42 CFR 460.180, CMS makes a prospective monthly payment to the PACE organization of a capitation rate for each Medicare participant. Consistent with the requirements of 42 CFR 460.180, PACE programs are responsible for payment up to the PACE contracted rates for covered services the PACE participant receives for authorized referral care, and for urgent or emergency services received from non-contracted providers.

(11) Under the PACE program agreement and 42 CFR 460.182, the Department makes a prospective monthly payment to the PACE organization of a capitation rate for each Medicaid participant. The PACE program must accept the capitation payment as payment in full for Medicaid participants and may not bill, charge, collect or receive any other form of payment from the Department or from or on behalf of the participant, except as follows:

(a) Payment with respect to the applicable spend-down liability and any amounts due under the post-eligibility treatment of income;

(b) Medicare payment received from CMS or from other payors, in accordance with section (10) of this rule; or

(c) Adjustments related to enrollment and disenrollment of participants in the PACE program; and

(d) Fee for service payments by the Department or Medicare prior to the participant being capitated.

(12) A PACE program must meet the requirements stated in 42CFR Part 460, Programs of All Inclusive Care for the Elderly (PACE) except where these rules are at variance.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0030

Financial

(1) PACE programs will assume the risk for providing capitated services under their contracts with the Department. PACE programs must main-

tain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports for submission to the Department as applicable:

(2) PACE programs must comply with solvency requirements specified in contracts with the Department, as applicable. Solvency requirements of PACE programs must include the following components:

(a) Maintenance of restricted reserve funds with balances equal to amounts specified in contracts with the Department;

(b) Protection against catastrophic and unexpected expenses related to capitated services for PACE programs. The method of protection may include the purchase of stop loss coverage, reinsurance, self-insurance or any other alternative determined acceptable by the Department, as applicable. Self-insurance must be determined appropriate by the Department; and

(c) Maintenance of professional liability coverage of not less than \$1,000,000 per person per incident and not less than \$1,000,000 in the aggregate either through binder issued by an insurance carrier or by self-insurance with proof of same, except to the extent that the Oregon Tort Claims Act, ORS 30.260 to 30.300 is applicable.

(3) The PACE program must be able to satisfy the fiscal soundness requirements in 42 CFR Sec. 460.80. If the amount required in the federal PACE regulations exceeds the sum of the restricted reserve and net worth requirement, the difference may be a combination of insolvency insurance, reinsurance, letters of credit, or excess net worth.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0040

PACE Marketing and Informational Requirements

(1) The PACE program may inform the general public of its program through appropriate informational activities and media. The PACE program must ensure that prohibited marketing activities as defined in 42 CFR 460.82 are not conducted by its employees or its agents.

(2) PACE programs will ensure that all staff who have contact with potential PACE participants are fully informed of PACE program policies, including enrollment, disenrollment and grievance policies and the provision of language and sign language interpreter services including providers who have bilingual capacity.

(3) PACE programs will develop informational materials for potential PACE participants in accordance with the following standards:

(a) PACE programs will provide informational materials sufficient for eligible PACE participants to make an informed decision about applying for enrollment. Information on participating providers must be made available from the program, upon request to potential enrollees, and must include enrollment requirements, benefits and services, locations of PACE centers, and choice of centers and PCPs, list of specialists, fees and other charges;

(b) PACE programs will produce printed informational materials that, at a minimum will include, the Marketing brochures, Participant Handbook, Enrollment Agreement, Disenrollment forms, and Denial of Services notices. These informational materials will be culturally sensitive and in the primary language of each substantial population (35 households) of non-English speaking PACE applicants and participants and in alternate forms for all vision impaired PACE applicants and participants. Alternate forms may include, but are not limited to, audio tapes, closed-captioned videos, large type and Braille;

(c) No written information will be provided to potential PACE participants that has not been approved by the Department. Approval or denial will be granted within 30 days of receipt by the Department. No response in 30 days constitutes approval. Any written communication by the PACE program or its subcontractors and providers that is intended solely for PACE participants and pertains to requirements to receive care at service sites or benefits must be approved by the Department prior to distribution; and

(d) PACE programs will provide written notice to affected PACE participants of any significant changes in program or service sites that impacts the PACE participants' ability to access care or services from PACE providers. Such notice will be provided to PACE participants or their representatives at least 14 calendar days prior to the effective date of that change, or as soon as possible, if the provider has not given the PACE program sufficient notification to meet the 14 days notice requirement. The Department will review and approve such materials within two working days of receipt by the Department.

(3) Participant Handbook Materials:

(a) The Participant Handbook will be made available as described above and will be distributed within 14 calendar days of the PACE participant's effective date of coverage with the PACE program;

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(b) At a minimum the information in the Participant Handbook will contain the following elements:

(A) Location(s) and office hours of the PACE program;

(B) Telephone number(s) to call for more information and telephone numbers relating to information listed below;

(C) Choice and use of PCPs and policies on changing PCPs;

(D) How to access urgent care services and advice;

(E) How and when to use emergency services including ambulance;

(F) Information on the grievance process, including confidentiality and requesting an administrative hearing;

(G) How to access interpreter services including sign interpreters;

(H) PACE participant rights and responsibilities;

(I) PACE participant's possible responsibility for charges including Medicare deductibles and coinsurances if he or she goes outside of the PACE program for non-emergent care, obtain non-covered services or services not authorized by the Interdisciplinary Team (IDT);

(J) A clear statement that level of care decisions (i.e., whether or not a participant needs continuing nursing home care or may be discharged to a community based facility), are determined by the participant's Interdisciplinary Team after consulting with the participant and their family. The participant may appeal that decision but does not have the choice of remaining at a particular level of care unless the level of care warrants such and is approved by the Interdisciplinary Team;

(K) Information on the availability of social services and assistance in placement in community based housing and facilities;

(L) How to obtain specialty care, mental health and chemical dependency services;

(M) Information on Advance Directives and Physician Order for Life Sustaining Treatment (POLST);

(N) How to obtain copies of the participant's records (and that the participant may be charged a reasonable copying fee);

(O) How to obtain non-emergent ambulance services and other medical transportation to appointments, as appropriate;

(P) Explanation of covered and non-covered services;

(Q) How to obtain prescriptions; and

(R) The PACE program's confidentiality policy.

(c) The Participant Handbook will be reviewed by the PACE program for accuracy at least yearly and updated with new or corrected information as needed to reflect the PACE program's internal changes and regulatory changes. If changes impact the PACE participant's ability to use services or benefits, the updated materials will be distributed to all PACE participants after approval by the Department.

(4) PACE programs will offer orientation to the PACE program to new participants in person within 30 days of enrollment.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0050

Enrollment

(1) Eligibility: To be eligible to enroll in a PACE program a person must:

(a) Reside in the PACE program's approved service area upon enrollment;

(b) Be 55 years of age or older;

(c) Be able to be maintained in a community based setting at the time of enrollment without jeopardizing his or her health or safety or the health and safety of others;

(d) Be determined by the local SPD/AAA agency to need the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services in accordance with OAR 411-015-0000 – 411-015-0100 Service Priority, Current Limitations and Eligibility for Nursing Facility or Community Based Care Services;

(e) Be Medicaid eligible or be willing to pay private fees; and

(f) Be willing to abide by the provision that requires enrollees to receive all health and long term care services exclusively from the PACE program and its contracted or referred providers.

(2) The criteria for determining that an individual cannot live safely in the community and thereby may be denied enrollment is as follows:

(a) The individual demonstrates imminent danger to self or others in accordance with the definition in OAR 411-015-005

(b) There is evidence in the individual's clinical record that shows he or she has been repeatedly placed in appropriate care settings and, despite medically appropriate treatment, placement has resulted in frequent hospitalizations or failed placements; or

(c) At the time of application, the individual is determined to be eligible for enhanced care services or long term care at Oregon State Hospital by either the enhanced care Services Coordinator or the OSH Geriatric Psychiatric Outreach Team.

(d) At the time of application, the individual has a physician documented condition that meets the criteria for Medicare skilled care and does not appear to be able to be discharged to the community within the next 30 days.

(e) At the time of application, the applicant lives in their own home and wishes to remain there but requires 24-hour care to remain safely in their home.

(3) If either the PACE program or the local SPD/AAA case manager has concerns about the safety of a potential enrollee, a case conference can be convened to review the case with outside consultants as needed for further evaluation.

(4) Enrollment/Screening and Intake:

(a) SPD/AAA staff will process the application for Medicaid services and determine the level of care required under Oregon's State Medicaid Plan for coverage of nursing facility services. SPD/AAA staff will follow appropriate PACE enrollment protocols as outlined in the SPD/AAA Policy Manuals.

(b) SPD/AAA staff will conduct initial screening and intake, including providing assistance in completing the application and obtaining relevant information.

(c) The Department will provide for the calculation of any applicable spend-down liability and for post-eligibility treatment of income for Medicaid participants in the same manner as the Department treats spend-down liability and post-eligibility income for individuals receiving services under the Home and Community Based Care Waiver (OAR 461-160-0620).

(d) The SPD/AAA staff will forward intake information of potential enrollees to the PACE program staff who will assess the applicant's appropriateness for enrollment in the PACE program in accordance with these rules and the requirements of 42 CFR 460.152. Potential enrollees may be denied enrollment by the PACE program if it determines the client would not be able to be maintained in a community based setting without jeopardizing his or her health or safety or the health and safety of others.

(e) If the potential enrollee or his or her representative is in disagreement with the PACE program's decision not to enroll the person, he or she may file an appeal with the Department.

(f) All letters to applicants regarding denial of enrollment by the PACE program must include the reason for the denial and the applicants appeal rights. This letter along with documentation of pertinent information related to the decision must be forwarded to the Department for review.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0060

Disenrollment

(1) PACE Participant Requests for Disenrollment:

(a) All PACE participant initiated requests for disenrollment from PACE programs must be initiated by the PACE participant or his or her representative;

(b) An applicant may request disenrollment if he or she has surgery scheduled at the time the PACE enrollment is effective and the provider is not on the PACE program's provider panel and the participant wishes to have the services performed by that provider; and

(c) PACE participant or representative requests for disenrollment will be effective at the end of the month following the date of request for disenrollment except in the case of (b) above.

(2) PACE program requests for disenrollment:

(a) Causes for disenrollment:

(A) The Department may disenroll PACE participants for the following causes when requested by the PACE program subject to ADA requirements and approval by the Department:

(i) Participant's behavior is disruptive, unruly, or abusive to the point that his or her enrollment seriously impairs the provider's ability to furnish services to either the participant or other participants; the participant commits or threatens an act of physical violence directed at PACE staff, other patients, property, or other providers; participant commits fraudulent or illegal acts such as: permitting use of his or her medical ID card by others, altering a prescription, theft or other criminal acts committed in any providers or PACE programs premises. The PACE program will report any illegal acts to law enforcement authorities or to the Medicaid Fraud Unit as appropriate;

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(ii) The participant fails to pay the PACE premium or loses Medicaid eligibility and is unable to pay the PACE premium;

(iii) The PACE participant moves out of the PACE program's service area, and that move was not facilitated by the PACE program; or

(B) Other reasons for the PACE program's requests for administrative disenrollment include the following:

(i) If a PACE participant is enrolled in the PACE program on the same day the participant is admitted to the hospital, the PACE program will be responsible for said hospitalization. If the participant is enrolled after the first day of the inpatient stay, the participant will be disenrolled, and the date of enrollment will be the next available enrollment date following discharge from inpatient hospital services; or

(ii) The participant is admitted to a state psychiatric institution.

(b) PACE participants will not be disenrolled solely for the following reasons:

(A) Because of a physical or mental disability;

(B) Because of an adverse change in the participant's health;

(C) Because of the participant's utilization of services, either excessive or lack thereof;

(D) Because the participant requests an administrative hearing; or

(E) Because the participant makes decisions regarding his or her medical care with which the PACE program disagrees.

(c) Requests by the PACE program for disenrollment of specific PACE participants will be submitted in writing to the Department for approval with copies and verbal communication to the SPD/AAA local office. The PACE program must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made. The following is the minimal documentation and process the Department will request:

(A) Documentation in the PACE participant's clinical record at the time the problem is identified;

(B) Documentation regarding how the problem was addressed in the care plan. The PACE program will inform the participant or his or her representative that if the problem persists it may result in disenrollment;

(C) A written request to disenroll the participant to the Department, with a copy to the participant's SPD/AAA caseworker. Documentation with the request will include the reason the PACE program is requesting disenrollment; a summary of the PACE program's efforts to resolve the problem and other options attempted before requesting disenrollment; and

(D) If the request is due to a behavioral problem, the following documentation must also be submitted:

(i) A written assessment of the relationship of the behavior to the disability including: current medical knowledge or best available objective evidence to determine the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(ii) An Interdisciplinary Team review that includes a mental health professional or behavioral specialist to assess the behavior, its history, and previous history of efforts to manage behavior;

(iii) If warranted, a clinical assessment that the behavior will not respond to reasonable clinical or social interventions;

(iv) Documentation in the care plan of any accommodations that have been attempted; and

(v) Any additional information or assessments requested by the Department.

(d) Disenrollment requests will be reviewed according to the following process:

(A) The request will be evaluated by a team of Department representatives who may request additional information from the SPD/AAA case manager, or other agencies as needed;

(B) The Department representatives will review the request and notify the PACE program of the decision within ten working days of receipt. Written decisions, including reasons for denials, will be sent to the PACE program within 15 working days from receipt of request;

(C) If the request is approved the disenrollment date is the end of the month after the date of approval. The PACE program must send the participant a letter within 14 days after the request was approved, with a copy to the participant's SPD/AAA case manager and OMAP's Health Management Unit (HMU). The letter must give the disenrollment date, the reason for disenrollment, and the notice of participant's right to an administrative hearing.

(e) If a request for disenrollment is approved the PACE program will be responsible for facilitating a PACE participant's enrollment into other programs by:

(A) Making appropriate referrals, ensuring clinical records are made available to new providers within 10 days of disenrollment to ensure participant's needs are met without interruption of care or services; and

(B) Working with CMS and the Department to reinstate the participant in other Medicare and Medicaid programs for which they are eligible.

(f) If a participant requests a hearing, the participant will continue to be enrolled until an administrative hearing decision has been mailed to the participant and the PACE program.

(g) If a disenrollment date is determined from the administrative hearing, the Department sends a letter to the participant with a copy to the participant's SPD/AAA case manager and the PACE program. The letter will inform the participant of the reason for the disenrollment decision.

(3) Department Initiated disenrollments:

(a) The Department may initiate and disenroll PACE participants as follows:

(A) If a Medicaid-only PACE participant moves out of the PACE program's service area(s), the effective date of disenrollment will be the date specified by the Department and the Department will recoup the balance of that month's capitation payment. If the participant has Medicare, the effective date of disenrollment will be the first of the month following the move out of the service area. If the participant has neither Medicare or Medicaid, the date of disenrollment will be the date specified by the Department;

(B) If the PACE participant is no longer eligible under SPD's long-term care criteria or under eligibility criteria for PACE, the effective date of disenrollment will be the date specified by the Department; or

(C) If the PACE participant dies, the effective date of disenrollment will be the end of the month following the date of death, and the Department will recoup any capitation payments made to PACE program after the end of the month.

(4) If the disenrollment is generated by the Department under subsection (3)(a)(A) or subsection (3)(a)(B) of this rule, the Department will inform the participant of the disenrollment decision in writing, including the right to request an administrative hearing. If a participant requests an administrative hearing, the participant will continue to be enrolled until a hearing decision has been mailed to the participant.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0070

Access to Care

(1) PACE programs will develop written policies and procedures for communicating with, and providing care to PACE participants who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone. Such policies and procedures will address the provision of qualified interpreter services by phone or in person in the PACE Center, PACE administrative offices, and participant's residence.

(2) PACE programs will provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits and after hours emergency calls, to interpret for persons with hearing impairment or in the primary language of non-English speaking PACE participants.

(a) Interpreters must be linguistically appropriate and be capable of communicating in English and the primary language of the PACE participant and be able to translate clinical information effectively. Interpreter services must be sufficient for the provider to be able to understand the PACE participant's grievance; to make a diagnosis; respond to a participant's questions and concerns; and to communicate instructions to the PACE participant; and

(b) Interpreters must be culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the PACE participant.

(3) PACE programs must have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act (ADA) of 1990 in providing access to covered services for all PACE participants and must arrange for services to be provided by non-participating referral providers when necessary:

(a) The policies and procedures must include the assurance of appropriate physical access to obtain covered services for all PACE participants including, but not limited to the following:

(A) Street level access or accessible ramp into facility;

(B) Wheelchair access to lavatory;

(C) Wheelchair access to examination room; and,

(D) Doors with levered hardware or other special adaptations for wheelchair access.

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(b) PACE programs must ensure that providers, their facilities and personnel are prepared to meet the special needs of PACE participants who require accommodations because of a disability. PACE programs must monitor providers for compliance with ADA and take corrective action, when necessary.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0080

Provision of Services

(1) PACE Services:

(a) PACE covered services for all participants must be the same regardless of the source of payment. They must include all OHP covered services specified in OAR 410-141-0480 and Medicare covered services. In addition the covered services must include the following:

(A) Interdisciplinary assessment and treatment planning;

(B) Case management and social work services;

(C) Personal care and supportive services;

(D) Nutritional counseling;

(E) Recreational therapy;

(F) Meals and nutritional supplement as appropriate;

(G) Community based long term care including nursing facility care as appropriate; and

(H) Other services determined necessary by the Interdisciplinary Team to improve or maintain the PACE participants overall health and functioning or to provide pain management and comfort care.

(b) The following are non-covered services under PACE:

(A) Any service that is not authorized by the Interdisciplinary Team, even if it is a covered service, unless it is an emergency service;

(B) Any service listed in OAR 410-0141-0500 Excluded Services and Limitations as described in OAR 410-0120-1200, or in the individual OMAP Provider Guides;

(C) Any service that is excluded under the Oregon Health Plan unless it is a covered service under 42 CFR 460.92 or Medicare;

(D) Excluded services listed in 42 CFR 460.96; and

(E) Services furnished outside of the United States except as permitted under 42 CFR 424.122 through 424.124 and under Oregon's approved Medicaid plan.

(c) The PACE program must operate at least one PACE center either in or contiguous to its defined service area, with sufficient capacity to allow routine attendance by PACE participants. The frequency of attendance at a PACE Center is determined by the Interdisciplinary Team and is to be based on the needs and preferences of each participant.

(d) A PACE program must ensure accessible and adequate services to meet the needs of its participants.

(e) The PACE program must establish an Interdisciplinary Team at each PACE Center to comprehensively assess and develop a written care plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.

(f) Each PACE Center must employ at a minimum a half-time physician and a full-time Center Manager, Registered Nurse and Social Worker with a Master's degree before they may add a Nurse Practitioner, Physician Assistant, Licensed Practical Nurse or Social Worker with a Bachelor degree.

(g) The Interdisciplinary Team members must have appropriate licensure for their respective disciplines within the state. One year's experience in working with the elderly or in caregiving is required with exceptions approved by the Department.

(h) Personal care attendants, who are not Certified Nursing Assistants, must be enrolled in a Department approved training program within the service area within 6 months of hire and complete the program within 12 months of hire.

(i) The Interdisciplinary Team is responsible for the initial assessment, periodic reassessments, care plan, and coordination of 24 hour care delivery.

(A) The initial assessment must be completed within 10 working days following enrollment.

(B) The Interdisciplinary Team must consolidate their individual assessments into a care plan within 10 working days following enrollment.

(C) The appropriate Interdisciplinary Team members must update the care plan within 5 working days following a significant change in the participant's health status or at the request of the participant or the participant's representative.

(D) The Interdisciplinary Team members actively involved in the participant's care plan must conduct an in-person reassessment and revise the

care plan with the participant and the participant's representative or caregiver at least semiannually, and meet with the members of the Interdisciplinary Team and update the care plan as needed. To the extent it is appropriate, the participant and the participant's representative or caregiver shall be involved in establishing the participant's goals.

(E) The Interdisciplinary Team must implement, coordinate and monitor the effectiveness of the care plan and, as appropriate, involve the participant and the participant's representative in care conferences or family meetings when there are issues or changes in the care plan.

(F) The care plan must specify the care needed to meet the participant's medical, physical, emotional and social needs as identified in the individual assessments. The team must document the care plan and any changes made to it in the participant's clinical record.

(2) Health Care:

(a) PACE programs will have written policies and procedures that ensure the provision of all medically and dentally appropriate care and covered services, including urgent and emergency services, preventive services and ancillary services included in the PACE contract with the Department. PACE programs must communicate these policies and procedures to PACE staff and contracted providers, regularly monitor compliance with these policies and procedures, and take any corrective action necessary to ensure compliance. PACE programs must document all monitoring and corrective action activities.

(b) The PACE program must maintain a provider panel sufficient to ensure adequate capacity and expertise to provide timely and appropriate access to covered services.

(c) PACE programs must ensure that all providers providing services to PACE participants are credentialed upon initial contract with the PACE program and re-credentialed no less frequently than biennially thereafter. This process must include a review and determination based on the results of the PACE program's quality improvement activities.

(d) The credentialing and re-credentialing process must include review of any information in the National Practitioner Databank; and

(A) A determination, based on the requirements of the discipline or profession, that providers have current licensure in the state in which they practice or appropriate certification; and

(B) Applicable hospital privileges; and

(C) Appropriate malpractice insurance.

(e) The PACE program may elect to contract for or to delegate responsibility for this process but the PACE program will retain responsibility for delegated activities, including oversight of the following processes:

(A) PACE programs must ensure that services are provided within the scope of license or certification of the provider or facility, and that providers are appropriately supervised according to their scope of practice;

(B) PACE programs, or their delegated agent, must maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank;

(C) PACE programs must not refer PACE participants to or use providers who have been suspended or terminated from the Oregon Medical Assistance Program or excluded as Medicare/Medicaid providers by CMS or convicted of criminal offenses against Medicare, Medicaid, or Title XX of the Social Security Act or related state law by any lawful court in this state. PACE programs must not accept billings for services to PACE participants provided after the date of such providers suspension or termination or conviction.

(f) PACE programs must have written procedures that allow for choice of a Primary Care Provider (PCP) for physical health within the PACE program's PCPs or contracted providers. Information about which PCPs are not accepting new patients will be provided by the PACE program to potential PACE participants.

(g) PACE programs must ensure a newly enrolled PACE participant receives timely, adequate and appropriate health care services necessary to establish and maintain the health of the PACE participant. PACE programs must coordinate services for PACE participants who require services from agencies providing non-covered services. The PCP will arrange, coordinate, and monitor all medical, mental health, and dental care for that PACE participant on an ongoing basis.

(A) A PACE program's liability covers the period between the participant's enrollment and disenrollment with the PACE program, unless the participant is hospitalized at the time of disenrollment. In such an event, the PACE program is responsible for the participant in accordance with its contract with the Department. The PACE program must have written procedures that describe how it will comply with this obligation.

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(h) The PACE program must identify the training needs of its provider panel and PACE staff and address such needs to improve the ability of the providers and staff to deliver covered services within the PACE program.

(3) Emergency and Urgent Care Services:

(a) PACE programs must have written policies and procedures and monitoring systems that ensure the provision of appropriate urgent care, emergency, and triage services 24-hours a day, 7-days-a-week for all PACE participants. PACE programs must communicate these policies and procedures to their staff and contracted providers; regularly monitor compliance with these policies and procedures and take any corrective action necessary to ensure provider compliance. PACE programs must document all monitoring and corrective action activities.

(b) PACE programs must have written policies and procedures and monitoring processes to ensure that urgent or emergency calls are responded to appropriately. These policies should address the following elements:

(A) The maintenance of 24-hour telephone coverage (not a recording) either onsite or through call sharing or an answering service, adequate to triage urgent care and emergency calls from PACE participants;

(B) The standards for call-back for emergency or urgent care, routine problems, and the provision of interpretive services after office hours. Urgent calls will be returned appropriate to the participant's condition but in no event more than 30 minutes after receipt. If information is not adequate to determine if the call is urgent, the call will be returned within 60 minutes to fully assess the nature of the call. If information is adequate to determine the call may be emergent in nature, the call must be returned immediately;

(C) Provisions for notifying other providers requesting approval to treat a PACE participant, including emergency departments;

(D) Provisions to ensure that relevant information is entered into the appropriate clinical record of the PACE participant regardless of who responds to the call or the time of day the call is received. PACE programs must monitor for compliance with this requirement;

(E) Written procedures and trained staff to communicate with hearing impaired PACE participants via TDD/TTY or Relay Service, and with limited English proficient PACE participants;

(F) Telephone coverage at PACE program centers and administrative offices that will permit access to administrative staff during normal office hours, including lunch hours, and have assigned administrative staff available for emergencies after hours and on weekends; and

(G) Provisions to monitor compliance with the policies and procedures governing 24 hour telephone coverage and on-call PCP and administrative coverage, take corrective action as needed, and report findings to the PACE program's Quality Improvement Committee.

(c) If a screening examination in an emergency room leads to a clinical determination by the examining physician that an actual emergency medical condition exists under the prudent layperson standard as defined in emergency services, the PACE program must pay for all services required to stabilize the patient. The PACE program may not require prior authorization for emergency services. The PACE program may not retroactively deny a claim for an emergency screening examination because the condition, that appeared to be an emergency medical condition under the prudent layperson standard, turned out to be non-emergency in nature.

(d) When a PACE participant's PCP, or other PACE program representative instructs the PACE participant or his or her representative to seek emergency services, in or out of the network, the PACE program is responsible for payment of the screening examination and for other medically appropriate services. The PACE program is responsible for payment of post-stabilization care that was:

(A) Pre-authorized by the PACE program; or

(B) Not pre-authorized by the PACE program if the program (or the on-call provider) failed to respond to a request for pre-authorization within one hour of the request being made, or the PACE program or provider on call could not be contacted.

(4) Continuity of Care:

(a) PACE programs must develop and maintain a formal referral system consisting of a network of consultation and referral providers, including alternative care settings, for all services covered in their contract with the Department. PACE programs must ensure that access to and quality of care provided in all referral settings is monitored. Referral services and services received in alternative care settings must be reflected in the PACE participant's clinical record. PACE programs must establish and follow written procedures for participating and non-participating providers in the PACE programs referral system. Procedures will include the maintenance of records within the referral system sufficient to document the flow of referral requests, approvals and denials in the system.

(b) PACE programs must have written procedures for referrals that ensure adequate prior notice of the referral to the referral providers and adequate documentation of the referral in the PACE participant's clinical record. These procedures must include:

(A) Review of information by the referring provider;

(B) Entry of information into the PACE participant's clinical record; and

(C) Monitoring of referrals to ensure that information, including information pertaining to ongoing referral appointments, is obtained from the referral providers, reviewed by the referring practitioner, and entered into the clinical record.

(c) PACE programs must have written procedures to orient and train their staff and the staff in contracted alternative care settings in the appropriate use of the urgent and emergency care systems, and the need to send any documents from emergency care to the PACE program.

(d) If a PACE participant is hospitalized in an inpatient or outpatient setting, PACE programs must ensure that:

(A) A notation is made in the PACE participant's clinical record of the reason, date, and expected duration of the hospitalization; and

(B) Upon discharge, a notation is made in the PACE participant's clinical record of the actual duration of the hospitalization and follow-up plans, including appointments for provider visits; and

(C) Pertinent reports from the hospitalization are entered in the PACE participant's clinical record. Such reports must include, as applicable, the reports of consulting practitioner's physical history, psycho-social history, list of medications and dosages, progress notes, and discharge summary.

(e) For PACE participants living in residential facilities or homes providing ongoing care, the IDT will work with the appropriate staff person identified by the facility to ensure that the PACE participant has timely and appropriate access to services according to the PACE participant's care plan, and to ensure coordination of care provided by the PACE program and care provided by the facility or home.

(f) For PACE participants living in residential facilities or homes providing ongoing care, PACE programs will provide medications in a manner that is compatible with the appropriate medication dispensing system of the facility, that meets state dispensing laws. PACE programs must provide emergency prescriptions on a 24-hour basis.

(g) When a PACE participant's care is being transferred from the PACE program to the PACE participant's new health care provider, the PACE program will make every reasonable effort within the laws governing confidentiality to coordinate transfer of the PACE participant into the care of the new provider.

(h) If a Primary Care Provider (PCP) terminates the patient/provider relationship, the PACE program will arrange for the participant to transfer his or her care to another PCP on the PACE program's panel who will accept the participant as his or her patient. All terminations of provider/patient relationships must be according to the PACE program's policies.

(i) PACE programs must have written procedures and criteria for health education of PACE participants and their caregivers. Health education will include: information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. Health education may be provided by PACE staff or other individual(s) or program(s) approved by the PACE program. PACE programs will endeavor to provide health education in a culturally sensitive manner to communicate most effectively with individuals from non-dominant cultures.

(5) Long term Care Services:

(a) PACE programs will have written policies and procedures that ensure the provision of all long term care services included in the PACE contract with the Department. PACE programs must communicate these policies and procedures to PACE staff and contracted providers, regularly monitor compliance with these policies and procedures, and take any corrective action necessary to ensure compliance. PACE programs must document all monitoring and corrective action activities.

(b) The PACE program must maintain a provider panel (either staff or contracted providers) sufficient to ensure adequate capacity and expertise to provide timely and appropriate access to covered long term care services.

(c) The PACE program must identify the training needs of its provider panel and PACE staff and address such needs to improve the ability of the providers and staff to deliver covered long term care services under the PACE program.

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(d) In addition to Medicare covered services and the OMAP covered services listed in OAR 411-045-0080(1)(a), the PACE program is responsible for providing services either directly or through contracted providers that are licensed pursuant to state law including but not limited to the following:

- (A) Comprehensive case management;
- (B) In-Home Services as defined in OAR 411-030-0002 – 411-030-0090;
- (C) Home delivered meals;
- (D) Personal Care Services as defined in OAR 411-034-0000 – 411-034-0090;
- (E) Non-medical transportation;
- (F) Adult Day Services as defined in OAR 411-066-0000 – 411-066-0020;
- (G) Residential Care Facility Services;
- (H) Assisted Living Facility Services;
- (I) Adult Foster Home Services; and
- (J) Nursing Facility Services.

(e) If the PACE program's facility is not in compliance with the provisions defined in OAR 411-066-0000 – 411-066-0020, they must submit a request to the Administrator of the Department for a variance. This request will be reviewed by the Administrator of the Department or his or her designee, and the representatives from the Department assigned to the PACE program.

(f) When a PACE program provides community based or long term care for residents outside of a participant's own residence it must assure that such facilities are licensed by the state. If the PACE program's facilities are not in compliance with the licensure requirements for those facilities, the PACE program must submit a request to the Department for a variance.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0090

Quality Improvement System

(1) A PACE program must have a planned, systematic and ongoing process for monitoring, collecting data and evaluating data and using that process for improving the quality and appropriateness of services provided to PACE participants. This process must include an internal Quality Improvement Program based on written policies, standards and procedures that are in accordance with relevant law, accepted medical practice and with accepted professional standards.

(2) A PACE program must designate a Quality Improvement Coordinator who will develop and coordinate systems to facilitate the work of the Quality Improvement Committee. The Quality Improvement Coordinator is generally responsible for the operations of the Quality Improvement Program and must have the management authority to implement changes to the Quality Improvement Program within the parameters of the PACE program. The Quality Improvement Coordinator must be qualified to assess the care of people who are aged, blind, or disabled or must retain consultation from individuals who are so qualified.

(3) The PACE program must have a written quality assessment and performance improvement plan. The plan must include all items included in the PACE program's contract with the Department.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0100

Confidentiality and Reporting

(1) The PACE program must have policies and procedures that ensure maintenance of a clinical record keeping system that is consistent with state and federal regulations to which the PACE program is subject.

(2) Access to clinical records:

(a) Provider Access to clinical records:

(A) PACE programs will release health service information requested by a provider involved in the care of a PACE participant within ten working days of receiving a signed release;

(B) PACE programs will assure that health service providers have access to the applicable contents of a PACE participant's mental health records when necessary for use in the diagnosis or treatment of the participant. Such access is permitted under ORS 179.505;

(b) PACE Participant Access to Records: Except as provided in ORS 179.505(9), the PACE program will, upon request, provide the participant access to his or her own clinical record and provide copies within ten work-

ing days of the request. The PACE program may charge the PACE participant for reasonable duplication costs;

(c) Third Party Access to Records: Except as otherwise provided in this rule, the PACE program will upon written consent of the PACE participant, or his or her legal guardian, provide access to participant's clinical record. The PACE program may charge for reasonable duplication costs.

(3) Confidentiality:

(a) PACE programs must have written policies and procedures to ensure that clinical records related to participants receiving services are kept confidential in accordance with ORS 179.505 through 179.507, 411.320, 433.045(3), 42 CFR Part 2, 42 CFR Part 431, subpart F, 45 CFR 205.50. If the PACE program is a public body within the meaning of the Oregon public records law, such policies and procedures will ensure that PACE participant's privacy is maintained in accordance with ORS 192.502(2), 192.502(8) (Confidential under Oregon law) and 192.502(9) (Confidential under Federal law) or other relevant public record exemptions.

(b) The PACE program staff and their providers must not release or disclose any information concerning a PACE participant to anyone other than the PACE participant or the participant's guardian for any purpose not directly connected with the administration of the Medicare program for Medicare recipients or of Title XIX of the Social Security Act for Medicaid recipients except as directed by the PACE participant;

(c) Except in an emergency, PACE program providers must obtain a written consent from the PACE participant or the legal guardian, or the legal Power of Attorney for health care decisions of the PACE participant before releasing information. The written consent, e.g., the DHR 2098 and 2099, will specify the type of information to be released and the recipient of the information, and a copy of the consent form will be placed in the PACE participants clinical record. In an emergency, release of service information will be limited to the extent necessary to meet the emergency information needs and then only to those persons involved in providing emergency medical services to the PACE participant.

(d) The PACE program staff and its agents, employees and subcontractors must protect the PACE participant's individually identifiable health information obtained or maintained from unauthorized use or disclosure consistent with the requirements in the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA).

(4) Mandatory Reporters: Employees of a PACE program have a responsibility and legal obligation to observe, detect and report to Adult Protective Services any signs or presence of abuse or neglect. The identity of the person reporting suspected abuse is confidential. Identity of the reporting person may be disclosed with the consent of that person, by judicial process or as required to perform the investigation by a law enforcement agency.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0110

Participant Rights

(1) PACE programs must have written policies and procedures that ensure PACE participants have the rights and responsibilities included in this rule. The PACE organization must inform a participant upon enrollment, in writing, of his or her rights and responsibilities, and all rules and regulations governing participation.

(2) PACE programs must communicate these policies and procedures to PACE staff and participating providers.

(3) PACE programs must monitor compliance with policies and procedures governing PACE participant rights and responsibilities, take corrective action as needed, and report findings to the PACE programs Quality Improvement Committee.

(4) PACE participants must have the following rights:

(a) To be treated with dignity and respect. To be free from abuse or neglect;

(b) To be treated by providers the same as other people seeking health and long term care services;

(c) To change primary care providers within the guidelines of the PACE program;

(d) To have a friend, family member, representative, or advocate, present during appointments and at other times as needed within clinical guidelines;

(e) To be actively involved in the development of his or her care plan;

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(f) To be given information about his or her condition and covered and non-covered services necessary to allow an informed decision about proposed treatment (s);

(g) To consent to treatment or refuse services, and be told the consequences of that decision, except for court ordered services;

(h) To receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;

(i) To have written materials explained in a manner that is understandable to the PACE participant;

(j) To receive necessary and reasonable services to diagnose the presenting condition;

(k) To receive covered services under the PACE program that meet generally accepted standards of practice and are medically appropriate;

(l) To obtain covered preventive services;

(m) To have access to urgent and emergency services 24 hours a day, 7 days a week as described in OAR 411-045-0080(3);

(n) To receive a referral to specialty practitioners for medically appropriate covered services;

(o) To have a clinical record maintained that documents conditions, services received, and referrals made;

(p) To have access to one's own clinical record, unless restricted by statute;

(q) To transfer a copy of one's clinical record to another provider;

(r) To execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, chemical dependency or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127 as amended by the Oregon Legislative Assembly 1993 and the OBRA 1990 — Patient Self-Determination Act;

(s) To receive written notices before a denial of, or change in, a benefit or service level is made, unless such notice is not required by federal or state regulations;

(t) To receive information on how to make a grievance with the PACE program and receive a response as defined in 411-045-0120;

(u) To request an administrative hearing with the Department of Human Services;

(v) To receive interpreter services as defined in OAR 411-045-0070 of the rule;

(w) To have the use of restraints (both physical and chemical) limited to the least restrictive and most effective method available. The use of such restraints must meet the requirements in 42 CFR 460.114; and

(x) To request that a qualified specialist for women's health services furnish routine or preventive women's health services.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0120

Grievance Process

(1) PACE programs must have written policies and procedures for the receipt, disposition and documentation of all grievances from PACE participants and their representatives. The PACE program's written procedures for handling grievances, must, at a minimum:

(a) Address how the PACE program will accept, process and respond to all grievances from PACE participants or their representatives, including expedited and additional reviews; and the continuation of care during the appeal process;

(b) Address the resolution of all grievances that PACE participants identify as needing resolution and must describe how grievances will be resolved or reviewed should the PACE participant or his or her representative decline to provide a release of information;

(c) Address how information concerning an PACE participant's grievance is kept confidential, with the exception that the Department and the local SPD/AAA office have the right to this information without a signed release from the PACE participant;

(d) Describe how the PACE program informs PACE participants, both orally and in writing, about the PACE program's grievance procedures. Information provided to the participant must include at least:

(A) Written material describing the grievance process;

(B) Assurance in all written, oral, and posted material of PACE participant confidentiality in the grievance process; and

(C) Information on alternatives to the PACE programs grievance and appeals process, including but not limited to, the Medicare appeals process, and the state's administrative hearing process.

(e) Include a requirement for a Department approved grievance and appeals log to be maintained by the PACE program; and

(f) Addresses how the PACE program will ensure the availability of a supply of blank complaint forms (OMAP 3001) in all PACE sites and in the administrative offices.

(2) The PACE program must assure that a participant's or his or her representative's expression of dissatisfaction, or grievance is recognized and resolved by the PACE program's staff as follows:

(a) A PACE participant or the PACE participant's representative may relate any incident or concern to a PACE program staff person by indicating or expressing dissatisfaction. Grievances may also be termed concerns, complaints, problems, or issues by the PACE participant or the participant's representative;

(b) If the PACE participant or the participant's representative indicates dissatisfaction or concern, the PACE program staff person will advise the PACE participant or his or her representative that he or she may make a grievance using the PACE program's grievance process;

(c) Any PACE staff person the participant makes a grievance to must either resolve the grievance and communicate the grievance and its resolution to the PACE program staff person designated for receiving grievances, or direct the PACE participant to that person;

(d) If the PACE participant or participant's representative's intent is unclear, the PACE program's designee will determine if the expression of dissatisfaction is a grievance in need of resolution or if the PACE participant or the participant's representative does not wish a resolution and only wishes to register the grievance. If the participant or his or her representative wishes only to register the grievance, the grievance should be logged and reported the same as other grievances;

(e) If a PACE participant or the PACE participant's representative wishes the grievance to be resolved, the PACE program will ask the PACE participant or his or her representative to consent verbally to the release of information regarding the grievance to individuals who are directly involved in the grievance or to other individuals as needed to resolve the grievance. Verbal consent must be documented in the grievance file. A PACE participant's or his or her representative's consent to release information related to the grievance does not constitute consent to release medical information. If the participant or the participant's representative does not give consent, he or she should be advised that the grievance may not be resolved to their satisfaction;

(f) For situations when the PACE participant's life, health, or ability to regain maximum functioning is at risk, an expedited grievance process may be requested by the PACE participant or his or her representative, or the PACE program staff. In such cases, the investigation will begin within 24 hours and a determination must be provided to the PACE participant or his or her representative within 72 hours unless the PACE participant requests an extension to 14 days or the PACE program finds that the delay is in the best interest of the participant;

(g) Complaints concerning denial of service or service coverage will be handled as appeals as described in OAR 411-045-0130;

(h). The PACE program must within 5 working days from the date the participant or his or her representative files the grievance either:

(A) Make a decision on the grievance and proceed according to subsection (2)(i) of this rule; or

(B) Notify the PACE participant or the PACE participant's representative in writing that a delay indecision of up to 30 calendar days is necessary to resolve the grievance. The letter must specify the reasons the additional time is necessary.

(i) The PACE program's decision must be communicated to the PACE participant or his or her representative orally or in writing no later than 30 calendar days from the date of receipt. The decision must contain the following:

(A) An oral decision must address each aspect of the participant's grievance and explain the reason for the PACE program's decision. The oral decision must include informing the PACE participant of his or her rights to an administrative hearing;

(B) A written decision must be made if the grievance was received in writing

(i) The written decision on the grievance must review each element of the PACE participant's grievance and address each of those concerns specifically, including the reasons for the PACE program's decision;

(ii) The written decision must have the Notice of Hearing Rights (OMAP 3030).

(j) If the PACE participant does not wish to attempt to resolve the grievance through the use of the PACE program's internal grievance procedure, the staff person will notify the PACE participant or his or her representative that he or she has the right to seek resolution through the state's administrative hearing process, or if the participant is a Medicare benefici-

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ary, through the Medicare appeals process. Under no circumstances may the PACE program discourage a PACE participant's use of the administrative hearing process. The PACE program, however, may explain to the PACE participant the potential benefits of using the PACE program's grievance procedure;

(k) Hearing requests made without previous use of the PACE program's grievance process will be forwarded to the PACE staff person designated to receive grievances for additional review by the SPD/AAA PACE Liaison Case Manager and reviewed as an extended grievance or as part of a informal meeting requested by the SPD/AAA Case Manager.

(3) Extended Review of Grievance:

(a) The PACE program may provide for additional review of a participant's grievance, as follows: If the PACE participant or his or her representative indicates dissatisfaction with the decision on the participant's grievance, the PACE program may provide the PACE participant with the opportunity to request another review pursuant to subsection (3) of this rule, in addition to the notice of hearing rights and hearing request;

(b) The additional or extended review may be offered by the PACE program in conjunction with the decision on the initial grievance and will not release the PACE program from the obligations to notify the participant or his or her representative of the participant's right to an administrative hearing and to provide a copy of AFS 443;

(c) The request for additional PACE program review of the grievance may be conveyed by the PACE participant, the PACE participant's representative or PACE programs designee, upon the request of the PACE participant;

(d) The additional PACE program review of the grievance will be reviewed, investigated, considered or heard by either:

(A) The PACE program's medical or program director; who was not involved in the original action; or

(B) A person or group, such as the Quality Improvement Committee or board of directors, responsible for internal review with the authority to make a final clinical or administrative decision at the PACE program level.

(e) A written decision, including the reasons for the PACE program's decision, will be mailed to the PACE participant or his or her representative no later than 30 calendar days from the date of receipt of the request for additional PACE program review of the grievance, unless:

(A) Further time is needed for the receipt of information requested from or submitted by the PACE participant and the new time frame is communicated to the participant in writing; or

(B) The PACE participant fails to provide the requested information within 30 calendar days of the request by the PACE program (or another mutually agreed upon time frame) the grievance may be resolved against the PACE participant.

(f) The PACE program's decision on the additional review of the PACE participant's grievance must have an additional Notice of Hearing Rights (OMAP 3030) attached.

(4) Responsibility for Documentation and Quality Improvement Review of Grievances

(a) The PACE program's documentation must include, at the minimum:

(A) The log of all grievances including grievances that the participant chooses either to resolve through another process, or not to have resolved. The log will identify the PACE participant, the date of the grievance, the nature of the grievance, the resolution and the date of resolution or the date of a grievance where no resolution was requested; and

(B) A file of grievances and records of their review or investigation and resolution, including all written decisions and copies of correspondence with the PACE participant related to the grievance will be retained for seven years.

(b) The PACE programs must have written procedures for the review and analysis of all grievances received by the PACE program and the operation of the entire grievance process. The analysis of grievances will be forwarded to the Quality Improvement Committee as necessary to comply with the Quality Improvement standards;

(c) PACE programs will monitor the written log, on a monthly basis, for receipt, disposition and documentation of grievances.

(d) Monitoring of grievances will include, at a minimum, a review for completeness, accuracy, timeliness of documentation, and compliance with plan procedures for receipt, disposition, and documentation of grievances.

(5) Issues involving abuse or neglect shall be reported by PACE to the local SPD/AAA Protective Services office and shall be investigated according to the setting in which the incident occurred. PACE program staff are to be considered mandatory reporters under ORS 124.060 and 124.050(5).

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0130

Appeal Process

(1) All denials, reductions, or terminations of services or service coverage by the PACE program must be in writing in accordance with Section (3) of this rule. PACE programs must make available to all PACE staff and contracted providers information concerning client notices, appeals and hearings processes.

(2) When the PACE program authorizes a course of treatment or covered service, but subsequently acts (as defined in 42 CFR 431.201) to terminate, discontinue, or reduce the course of treatment or a covered service, the PACE program must mail a written notice to the participant at least ten (10) working days before the date of the termination or reduction of the covered service unless there is documentation that the participant had previously agreed to the change as part of the course of treatment.

(3) The written client notice must be a Department approved format and is to be used for all denials, reductions, or terminations of services and denials of claims payment. The notice must inform the PACE participant of the following:

(a) Relevant information to include but is not limited to the following:

(A) Date of notice;

(B) Program name;

(C) Primary Care Provider's name;

(D) Participant's name and ID number;

(E) Date of Request/Service;

(F) Service or Item Requested or provided;

(G) Who Requested or Provided the item or service;

(H) Effective Date of Action;

(b) Reasons for the action to include the following:

(A) Treatment is not covered, item requires pre-authorization and it was not pre-authorized;

(B) It is not medically appropriate;

(C) Service or item received in an emergency care setting and does not qualify as an emergency service;

(D) Person was not a participant at the time of the service or is not a participant at the time of a requested service.

(E) The provider is not on the panel and person did not obtain prior approval;

(c) The PACE participant's right to file an appeal with the plan and request an administrative hearing with the Department including attaching the Notice of Hearing Rights (OMAP 3030) that includes a statement that the PACE participant may request continuation of benefits until a decision is rendered; and

(d) The telephone number to contact for additional information.

(4) The PACE program will have the following responsibilities in relation to section (2) of this rule:

(a) The PACE program must continue services if the PACE participant or PACE participant's representative requests an administrative hearing before the effective date of the client notice and requests that services be continued. The service must be continued until whichever of the following occurs first (but in no event should exceed ninety (90) days from the date of the participant's request for an administrative hearing):

(A) The current authorization expires; or

(B) A decision is rendered about the appeal; or

(C) The participant is no longer eligible for PACE.

(b) The PACE program must notify the PACE participant or PACE participant's representative in writing that it is continuing the service. The notice must inform the PACE participant or PACE participant's representative that if the hearing is resolved against the PACE participant, the cost of any services continued after the effective date of the client notice may be recovered from the PACE participant pursuant to 42 CFR 431.230(b);

(c) The PACE program must reinstate services if:

(A) The PACE program takes an action without providing the required notice and the PACE participant requests a hearing;

(B) The PACE program does not provide the notice in the time required under section (2) of this rule and the PACE participant requests a hearing within 10 days of the mailing of the notice of action; or

(d) The PACE program must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the PACE participant, or the Department or the PACE program decides in the PACE participant's favor before the hearing even if the PACE participant has lost eligibility after the date the action was taken.

(5) If an appeal is made to a PACE program's staff person the appeal must be recognized by the PACE program, forwarded to the PACE staff person responsible for appeals, and answered in writing:

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(a) The PACE program's staff person must notify the PACE participant or the participant's representative in accessible format of the decision that denied, discontinued or reduced the service(s) or coverage within five (5) working days. The decision letter must include at least the elements included in Section (3) of this rule;

(b) A copy of the Notice of Hearing Rights (OMAP 3030) and Administrative Hearing Request (AFS 443) must be attached.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

411-045-0140

Administrative Hearings

(1) PACE participants are entitled to an administrative hearing by the Department regarding the action by the PACE program to deny services, payment of a claim, or to terminate, discontinue or reduce a course of treatment. PACE participants are also entitled to an administrative hearing for issues related to their eligibility for PACE benefits, or issues related to enrollment in a PACE program. Administrative hearings are governed by the following:

(a) A written hearing request must be received by the SPD/AAA PACE Liaison Case Manager no later than the 45th day following the date of the Notice of Action or written decision regarding an appeal;

(b) If the action involves a Notice of Action or decision concerning an appeal that involves continuation of services, and the PACE participant or PACE participant's representative wishes to have services continued while the hearing issue is being resolved, the PACE participant or PACE participant's representative must request a hearing before the effective date of the intended action or within 10 calendar days after the notice of action or written grievance decision was mailed or given to the PACE participant or PACE participant's representative.

(2) The SPD/AAA PACE Liaison Case Manager will review the administrative hearing requests, documentation related to the hearing issue, and computer records to determine whether the claimant or the person for whom the request is being made is or was a PACE participant at the time the action was taken, whether the hearing request was timely (requested within 45 calendar days of the Notice of Action, or the decision about a grievance) and whether continuation of benefits or services has been requested.

(3) The hearing request (AFS 443) must be referred to the Central Hearings Panel and a hearing officer requested. PACE administrative hearings are governed by OAR 461-025-300 and the following, except to the extent that Department rules apply.

(4) A final order must be issued or the case otherwise resolved by the Department no later than 90 days following the Department's receipt of the request for hearing. Delay due to a postponement or continuance granted at the PACE participant or the PACE participant representative's request or with the consent of the PACE participant or the PACE participant's representative will not be counted in computing the time limit. The final order is the final decision of the Department.

(5) The PACE program will immediately transmit to the SPD/AAA PACE Liaison Case Manager any hearing request submitted on behalf of a participant.

(6) If an administrative hearing is requested by a PACE participant or the participant's representative, the PACE program will cooperate in the hearing process and will make available, as determined necessary by the Department, all persons with relevant information, including the staff person who attempted resolution of the grievance or appeal. The PACE program will also provide all pertinent files and clinical records, as well as the results of the review by the PACE program of the grievance or appeal in the hearing request and any attempts at resolution by the PACE program to the Department.

(7) If the PACE participant or his or her representative files a request for an administrative hearing, the SPD/AAA PACE Liaison Case Manager will immediately notify the PACE program. The PACE program will review the hearing request as a grievance or an appeal depending on the nature of the complaint. The SPD/AAA PACE Liaison Case Manager shall evaluate the request and, if warranted, request an informal meeting and will notify the other departments as appropriate.

(8) A PACE participant or his or her representative may request a delay in the administrative hearing in writing. This delay will not relieve the PACE program of resolving the grievance or appeal that was referred to them by the SPD/AAA PACE Liaison Case Manager within 30 days.

(9) PACE programs will review the hearing request, which has not been previously received or reviewed as a grievance or appeal, using the PACE program's grievance and appeals process as follows:

(a) The grievance or appeal will be reviewed immediately and will be resolved, if possible, within 30 days of receipt of the request for hearing in the Department;

(b) The PACE program's decision must be in writing and will be provided to the SPD/AAA PACE Liaison Case Manager, and to the PACE participant or his or her representative;

(c) If the grievance or appeal is not resolved within 30 days, or the participant or his or her representative does not accept resolution proposed by the PACE program on the hearing request, the PACE program will provide the SPD/AAA PACE Liaison Case Manager with all pertinent material and documentation within 30 days from the date of the transmittal of the request for hearing from the Department grievances and appeals are defined in OAR 410-141-0000, Definitions.

(10) If the PACE participant or his or her representative chooses to use the PACE program's grievance or appeal procedure as well as the administrative hearing process, the PACE program will ensure that the process is completed within 30 days of receipt, and the records sent to by the 30th day.

(11) If a PACE participant or the PACE participant's representative feels the participant's medical or dental problem cannot wait for the normal PACE program review process, including the PACE program's final resolution he or she may request an expedited hearing. The PACE program will inform PACE participants of the participants' rights to request an expedited hearing and provide participants with a copy of AFS Form 443 and Notice of Hearing Rights.

(12) Expedited hearings are requested using AFS Form 443.

(13) The PACE program will submit relevant documentation to OMAP's Medical Director within, as nearly as possible, 2 working days for a decision as to the necessity of an expedited administrative hearing. OMAP's Medical Director, in consultation with SPD's Medical Director, must decide within, as nearly as possible, 2 working days from date of request, if that PACE participant is entitled to an expedited hearing.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 5-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 2-2005, f. & cert. ef. 1-4-05

Adm. Order No.: SPD 3-2005

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Subject: The rules for Adult Foster Homes for Persons with Developmental Disabilities, previously located in Chapter 309, have been permanently adopted as new rules in Chapter 411, Division 360. This rulemaking change reflects the current organizational structure of DHS and the new rules provide for the following:

- a) Clarification of rule requirements for licensure of providers.
- b) Addition of a new category of 'limited license.'
- c) Incorporation of changes to individual support plans.
- d) Update of definitions and requirements of medical, fire safety, behavior support and physical intervention.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-360-0010

Statement of Purpose

These rules prescribe the standards and procedures for the licensure and provision of care and services to individuals in Department of Human Services adult foster homes for persons with developmental disabilities (AFH-DD) in a homelike environment that is safe and secure. The goal of the AFH-DD is to provide necessary care while emphasizing the individual's independence. This goal is reached through a cooperative relationship between the provider, the individual and their guardian, if applicable and the CDDP in a setting that protects and encourages the individual's independence, dignity, choice and decision making. The individual's needs are to be addressed in a manner that supports and enables the individual to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070, 409.050

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Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0020

Definitions

(1) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748 and 418.749. This includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites that are deliberately inflicted;

(C) Neglect including, but not limited to, failure to provide food, shelter or medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message that is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an Adult. Except for those additional circumstances listed in OAR 411-320-0020(2)(c)(A-F) abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury; or

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abuse in other circumstances. When the Department directly operates any licensed 24-Hour Residential Program or the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour Residential program; an adult foster home; an employment or community inclusion program; a supported living program; or a semi-independent living program, abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes but is not limited to, the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate or unauthorized physical intervention that results in injury.

(i) A physical intervention is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan;

or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A physical intervention is not authorized if:

(I) There is not a written physician's order when intervention is used as a health related protection; or

(II) It is applied without ISP Team approval as identified on the ISP or as described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure when absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation that may include, but is not limited to, an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or the person's legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.

(G) The definitions of abuse described in OAR 411-320-0020 (2)(b)(A-E) also apply to homes or facilities licensed to provide 24-Hour Residential Services for children with developmental disabilities or to agencies licensed or certified by the Department to provide Proctor Foster Care for children with developmental disabilities.

(H) The definitions of abuse described in OAR 411-320-020 (2)(c)(A-F) also apply to the CMHDDP and to staff of a Support Services Brokerage.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by OAR 309-040-0200 through 309-040-0290 or any successor rule(s).

(3) "Activities of Daily Living (ADL)" are those personal functional activities required by an individual for continued well being including eating or nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.

(a) "Independent" means the individual can perform the ADL without help;

(b) "Assistance" means the individual is able to help with an ADL, but cannot do it entirely alone;

(c) "Dependent" means the individual is unable to do any part of an ADL; it must be done entirely by someone else.

(4) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

(5) "Administration of Medication" means the act by a caregiver, who is responsible for the individual's care, of placing a medication in or on an individual's body.

(6) "Adult Foster Home (AFH)" means any home licensed by the Department in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if a family member receives care, he or she will be included as one of the five allowable individuals. A home or person that advertises to provide room, board, and care and services for adults, including word-of-mouth advertising, is deemed to be an AFH. For the purpose of these rules, an AFH does not include:

(a) Any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, where no individual thereof requires any element of care;

(b) Any specialized living situation for physically handicapped persons where the Department provides payment for personal care services other than to an AFH provider;

(c) Any residential facility, licensed under authority of ORS 443.400, which serves adults who are mentally or emotionally disturbed, developmentally disabled, elderly or physically disabled.

(7) "Adult Foster Home for Individuals with Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and support to individuals with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

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(9) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Appeal" is the process by which a licensed provider may petition the suspension, denial, revocation or civil penalty of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(11) "Applicant" means any person who completes an application for a license who is also the owner of the business.

(12) "Authorized Department Representative" (ADR) means an employee of the Department who is qualified to have access to the Law Enforcement Data System (LEDS) information.

(13) "Bill of Rights" means civil, legal or human rights afforded to AFH individuals that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as described in OAR 411-360-0170(9).

(14) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 Chapter 851, Division 047.

(15) "Care" means the provision of room, board, services and assistance with activities of daily living such as assistance with bathing, dressing, grooming, eating, managing money, recreation and medication management. Care also means services that encourage maximum individual independence and enhance quality of life.

(16) "Caregiver" means any person responsible for providing care and services to individuals including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and service to individuals.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or for behavior modification in place of a meaningful behavior or treatment plan.

(18) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(19) "Community Developmental Disability Program or CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(20) "Community Mental Health and Developmental Disability Program or CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the contract with the Department of Human Services.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a contract with the Department of Human Services.

(22) "Compensation" means payments by or on behalf of a individual to a provider in exchange for room and board, care and services as indicated in the Individual Support Plan. Compensation does not include the voluntary sharing of expenses between or among roommates.

(23) "Complaint Investigation" means an investigation of any allegation that a provider has taken action that is contrary to law, rule, or policy that does not meet the criteria for an abuse investigation.

(24) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(25) "Contract" means an agreement between a provider and the Department to provide room, board, care and services for compensation to a individual of an AFH-DD.

(26) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(27) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS. 427 and imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(28) "Day Care" means care and services in an AFH-DD for a person who does not stay overnight. Day care persons will be counted in the total allowable five individuals of the capacity of the AFH-DD.

(29) "Denial" is the refusal of the Department of Human Services to issue a license to operate an AFH-DD because the Department has determined that the home is not in compliance with one or more of these administrative rules.

(30) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(31) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification will be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(32) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(33) "Director" means the Director of the Department of Human Services or that person's designee.

(34) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(35) "Entry" means admission to a Department funded developmental disability service provider. For the purpose of this rule "entry" means admission to an AFH-DD foster home.

(36) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(37) "Exit" means termination from a Department funded developmental disability services provider.

(38) "Family Member" means a legally responsible relative, including spouses of recipients.

(39) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(40) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(41) "Home" means the physical structure in which individuals live, synonymous with AFH-DD.

(42) "Homelike" means an environment that promotes the dignity, security and comfort of individuals through the provision of personalized care and services to encourage independence, choice, and decision making.

(43) "House Rules" means those written and posted rules governing house activities in the AFH-DD. These rules will not conflict with the AFH Bill of Rights.

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(44) "Incident Report" means a written report of any injury, accident, acts of physical aggression, use of physical restraints, or unusual incident involving an individual.

(45) "Individual" means a person age 18 or older residing in an AFH-DD regardless of source of compensation. The terms "individual" and "client" are synonymous.

(46) "Individual Support Plan or ISP" means a written plan of support and training services for an individual with developmental disabilities covering a 12 month period that addresses the individual's support needs.

(47) "Individual Support Plan Team or ISP Team" means a team composed of the individual, representatives of all current service providers including the AFH-DD provider, Services Coordinator, the individual's legal guardian if any, advocate and others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership will be determined by the ISP team members.

(48) "License" means a document granted by the Department to applicants who are in compliance with these rules.

(49) "Licensee" means a person or organization to whom a license is granted.

(50) "Limited License" means a license issued to a person who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.

(51) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team will have the authority to make decisions for the team. Representatives from service provider(s), families, the CDDP, or advocacy agencies will be considered as one member of the ISP team for the purpose of reaching majority agreement.

(52) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765 (2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295

(53) "Mechanical Restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around, and restricts freedom of movement, or access to the individual's body.

(54) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(55) "Member of Household" means any adult or children living in the home, including any foster providers, substitute caregivers, or volunteers assisting in the care provided to adults placed in the home, and excluding the service recipient placed in the home.

(56) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(57) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(58) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel that is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(59) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught or delegated to the provider and staff.

(60) "Oregon Intervention System or OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of proactive support and describes approved physical intervention techniques that are used to maintain health and safety keeping individuals from harming themselves or others. The system is based on a pro-active approach that includes methods of effective evasion, deflection and escape from holding.

(61) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(62) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(63) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(64) "Prescription Medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(65) "PRN" means the administration of a medication to an individual on an 'as needed' basis.

(66) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(67) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(68) "Provider" means the person licensed to operate an AFH-DD who is responsible for the provision of room, board, and care or services in the daily operation of the AFH-DD. Applicant, provider, licensee, and operator are all synonymous terms.

(69) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person meets the standards of OAR 411-360-0110 and OAR 411-360-0070 except for completing the training and testing requirements.

(70) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anti-anxiety and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(71) "Registered Nurse" means an individual licensed and registered to practice nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

(72) "Resident Manager" means an employee of the provider who lives in the AFH-DD and is directly responsible for the care of individuals on a day-to-day basis.

(73) "Residential Care" means the provision of room, board, care, and services that assist the individual with ADL's. Residential care includes 24 hour supervision; being aware of the individuals' general whereabouts; monitoring the activities of the individual while on the premises of the AFH-DD to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(74) "Respite Care" means short term care services for a period of 14 days or less provided on behalf of an individual due to absence or need for relief of those persons normally providing care for the individual. Respite services may include both day or overnight care. Respite care individuals must be counted in the total allowable five individuals in the home.

(75) "Restraints" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(76) "Revocation" is the action taken to rescind an AFH-DD license after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(77) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(78) "Self-Administration of Medication" means the individual manages and takes his or her own medications. The individual identifies his or her medication(s), the times and methods of administration, places the medication internally in, or externally on, his or her own body without caregiver assistance upon the written order of a physician, and safely maintains the medication(s) without supervision.

(79) "Services" means those activities that help the individuals develop appropriate skills to increase or maintain their level of functioning. Services available in the community and arranged for by the provider may include mental health services, habilitation services, rehabilitation services, social services, ADL's, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a individual's needs as defined in the ISP.

(80) "Services Coordinator" means an employee of the Community Developmental Disability Program (CDDP) or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for

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persons with developmental disabilities. The term case manager is synonymous with services coordinator.

(81) "Special Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast and include fresh fruit with each meal.

(82) "Suspension of License" is an immediate withdrawal of the approval to operate an AFH-DD after the Department determines that there is a threat to the health or safety of individuals.

(83) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department.

(84) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(85) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of a individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(86) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the provider.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0030

Variance

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health or safety of the individuals. If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP.

(2) No variance will be granted from a regulation or provision of these rules pertaining to the limit of five individuals, inspections of the AFH-DD, civil, legal and human rights, and inspection of the public files. No variance related to fire and life safety will be granted by the Department without prior consultation with the local fire department or its designee.

(3) Variances will be granted in writing and reviewed at each renewal period. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0040

License Required

(1) Any home that meets the definition of an AFH as defined in OAR 411-360-0020(6) must apply for and obtain a license from the Department or an exempt area county.

(2) A person or entity must not represent themselves as operating an adult foster home or accept placement of an individual without being licensed.

(3) No person may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an adult foster home who:

(a) Has not complied with Department rules for review of criminal history in accordance with OAR chapter 410, division 007; or

(b) Has been disapproved to work based on current Department policy and procedures for criminal history in accordance with OAR chapter 410, division 007.

(c) This provision does not apply to individual service recipients of the adult foster home.

(4) Any home that meets the definition of a Limited License AFH-DD as defined in OAR 411-360-0020(50) must have a license from the Department if receiving compensation from the Department. To qualify for this license and for compensation from the Department the applicant or provider must submit a completed application, appropriate licensing fee, physician's statement, obtain a criminal history clearance, obtain a background check in regards to abuse of children, demonstrate a clear understanding of the individual's care needs, meet minimal fire safety compli-

ance, including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Department to provide adequate care for the individual.

(5) Any home that meets the definition of a Limited License AFH-DD, must be licensed by the Department if compensation is received from the Department or is privately paid to the provider. The person requesting a limited license must meet the standards of an adult foster home and acquire any additional training necessary to meet the needs of the individual. The individual receiving care will be named on the license. The license will be limited to the care of the named individual only and may not be transferred to another person.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0050

License Application and Fees

(1) A written application must be submitted by the provider on forms supplied by the Department. The application is not complete until the required information is submitted to the Department with the required non-refundable fee. Incomplete applications are void after 60 days of the date the application form is received by the Department. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on the application form supplied by the Department.

(4) The application must include:

(a) The maximum capacity to be served by the home;

(b) A listing of all persons living in or receiving care in the home. This must include family members needing care, respite care and day care person(s);

(c) A list of any other occupants living in the home or on the property;

(d) A physician's statement on a form supplied by the Department regarding ability to provide care;

(e) A completed Financial Information Sheet on a form supplied by the Department;

(f) A signed Criminal History Clearance Authorization form and if needed, the Mitigating Information and Fitness Determination form for each person who will have regular contact with the residents, including the provider(s), the resident manager, caregivers and other occupants over the age of 16 (excluding individual service recipients);

(g) A signed consent form for a background check with regards to abuse of children;

(h) A floor plan for each floor of the house showing the location and size of rooms indicating the rooms that are to be service recipient's bedrooms, caregiver sleeping room(s), rooms of other occupants of home, and the location of windows, fire exit doors, placement of each individual's bed, smoke detectors and fire extinguishers, escape routes and wheelchair ramps;

(i) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities, staffing and caregiver qualifications and evidence of financial responsibility;

(j) A \$20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);

(k) References from three non-relatives that have current knowledge of the applicant's character and capabilities;

(l) A written plan on the coverage for resident manager absences from the adult foster home that has been provided to the local CDDP and the Department; Written information describing the daily operation of the adult foster home, including the use of substitute caregivers and other staff;

(m) A copy of the AFH-DD's house rules.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department or its designee must investigate the information submitted, inspect the home and conduct an orientation with the applicant. Applicants must attend a local orientation offered by the local CDDP prior to being licensed. Upon submission and completion of the application and the process described, the Department will determine compliance with the rules.

(6) The provider will be given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from date of inspection.

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(7) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Department or its designee. Applicants must be in compliance with these Administrative Rules before a license is issued. If cited deficiencies are not corrected within the timeframes specified by the Department or its designee, the application will be denied. The application fee is non-refundable.

(8) The applicant may withdraw a new or renewal application at any time during the application process by notifying the Department. The application fee is non-refundable.

(9) An applicant whose license has been revoked or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied will not be permitted to make a new application for one year from the date the revocation, surrender or denial is final. The time period may be for a longer period of time if specified in the order revoking or denying the license.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0060

Capacity

(1) Maximum Capacity. The Adult Foster Home maximum capacity is limited to five adults who require care and are unrelated to the provider by blood or marriage.

(2) Limits to Capacity. The number of individuals permitted to reside in an AFH will be determined by the ability of the caregiver to meet the care needs of the individuals, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children, adult relatives and elderly. In determining maximum capacity, consideration will be given to whether children over the age of five have a bedroom separate from their parents.

(3) Respite included. Individuals receiving respite service are included in the licensed capacity of the home.

(4) Day care included. Individuals receiving day care services are included in the licensed capacity of the home.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0070

Classification of Adult Foster Homes for Persons with Developmental Disabilities

(1) A Provisional, Limited, Level 1, Level 2B, or Level 2M license may be issued by the Department based upon the qualifications of the applicant and the resident manager, if there is one, and compliance with the following requirements.

(2) A Provisional AFH-DD license may be issued by the Department if:

(a) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the Adult Foster Home.

(b) The applicant meets the standards of OAR 411-360-0110, Qualifications of Adult Foster Home Providers, Resident Managers and Other Caregivers and OAR 411-360-0070, Classification of Adult Foster Home for Persons with Developmental Disabilities, except for completing the training and testing requirements.

(c) A provisional license is valid for 60 days from the date of issue and is not renewable.

(3) A Limited AFH-DD license may be issued by the Department if:

(a) The applicant meets the qualifications listed in OAR 411-360-0110(1)(a-i) Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers and the home meets the requirements listed in OAR 411-360-0130 Facility Standards;

(b) The applicant acquires any additional training necessary to meet the needs of the individual; and

(c) The license will be limited to the care of the named person only and the individual receiving care is named on the license.

(4) A Level 1 AFH-DD license may be issued by the Department if the applicant and resident manager, if any:

(a) Meet the qualifications listed in OAR 411-360-0110 Qualifications for Adult Foster Providers, Resident Manager and Other Caregivers and completes the training requirements outlined in OAR 411-360-0120, Training Requirements for Providers, Resident Managers and Substitute Caregivers and

(b) The home and applicant are in compliance with OAR 411-360-0080 Issuance of a license.

(5) A Level 2B AFH-DD license may be issued only by the Department only if the applicant or resident manager has met the criteria for a Level 1 home and in addition, has met the following criteria:

(a) Has completed the training requirements outlined in OAR 411-360-0120 Training Requirements for Provider, Resident Manager and Substitute Caregivers;

(b) Has the equivalent of one year of full-time experience in providing direct care to individuals;

(c) Has received OIS-G certification by a state approved trainer;

(d) Has completed additional hours of advanced behavior intervention training per year, based on the support needs of the person, if available from the Department;

(e) Has been certified in CPR and First Aid by a recognized training agency; and

(f) Intends to provide care and support to more than one individual who exhibit behavior that poses a significant danger to the individual. Examples include but are not limited to:

(A) Acts or history of acts that have caused injury to self or others requiring medical treatment;

(B) Use of fire or items to threaten injury to persons or damage to property;

(C) Acts that cause significant damage to homes, vehicles, or other properties;

(D) Actively searching for opportunities to act out thoughts that involve harm to others.

(6) A Level 2B AFH-DD provider will have a transition plan upon entry and a behavior support plan within 60 days of placement that:

(a) Emphasizes the development of the functional alternative and positive approaches and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning intervention will never be used; and

(d) Is evaluated by the ISP Team through review of specific data at least every six months to assess the effectiveness of the procedures.

(7) If a provider serves or intends to serve more than one individual who exhibits behavior that pose a significant danger to the individual or others, the provider must be licensed as a Level 2B AFH-DD.

(8) A Level 2M AFH-DD license may be issued by the Department only if the applicant or resident manager has met the requirements for a Level 1 AFH-DD and meets the following additional criteria:

(a) Has the equivalent of one year of full-time experience in providing direct care to individuals;

(b) Is a health care professional such as a registered nurse (RN), or licensed practical nurse (LPN); or has the equivalent of two years full-time experience providing care and support to individual(s) who have a medical condition that is serious and could be life-threatening;

(c) Has been certified in CPR and First Aid by a recognized training agency;

(d) Can provide current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver; and

(e) Has fulfilled a minimum six of the ten hours of annual training requirements in specific medical training; and

(f) Intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions; and

(E) A terminal illness that requires hospice care.

(9) A Level 2M AFH-DD provider will have a transition plan upon entry and develop, with the ISP Team, a medical support plan within 30 days of placement or whenever there is a change in health status for each individual who has a medical condition that is serious and could be life threatening.

(10) A provider in a 2B or 2M licensed AFH-DD will not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for the AFH-DD.

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(11) The AFH-DD will not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and must not be admitted without prior approval of the Department.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0080

Issuance of a License

(1) The Department will issue a license within 60 days after inspection and investigation, if the home and provider are found to be in compliance with these rules. The license will state the name of the provider, resident manager, address of premises to which license applies, the maximum number of individuals, expiration date and classification level. The licensee will visibly post license in the in the AFH-DD home and the license will be available for inspection at all times.

(2) A limited license may be issued to a provider for the care of a specific individual(s). No other admissions will be made by a provider with this limitation. A provider with a limited license must meet the standards of an adult foster home and acquire any additional training necessary to meet the needs of the individual and may be subject to the requirements for OAR 411-360-0140, Standards and Practices for Health Care; 411-360-0160, Behavior Supports; 411-360-0170, Documentation and Record Requirements; 411-360-0150, General Practices; 411-360-0190, Standards for Admission, Transfers, Respite, Crisis Placements, Discharges and Closure.

(3) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738 the Department may issue a 60-day provisional license to a qualified person, if the Department determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home. A person will be considered to be a qualified person if they are 21 years of age and meet the requirements of a substitute caregiver.

(4) The Department may attach conditions to the license that limit, restrict or specify other criteria for operation of the AFH-DD. The conditions must be posted with the license in the AFH-DD and be available for inspection at all times.

(5) A condition may be attached to a license that restricts admissions to the AFH-DD.

(6) An AFH-DD license is not transferable or applicable to any location or persons other than those specified on the license.

(7) When an AFH-DD is to be sold or otherwise transferred, the new provider must apply for, and obtain, a license prior to the transfer of operation of the AFH-DD.

(8) A license is valid for one year unless revoked or suspended.

(9) The Department will not issue a license to operate an additional AFH-DD to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating any existing home or homes.

(10) The Department will not issue an initial license unless:

(a) The applicant and AFH-DD are in compliance with ORS 443.705 to 443.825 and the rules of the Department;

(b) The Department or its designee has completed an inspection of the AFH;

(c) The Department has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing on the property, in the AFH-DD, or employed by the AFH-DD;

(d) The applicant has demonstrated to the Department the financial ability and resources necessary to operate the AFH-DD;

(e) The Department has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(f) The Department has conducted a background check of the provider or resident manager with regard to abuse of children or adults.

(11) If a resident manager changes during the period of time the license covers, the provider must notify the Department immediately and identify who will be providing care. The provider must submit a request for a change of resident manager to the Department, a criminal record authorization, a current consent form to conduct a background check for child abuse and payment of a \$10.00 fee. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Department's required training and passed the test, a revised license will be issued with the name of the new resident manager.

(12) In seeking an initial license the burden of proof will be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0090

Renewal of a License

(1) The provider must submit a renewal application and fee prior to the expiration date that will keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Department. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD will be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application will include the same information and fee as required for a new application, except that a physician's statement and financial information sheet are not required if the Department or its designee can reasonably assume this information has not changed.

(3) The Department or its designee may investigate any information in the renewal application and will conduct an inspection of the AFH-DD.

(4) The provider will be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Department will require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected within the time frame specified by the Department or its designee, the renewal application will be denied.

(6) The Department will not renew a license unless:

(a) The applicant and the AFH-DD are in compliance with ORS 443.705 to 443.825 and the rules of the Department or its designee;

(b) The Department has completed an inspection of the AFH-DD;

(c) The Department has completed a criminal records check as required by ORS 181.536 through 181.537 and 443.735 on the applicant and any occupant, other than a service recipient, 16 years of age or older who will be residing on the property, in the AFH-DD, or employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof will be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof will be upon the Department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the Department.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0100

Contracts

(1) Providers who care for public assistance individuals must enter into a contract with the Department and follow Department rules and contract requirements governing reimbursement for services and refunds.

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract will include, but is not limited to, an ISP; a schedule of rates; conditions under which the rates can be changed; and the AFH-DD's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) Thirty days prior written notification of increases, additions, and other modifications of the rates to be charged will be given by the provider to private individuals or persons paying for care unless the change is due to a medical emergency resulting in a greater level of care, in which case the notice will be given within ten days of the change.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0110

Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) An AFH-DD provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the residence that is to be licensed as the AFH-DD or if the provider does not live in the residence there must be a resident manager who lives in the AFH-DD;

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest and concern in providing care to persons

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with a developmental disability. Such evidence may include, but not be limited to:

- (A) Certified nurse's aide training;
- (B) Nursing home, hospital or institutional work experience;
- (C) Licensed practical nurse or registered nurse training and experience;
- (D) Training approved by the Department;
- (E) Experience in caring for persons with a developmental disability and home management skills;
- (d) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide 24 hour care for adults who are developmentally disabled. Applicants must have a statement from a physician, on a form provided by the Department, that they are physically and mentally capable of providing care. Applicants with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition.
- (e) Undergo a criminal record check in accordance with Department rules, and be found suitable for licensure by the Department. The Department will evaluate and verify information regarding criminal history;
- (f) Have no founded allegations of abuse of a child.

(g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential service and room and board payments. The applicant must provide the Department with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant, all bankruptcy filings by the applicant, and all unpaid taxes due from the applicant. The Department may require or permit the applicant to provide a current credit report to satisfy this financial requirement. The Department will not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Department will require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Department may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(h) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and appropriate others, and be able to respond appropriately to emergency situations at all times;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(j) Meet the requirements of the licensing classification of the AFH-DD OAR 411-360-0070, Classification of Adult Foster Home for Persons with Developmental Disabilities.

(k) Document annual review of responsibility for reporting abuse or neglect of an individual on forms provided by the Department.

(2) The resident manager will meet the provider qualifications listed in subsections (1)(a) through (k) of this rule.

(3) Substitute caregivers left in charge of individuals for any period of time must have access to individual records and meet the following qualifications:

- (a) Be at least 18 years of age;
- (b) Have a criminal record check in accordance with the current Department rules governing criminal history checks;
- (c) Be notified annually of the substitute caregiver's responsibility as a mandatory reporter of abuse or neglect and documented on forms provided by the Department;
- (d) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and appropriate others, and be able to respond appropriately to emergency situations at all times;
- (e) Know fire safety and emergency procedures;
- (f) Have a clear understanding of job responsibilities, have knowledge of ISP's and be able to provide the care specified for each individual's needs;
- (g) Be able to meet the requirements of a resident manager when left in charge of an AFH-DD for 30 days or longer;
- (h) Not be an individual service recipient of the AFH-DD;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon; and

(j) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide care for adults who are developmentally disabled. Substitute caregivers with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition;

(k) Must meet the training requirements of the licensing classification of the AFH-DD in OAR 411-360-0120.

(4) Providers will not hire or continue to employ a resident manager or substitute caregiver that does not meet the standards stated in this rule.

(5) A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0120 Training Requirements for Providers Resident Managers and Substitute Caregivers

(1) All providers, resident managers, and substitute caregivers must complete the Department's Basic Training Course that includes, but is not limited to, taking and passing an examination on course work and necessary skills. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-360-0270.

(2) All provider and resident manager applicants must complete the Department's Basic Training Course and pass the Basic Training Examination prior to becoming a licensed provider or a resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application will be denied.

(3) All substitute caregivers left in charge of the home in the provider's or resident manager's absence for any length of time will complete the Department's Basic Training Course and pass the Basic Training Examination prior to giving care.

(4) The provider or resident manager will keep documentation of the completed Department Basic Training Course and annual training of substitute caregivers including the date of the training, subject content, name of the agency or organization providing the training and the number of training hours.

(5) Prior to placement of individuals in the home the provider must complete an AFH-DD orientation that, at a minimum covers the requirements of the Oregon administrative rule governing AFH-DD services as provided by the local CDDP.

(6) All provider and resident manager applicants must have current certification in first aid by a recognized training agency.

(7) Annual Training Requirements:

(a) The Department will require at least ten hours of training annually for the provider, resident manager, and substitute caregivers of an AFH-DD that must be documented in the record;

(b) Based on the support or care needs of an individual or individuals in the home, the individual's ISP team may recommend to the Department a waiver of the requirement that a substitute caregiver receive ten hours of annual training. The CDDP and provider may submit a request for a variance indicating the number of hours of training a substitute caregiver requires per year for an individual and attach to the variance a copy of the relevant portions of the ISP.

(8) If a provider, resident manager or substitute caregiver is not in compliance with these rules, the Department may require additional training in the deficient area, whether or not the 10-hour annual training requirement has already been met.

(9) Providers, resident managers or substitute caregivers who perform tasks of care that are delegated by a registered nurse or taught by a physician must:

(10) Receive appropriate training and monitoring from a registered nurse or physician on performance and implementation of task of care;

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

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411-360-0130

Facility Standards

In order to qualify for or maintain a license, an AFH-DD must meet the following provisions.

(1) General Conditions:

(a) Each AFH-DD will maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes, and state and local fire and safety regulations for a single family residence. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP;

(b) The building and furnishings must be clean and in good repair and grounds must be maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There will be no accumulation of garbage, debris, rubbish or offensive odors;

(c) Stairways (interior and exterior) must have handrails and be adequately lighted. A functioning light will be provided in each room, stairway (interior and exterior), and exit way. All light bulbs must be protected with appropriate covers. Yard and exterior steps must be accessible and appropriate to the needs of individuals;

(d) The heating system must be in working order. Areas of the AFH-DD used by individuals will be maintained at no less than 68° during the day (when individuals are home) and 60° during sleeping hours. During times of extreme summer heat, the provider will make reasonable effort to make the individuals comfortable and safe using ventilation, fans or air conditioners;

(e) There must be at least 150 square feet of common space, and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space will not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space will be required if wheelchairs are to be accommodated;

(f) Providers must not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access;

(g) Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(2) Sanitation:

(a) A public water supply will be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly, and records will be retained for two years; corrective action must be taken to ensure potability;

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order;

(c) Garbage and refuse will be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal;

(d) Prior to laundering, soiled linens and clothing will be stored in containers in an area separate from food storage, and kitchen and dining areas. Special pre-wash attention will be given to soiled and wet bed linens;

(e) Sanitation for household pets and other domestic animals will be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by a licensed veterinarian must be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to individuals or guests;

(f) There will be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation;

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids; and

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(3) Bathrooms:

(a) Must provide for individual privacy and have a finished interior, a mirror, an openable window or other means of ventilation, and a window covering. No person will walk through another person's bedroom to get to a bathroom;

(b) Must be clean and free of objectionable odors;

(c) Must have tubs or showers, toilets and sinks in good repair, and hot and cold water. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(d) Must have hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas will not exceed 120 degrees F;

(e) Will have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Must have grab bars for toilets, tubs and showers for individual's safety as required by individual's disabilities;

(g) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals; alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene;

(h) Must have adequate supplies of toilet paper for each toilet and soap for each sink. Individuals will be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals will have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals will be provided with individually dispensed paper towels.

(4) Bedrooms:

(a) Bedrooms for all household occupants will:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated and lighted with at least one openable window that meets fire regulations subsection (7)(a) of this rule;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and

(E) Have no more than two persons per room;

(b) Providers, resident managers or family members must not sleep in areas designated as common use living areas, nor share bedrooms with service recipients;

(c) There must be an individual bed for each individual consisting of a mattress and box springs at least 36 inches wide. Cots, rollaways, bunks, trundles, couches, futons and folding beds must not be used for individuals. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase and blankets adequate for the weather. Sheets and pillowcases must be laundered at least weekly, and more often if necessary. Waterproof mattress covers must be used for incontinent individuals. Individual's beds will not be used by day care persons;

(d) Each bedroom must have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for individuals;

(e) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility;

(f) Individual bedrooms must be in close enough proximity to provider to alert provider to nighttime needs or emergencies, or be equipped with a call bell or intercom.

(g) Bedrooms must have at least one window or exterior door that will readily open from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that can be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(h) Smoking is not permitted in any bedroom including that of an individual, provider, resident manager, caregiver, boarder, or family member.

(5) Meals:

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(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by the physician. There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration must be given to cultural and ethnic backgrounds, as well as, food preferences of individuals in food preparation. Special consideration must be given to individuals with chewing difficulties and other eating limitations. Food will not be used as an inducement to control the behavior of an individual;

(b) Menus for the coming week that consider individual preferences will be prepared and posted weekly in a location that is accessible to individuals and families. Menu substitutions in compliance with subsection (4)(a) of this rule are acceptable;

(c) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the provider must:

(A) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified texture or special diets are prepared and served to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage;

(e) Utensils, dishes, glassware and food supplies must not be stored in bedrooms, bathrooms, or living areas;

(f) Meals must be prepared and served in the AFH-DD where individuals live. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual;

(g) Utensils, dishes and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sani-cycle is recommended;

(h) Food storage and preparation areas and equipment must be clean, free of obnoxious odors and in good repair; and

(i) Home-canned foods must be processed according to the current guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(6) Telephone:

(a) A telephone must be provided in the AFH-DD that is available and accessible for individuals' use for incoming and outgoing calls;

(b) Emergency telephone numbers for the local CDDP, Police, Fire, Medical and other emergencies will be posted by the telephone including an emergency number to reach a provider who does not live in the AFH-DD. Telephone numbers for making complaints or a report of alleged abuse to the Department; the local CDDP and the Oregon Advocacy Center must also be posted;

(c) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day;

(d) AFH-DD telephone numbers must be listed in the local telephone directory.

(7) Safety:

(a) Buildings must meet all applicable state building, mechanical, and housing codes for fire and life safety. The AFH-DD will be inspected for fire safety by the local or state fire agencies or an inspector designated by the Department using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. The standards will include Appendix 1-E of the Uniform Fire Code, as in effect, after September 9, 1990 or any successor rules as they may be revised from time to time;

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves

to prevent residents with ambulation or confusion problems from coming in contact with the stove. Un-vented portable oil, gas or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction;

(c) Extension cord wiring must not be used in place of permanent wiring;

(d) Hardware for all exit doors and interior doors must have simple hardware that cannot be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have functional and activated alarm system to alert a caregiver of an unsupervised exit by an individual.

(e) Emergency Procedures:

(A) General fire drill requirements. The provider must conduct unannounced evacuation drills when individuals are present, one every 90 days with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening and night with exit routes being varied based on the location of a simulated fire.

(B) Written fire drill documentation required. Written documentation must be made at the time of the fire drill and kept by the provider for at least two years following the drill. Fire drill documentation must include:

(i) The date and time of the drill or simulated drill;

(ii) The location of the simulated fire and exit route;

(iii) The last names of all individuals and provider(s) present on the premises at the time of the drill;

(iv) The type of evacuation assistance provided by provider(s) to individuals;

(v) The amount of time required by each individual to evacuate; and

(vi) The signature of the provider(s) conducting the drill.

(C) The Individual Support Plan must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire alarm, and how to exit from the AFH-DD in an emergency;

(D) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license that include, but are not limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license;

(E) The provider will provide, keep updated, and post a floor plan on each floor containing room sizes, location of each individual's bed, window, exit doors, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes and wheelchair ramps. A copy of this drawing must be submitted with the application and updated to reflect any change;

(F) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including basement.

(f) Smoke detectors. Battery operated smoke alarms with a 10-year battery life and hush feature must be installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6" and 12" from the ceiling and not within 12" of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition;

(g) Portable fire fighting equipment. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and must be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation maintained.

(h) Special hazards:

(A) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by individuals and vandals. Firearms on the premises of an AFH-DD must be stored in a locked permanent enclosure. The firearms permanent enclosure must be located in an area of the home that is not readily accessible to individuals and all ammunition must be stored in a separate, locked location;

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(B) Smoking regulations will be adopted to allow smoking only in designated areas. Smoking will be prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design will be provided in areas where smoking is permitted;

(C) Cleaning supplies, medical sharps containers, poisons and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0140

Standards and Practices for Health Care

(1) Individual health care. The individual must receive care that promotes their health and well being as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary health care provider whom he or she, the parent, guardian or legal representative has chosen from among qualified providers;

(b) The AFH-DD must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by the qualified health care providers;

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) A physician's or qualified health care provider's written, signed order is required prior to the use or implementation of any of the following:

- (A) Prescription medications;
- (B) Non prescription medications except over the counter topicals;
- (C) Treatments other than basic first aid;
- (D) Modified or special diets;
- (E) Adaptive equipment; and
- (F) Aids to physical functioning.

(e) The AFH-DD provider must implement a physician's or qualified health care provider's order;

(f) Injections may be self-administered by the individual, or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, Department 047. Documentation regarding the training or delegation must be maintained in the individual's record;

(2) Required documentation. The AFH-DD provider must maintain records on each individual to aid physicians, licensed health professionals and the program in understanding the individual's medical history. Such documentation must include:

(a) A list of known health conditions, medical diagnoses; known allergies and immunizations;

(b) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(c) A record of known hospitalizations and surgeries.

(3) Medication procurement and storage. All medications must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and

(c) Kept in a secured locked container and stored as indicated by the product manufacturer.

(4) Medication administration. All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(a) The name of the individual;

(b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(c) For over the counter topical medications without a physician's order, a transcription of the printed instructions from the package;

(d) Times and dates of administration or self administration of the medication;

(e) Signature of the person administering the medication or the person monitoring the self administration of the medication;

(f) Method of administration;

(g) An explanation of why a PRN (i.e., as needed) medication was administered;

(h) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(i) An explanation of any medication administration irregularity; and

(j) Documentation of any known allergy or adverse drug reaction.

(5) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(6) Self-administration medications unavailable to other individuals. The AFH-DD must ensure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(7) Use of psychotropic medications.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or health care provider through a written order;

(B) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences; and

(b) PRN (as needed) psychotropic medication orders will not be allowed.

(8) Balancing test for psychotropic medications. When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the DHS Balancing Test Form or by inserting the required form content into the AFH-DD provider's forms. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(a) The AFH-DD provider must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

(b) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

(9) Adverse medication effects safe guards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible all prescription medication, except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage strength and amount being disposed;

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) Direct nursing services. When direct nursing services are provided to an individual the provider must:

(a) Coordinate with the nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the individual's health needs; and

(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(12) Delegation and Supervision of Tasks of Nursing Care. Tasks of nursing care may be delegated by a registered nurse to providers and other caregivers only in accordance with Oregon State Board of Nursing Administrative Rule 851-047-0000.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

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Personal Care Services:

Individuals living in the AFH-DD and receiving services from the Department must not receive Personal Care Services funded through the state Title XIX Medicaid State Plan.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0160

Behavior Support

Physical Intervention. Circumstances allowing the use of physical intervention. The AFH-DD must only employ physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee.

(1) Physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others is at risk, and the ISP team has authorized the procedures as documented by an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

(b) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Training. Provider(s), Resident Manager and substitute caregivers who support individuals who have a history of behavior that may require the application of physical intervention, and when the ISP team has determined that there is probable cause for future application of physical intervention, must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in the personnel file of the provider, resident manager and substitute caregiver.

(3) Modification of OIS physical intervention procedures. The AFH-DD provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention technique(s). The request for modification of physical intervention technique(s) must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Physical intervention techniques in emergency situations. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the AFH-DD provider or resident manager or designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Require submission of an incident report to the CDDP services coordinator, or other Department designee (if applicable) and personal agent (if applicable) no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Incident report. Any use of physical intervention(s) must be documented in an incident report. The report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the caregiver(s) applying the physical intervention;

(f) The name(s) and position(s) of the caregivers witnessing the physical intervention;

(g) The name and position of the person conducting the review of the incident that includes the follow-up to be taken to prevent a recurrence of the incident.

(6) Copies submitted. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP services coordinator or other Department designee (if applicable) unless the physical intervention results in an injury. The CDDP must be immediately notified of any physical interventions resulting in an injury. The incident must be docu-

mented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable), within one working day of the incident. Copies of incident reports not associated with protective service investigations will be provided to the personal agent (if applicable) and the person's legal guardian (if applicable) within the timeframes specified above.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0170

Documentation and Record Requirements

(1) Individual Records. A record will be developed, kept current, and available on the premises for each individual admitted to the AFH-DD:

(a) The provider will maintain a summary sheet for each individual in the home. The record must include:

(A) The individual's name, current and previous address, date of entry into AFH-DD, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number, where applicable, guardianship status; and

(B) The name, address and telephone number of:

(i) The individual's legal representative, family, advocate or other significant person;

(ii) The individual's preferred primary health provider and designated back up health care provider or clinic;

(iii) The individual's preferred dentist;

(iv) The individual's day program or employer; if any;

(v) The individual's services coordinator; and

(vi) Other agency representatives providing services to the individual.

(b) Individual records must be available to representatives of the Department conducting inspections or investigations, as well as to individuals to whom the information pertains, their authorized representative or other legally authorized persons;

(c) Individual and financial records. Individual records must be kept for a period of at least three years. If an individual moves or the AFH-DD closes, copies of pertinent information will be transferred to the individual's new place of residence. Financial records must be maintained for at least seven years; and

(d) In all other matters pertaining to confidential records and release of information, providers must comply with ORS 179.505.

(2) Resident Account Record

For those individuals not yet capable of managing their own money, as determined by the ISP Team or guardian, the provider(s) must prepare and maintain a separate and accurate written record for each individual of all money received or disbursed on behalf of or by the individual.

(a) The record must include:

(A) The date, amount and source of income received;

(B) The date, amount and purpose of funds disbursed; and

(C) Signature of the provider(s) making each entry.

(b) Purchases of \$10.00 or more made on behalf of a individual must be documented by receipts unless a smaller amount is otherwise specified by the ISP Team.

(c) Personal Incidental Funds (PIF) for individuals are to be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet) and addressed in the ISP;

(d) Each Resident Account Record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month. The record must show that part of the fee was used to pay for the individual's share of the upcoming month's rent. The remaining portion of the room and board fee must be used for the provision of meals, laundry, and housekeeping to the individual (see definition of room and board).

(e) Reimbursement to individual. The provider must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of the provider, resident manager or substitute caregiver of the AFH-DD or for any funds within the custody of the provider(s) that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(3) Individuals' Personal Property Record: The provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider(s) making each entry; and

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(e) A signed and dated annual review of the record for accuracy.

(4) Individual Support Plan: A health and safety transition plan must be developed at the time of admission for the first sixty (60) days of service and a complete ISP must be developed by the end of 60 days. It must be updated annually or whenever the individual's support needs change.

(a) A completed ISP must be documented on the Department mandated Foster Care ISP Form that includes the following:

(A) What is most important to the person and what works and doesn't work;

(B) A review of the individual's support needs (as identified on the mandated ISP form);

(C) The type and frequency of supports to be provided; and

(D) The person responsible for carrying out the plan.

(E) A copy of the employment or ATE provider's plan must be integrated or attached to the AFH-DD ISP, for persons also served in an employment or other Department funded day service.

(b) The ISP must include at least six hours of activities each week that are of interest to the individual, not including television or movies made available by the provider. Activities available in the community and made available or offered by the provider or the CDDP may include but are not limited to:

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and

(F) Other services required to meet a individual's needs as defined in the ISP.

(5) House Rules: A copy of the written house rules with documentation that the rules have been discussed by the provider with the individual annually. House rules must be in compliance with rules governing the rights of individuals, OAR 411-360-0170(9)(a-t).

(6) Unusual Incidents: A written report of all unusual incidents relating to an individual will be sent to the CDDP within 5 working days of the incident. The report will include how and when the incident occurred, who was involved, what action was taken by the provider or substitute caregiver and the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(7) General Information: The provider will maintain any other information or correspondence pertaining to the individual;

(8) Monthly Progress Notes: The provider will maintain monthly progress notes for each individual residing in the home, regarding the success of the ISP, any medical, behavioral or safety issues or any other events that are significant to the individual.

(9) Individuals' Bill of Rights: The Provider will abide by the Individuals' Bill of Rights, post them in a location that is accessible to individuals, their parents, guardians or legal representatives. A copy of the Individual's Bill of Rights along with a description of how to exercise these rights will be given to each individual and parent, guardian, or legal representative by the provider. These rights will be reviewed annually or as changes occur by the provider with the individual and any parent, guardian or legal representative. The Bill of Rights states each individual has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(c) Receive appropriate care and services and prompt medical care as needed;

(d) Adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in 411-360-0130(6)(a-d);

(e) Have access to and participate in activities of social, religious, and community groups;

(f) Be able to keep and use personal clothing and possessions as space permits;

(g) Be free of discrimination in regard to race, color, national origin, sex, or religion;

(h) Manage his or her financial affairs unless legally restricted;

(i) A safe and secure environment;

(j) Written notices prior to rate increases and evictions;

(k) A written agreement regarding services to be provided and agreed upon rates;

(l) Voice grievance without fear of retaliation;

(m) Freedom from training, treatment, chemical or physical restraints except as agreed to, in writing, in a individual's ISP;

(n) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;

(o) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(p) Freedom from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;

(q) Freedom from abuse and neglect;

(r) The opportunity to contribute to the maintenance and normal activities of the household; and

(s) Access and opportunity to interact with persons with or without disabilities.

(t) The right not to be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070, and the opportunity for a hearing as provided in ORS 443.738 (11)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0180

General Practices

General Practices. The provider must:

(1) Conspicuously post the state license where it can be seen by individuals;

(2) Explain and document in the individual's file that a copy of the Resident's Bill of Rights is given to each individual at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints;

(3) Develop written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization or death. House rules will be discussed with individuals and their families at the time of admission, reviewed annually and be posted in a conspicuous place in the AFH-DD. House rules are subject to review and approval by the Department or designee and may not violate individual's rights as stated in ORS 430.210, 443.739 and 411-360-0170(9)(a-t);

(4) Cooperate with Department personnel or designee in complaint investigation procedures, abuse investigations and protective services, planning for individual care, application procedures and other necessary activities, and allow access of Department personnel to the AFH-DD, its individuals, and all records;

(5) Give care and services, as appropriate to the age and condition of the individual(s), and as identified on the ISP. The provider will be responsible for ensuring that physicians' orders and those of other medical professionals are followed, and that the individual's physicians and other medical professionals are informed of changes in health status and if the individual refuses care;

(6) In provider's absence, have a substitute caregiver on the premises who can provide care or services as required by the age and condition of the individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the substitute caregiver;

(7) A provider, resident manager, or substitute caregiver must be present in the home at all times individuals are present, unless specifically stated in the ISP, and granted as a variance by the Department;

(8) Allow individual(s) to exercise all civil and human rights accorded to other citizens;

(9) Not allow or tolerate physical, sexual or emotional abuse or punishment; exploitation; or neglect of individuals;

(10) Provide care and services as agreed to in the ISP;

(11) Keep information related to individual(s) confidential as required under ORS 179.050;

(12) Assure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the CDDP and Department;

(13) Not admit individuals without developmental disabilities without the express permission of the Department or designee. The provider must notify the CDDP prior to admitting an individual not referred for placement by the CDDP;

(14) Notify the Department and CDDP prior to announcing a planned closure to individuals and families. The provider must give individuals,

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families, and the CDDP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety or well-being of individuals, providers or caregivers. If a provider has more than one AFH-DD, individuals cannot be shifted from one AFH-DD to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members and CDDP's;

(15) Exercise reasonable precautions against any conditions that could threaten the health, safety or welfare of individuals;

(16) Immediately notify the appropriate ISP Team members (in particular the services coordinator and family or guardian) of any unusual incidents that include the following:

- (A) Any significant change in medical status;
- (B) An unexplained or unanticipated absence from the AFH-DD;
- (C) Any alleged or actual abuse of the individual;
- (D) Any major behavioral incident, accident, illness, or hospitalization; or
- (E) If the individual contacts, or is contacted by, the police; or
- (F) The individual dies.

(18) Write an incident report for any unusual incident and forward copy of the incident report to the CDDP within five working days of the incident unless the incident should be referred immediately for a protective services investigation. Copies of incident reports not involving a protective services investigation will be provided to the guardian or personal agent, when applicable.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0190

Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(1) Admission. All individuals considered for admission into the AFH-DD must:

(a) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Be referred by the Community Developmental Disability Program or have prior written approval of the CDDP or Department if the individual's services are paid for by the Department; or

(d) Be placed with the agreement of the Community Developmental Disability Program if the individual is either private pay or not developmentally disabled.

(2) Information required for admission. At the time of the referral the provider will be given:

(a) A copy of the individual's eligibility determination document;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes, where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) Results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

(e) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable;

(g) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, Individual Support Plan and Individual Education Plan if applicable.

(3) Admission meeting. An ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-admission information required by OAR 411-360-0190(2)(a)-(g);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(4) The provider will retain the right to deny admission of any individual if they feel the individual cannot be managed effectively in the AFH-DD, or for any other reason specifically prohibited by this rule.

(5) AFH-DD's will not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the CDDP or the Department.

(6) Transfers:

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the adult foster home without 30 days advance written notice to the individual, the individual's legal representative, guardian or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care;

(C) The AFH-DD has had its license revoked, not renewed, or voluntarily surrendered;

(D) The individual's care needs exceed the ability of the provider; or

(E) There is a mutual decision made by the individual and the ISP team that a transfer is in the person's best interest and all team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider will be given the opportunity for hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member and CDDP staff member.

(7) Respite. Providers will not exceed the licensed capacity of their AFH-DD. However, respite care of no longer than two weeks duration may be provided to one or more persons if the addition of the respite person does not cause the total number of individuals to exceed five. Thus, a provider may exceed the licensed number of individuals by one or more respite individuals, for two weeks or less, if approved by the CDDP or Department, and:

(a) If the total number of individuals does not exceed five;

(b) There adequate bedroom and living space available in the AFH-DD; and

(c) The provider has information sufficient to provide for the health and safety of individuals receiving respite.

(8) Crisis Services. Qualifications for crisis services. All individuals considered for crisis services funded through Adult Foster Care services must:

(a) Be referred by the Community Developmental Disability Program or Department;

(b) Be determined to have a developmental disability by the Department or its designee;

(c) Be determined to be eligible for DD Services as defined in OAR 411-360-0020(31)(a-e) or any subsequent revision thereof; and

(d) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(9) Support Services Plan of Care and Crisis Addendum required. Individuals receiving support services under Chapter 411 Division 340, and receiving crisis services in an AFH-DD must have a Support Services Plan of Care and a Crisis Addendum upon admission to the AFH-DD.

(10) Plan of Care required for persons not enrolled in support services. Individuals, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a transition plan on admission that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(11) Admission meeting required. Admission meetings are required for individuals receiving crisis services.

(12) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

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(13) Waiver of appeal rights for exit. Individuals receiving crisis services do not have appeal rights regarding exit upon completion of the Crisis Plan.

(14) Exit.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in paragraphs (6)(a)(A) through (E) of this rule. The provider will give at least 30 days written notice to an individual and the Department before termination of residency, except where undue delay might jeopardize the health, safety or well-being of the individual or others;

(b) The provider will promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves.

(15) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from the AFH-DD unless the individual, or individual's guardian is requesting exit;

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(16) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual and his or her guardian or legal representative request an immediate move from the AFH-DD home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(17) Closing. Providers must notify the Department in writing prior to a voluntary closure of an AFH-DD, and give individuals, families, and the CDDP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of individuals, providers or caregivers. If a provider has more than one AFH-DD, individuals cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members and the CDDP. A provider must return the license to the AFH-DD to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0200

Adjustment, Suspension or Termination of Payment

(1) The CDDP or Department may adjust, suspend, or terminate payment(s) to a provider when any of the following conditions occur:

(a) The provider's AFH-DD license is revoked, suspended, or terminated;

(b) Upon finding that the provider is failing to deliver any service as agreed to in the ISP;

(c) When funding, laws, regulations, or the CDDP or Department priorities change such that funding is no longer available, redirected to other purposes, or reduced;

(d) The individual's service needs change;

(e) The individual is absent without providing notice to the provider for five or more consecutive days;

(f) The individual is determined to be ineligible for services; or

(g) The individual moves, with or without notice, from the AFH-DD; the provider will be paid only through the last day of the individual's occupancy.

(2) The CDDP or Department is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0210

Inspections

(1) The Department or designee will conduct an inspection of an AFH-DD:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Department has probable cause to believe that an AFH-DD has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections of an AFH-DD:

(a) Anytime such inspections are authorized by these rules and any other time the CDDP or Department considers it necessary to determine if an AFH-DD is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors will be permitted access to enter and inspect the AFH-DD regarding fire safety upon request of the CDDP or Department.

(4) Department or CDDP staff will have full access and authority to examine, among other things, facility and individual records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Department or CDDP staff will have authority to interview the provider, resident manager, caregiver(s), and individuals. Interviews will be confidential and conducted in private, and will be confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Department or CDDP staff for the purpose of inspection and investigation.

(7) The Department or CDDP staff has authority to conduct inspections with or without advance notice to the provider, substitute caregivers, or an individual of the AFH-DD. The Department or CDDP will not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department or CDDP staff is not permitted access or inspection a search warrant may be obtained.

(9) The inspector will respect the private possessions and living area of individuals, providers and caregivers while conducting an inspection.

(10) Completed reports on inspections, except for confidential information, will be available to the public, upon request of the Department or CDDP, during business hours. A copy of the inspection report will be given to the licensee within ten working days of completion of the final report.

(11) For individuals receiving services authorized or funded by a CDDP, the Department or its designee must investigate allegations of abuse as defined in OAR 411-360-0020.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee, has determined to initiate an investigation, the provider will not conduct an internal investigation without prior authorization from the Department or its designee. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred;

(b) If the alleged victim is in danger or in need of immediate protective services;

(c) If there is reason to believe that a crime has been committed; and

(d) What, if any, immediate personnel actions will be taken.

(13) The Department or its designee will complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1) or any successor rules. The report will include the findings based upon the abuse investigation.

(14) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(15) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report that are public records and not exempt from disclosure under the public records law will be provided to the appropriate

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provider. The provider will implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(16) A provider will not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(17) Any provider who retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, not withstanding any other remedy provided by law.

(18) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes, but is not limited to:

- (a) Discharge or transfer from the AFH-DD, except for clinical reasons;
- (b) Discharge from or termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its individuals.

(19) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0220 Complaints

(1) The Department or CDDP will furnish each AFH-DD with a Complaint Notice that must be posted in a conspicuous place, stating the telephone number of the Department and the CDDP and the procedure for making complaints.

(2) Any person who believes these rules OAR 411-360-0010 through 0310 have been violated may file a complaint with the Department or CDDP.

(3) The Department or CDDP will investigate any complaint regarding the AFH-DD.

(4) A copy of all AFH-DD complaints will be maintained by the Department. All complaints and action taken on the complaint, indexed by the name of the provider, will:

- (a) Be placed into the public file at the Department. (Information regarding the investigation of the complaint will not be filed in the public file until the investigation has been completed);
 - (b) Protect the privacy of the complainant and the individual; and
 - (c) Treat the names of the witnesses as confidential information.
- (5) Providers who receive substantiated complaints pertaining to the health, safety or welfare of individuals may have their licenses suspended, revoked or not renewed, or may have conditions placed on the license.

(6) The AFH-DD provider, resident manager, or caregiver must not retaliate in any way against any individual after a complaint has been filed with the Department. Retaliation may include, but is not limited to:

- (a) Increasing charges;
- (b) Decreasing services, rights or privileges;
- (c) Threatening to increase charges or decrease services, rights or privileges;

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH-DD; or

(e) Abusing, harassing, or threatening to harass or abuse an individual in any manner.

(7) A complainant, witness or caregiver of an AFH-DD must not be subject to retaliation by a provider or resident manager for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment, or restriction of access to either the AFH-DD or an individual.

(8) Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Department upon request subject to the Department's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests subject to Federal and State confidentiality laws.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0230

Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Department determines that abuse has occurred, the provider must be notified verbally to cease the abusive act immediately. The Department will follow-up with a written confirmation of the warning to cease the abusive act, and will include notification that further sanctions may be imposed.

(2) If an inspection or investigation results in a violation of the rules other than abuse, the Department will notify the provider in writing of violations of these rules.

(3) The notice of violation will state the following:

(a) A description of each conduct or condition that constitutes a violation;

(b) Each regulation that has been violated;

(c) Except in cases of abuse, a specific time frame for correction, but no later than 60 days after receipt of the notice;

(d) Sanctions that may be imposed against the AFH-DD for failure to correct the violations;

(e) Right to contest the violations if an administrative sanction is imposed; and

(f) The right to request a variance as provided in OAR 411-360-0030.

(4) At any time after receipt of a notice of violations or an inspection report, the licensee or the Department may request a conference. The conference will be scheduled within 10 days of a request by either party.

(5) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules.

(6) The request by a licensee or the Department for a conference will not extend any previously established time limit for correction.

(7) The licensee will notify the Department in writing of the correction of violations no later than the date specified in the notice of violation.

(8) The Department or its designee will conduct a re-inspection of the AFH-DD after the date the Department or the CDDP receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(9) For violations that present a serious and immediate threat to the health, safety or welfare of individuals, the notice of violation will order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Department will inspect the AFH-DD after the 24 hour period to determine if the violations have been corrected as specified in the notice of violation.

(10) If individuals are in serious and immediate danger, the license may be suspended or revoked immediately and arrangements made to move the individuals.

(11) If, after inspection of the AFH-DD, the violations have not been corrected by the date specified in the notice of violation or if the Department has not received a report of compliance, the Department will institute one or more of the following actions:

(a) Imposition of an administrative sanction;

(b) Filing of a criminal complaint.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0240

Administrative Sanction

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, revocation, or non-renewal of license;

(d) Immediate suspension or revocation of license.

(2) If the Department imposes an administrative sanction, it will serve a notice of administrative sanction upon the licensee personally or by certified or registered mail.

(3) The notice of administrative sanction will state:

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

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(f) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the Department will issue a final order by default if the licensee fails to request a hearing within the specified time or fails to appear for the contested case hearing.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0250

Conditions

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse of an adult;

(d) The AFH-DD is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements may not be made into that AFH-DD.

(2) Imposing conditions. Conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of individuals;

(b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all individuals;

(c) Requiring additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD; and

(g) Suspending admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and will be given an opportunity to request a hearing under ORS Chapter 183.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Department administrator or designee of conditions imposed by the CDDP or Department. The review does not diminish the provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the duration of the licensure period (one year) or limited to some other shorter period of time. If the conditions correspond to the licensing period, the reasons for the conditions will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions will be indicated on the attachment to the license.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0260

Civil Penalties

(1) Civil penalties, not to exceed \$100 per violation to a maximum of \$250, may be assessed for violation of these rules, with the exception of substantiated abuse.

(2) Civil penalties of a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(3) In addition to any other liability or penalty, the Department may impose a civil penalty for any of the following:

(a) Operating the AFH-DD without a license;

(b) The number of individuals exceeds the licensed capacity;

(c) The provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;

(d) The AFH-DD is unable to provide adequate level of care to individuals;

(e) There is retaliation or discrimination against an individual, family, employee, or any other person for making a complaint against the AFH-DD;

(f) The provider fails to cooperate with the Department, physician, registered nurse, or other health care professional in carrying out an individual's care plan; or

(g) Violations are found on two consecutive inspections of an AFH-DD after a reasonable amount of time, prescribed for elimination of the violations, has passed.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to this rule, the Department will consider the following factors:

(a) The past history of the provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to AFH-DD foster homes;

(c) The economic and financial conditions of the provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety and well being of the individuals.

(5) Any civil penalty imposed under this section will become due and payable when the provider incurring the penalty receives a notice in writing from the Department. The notice will be sent by registered or certified mail and will include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(6) Timeline to make written application for a hearing. The provider to whom the notice is addressed, will have 10 days from the date of service of the notice in which to make a written application for a hearing before the Department.

(7) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) Failure to request a hearing within 10 days. If the provider notified fails to request a hearing within 10 days an order may be entered by the Department assessing a civil penalty.

(9) A hearing must be held and a final order issued within 180 days of the request of the hearing.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may be filed in accordance with provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a AFH-DD issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(13) Judicial review of civil penalties. Judicial review of civil penalties imposed under ORS 441.710 will be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) Penalties recovered. All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0270

Denial, Revocation or Non-renewal of License

(1) The Department will deny, revoke, or refuse to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD; or

(b) The applicant or provider has a denied criminal record clearance from the Department.

(c) The applicant or provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(d) The applicant or provider fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

(e) The provider refuses to allow access and inspections;

ADMINISTRATIVE RULES

(f) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation or refusal to renew was due in any part to abuse of an adult or child, creating a threat to the individuals or failure to possess physical health, mental health or good personal character;

(g) If the denial, suspension, revocation or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Department by clear and convincing evidence his or her ability and fitness to operate an AFH-DD. If the applicant or provider does not meet this burden, then the Department will deny, revoke or refuse to renew the license;

(h) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Department by clear and convincing evidence that the person does not pose a threat to the individuals;

(A) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

- (i) Resides with the person;
- (ii) Employs the person in the AFH-DD;
- (iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For purposes of this section only, "present action", means the date of the notice of denial, suspension, revocation or refusal to renew.

(2) The Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider:

(a) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or disruption of utility services due to failure to pay bill(s);

(b) Has threatened the health, safety, or welfare of any individual;

(c) Has a substantiated finding of abuse of an adult;

(d) Has a medical or psychiatric problem that interferes with the ability to provide care.

(3) Failure to disclose requested information on the application; provision of incomplete or incorrect information on the application; or failure to renew their license will constitute grounds for denial or revocation of the license.

(4) Any administrative sanction imposed under this section will receive a notice in writing from the Department. The notice will be sent by registered or certified mail and will include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the administrative sanction imposed; and

(d) A statement of the right to request a hearing.

(5) Timeline to make written application for a hearing. The provider to whom the notice is addressed, will have 60 days from the date of service of the notice in which to make a written application for a hearing before the Department when the administrative sanction is a denial of a license. The provider will have 90 days when the administrative sanction is a non-renewal of a license.

(6) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions or ORS Chapter 183.

(7) Failure to request a hearing. If the provider notified fails to request a hearing within the time period specified in the notice an order may be entered by the Department assessing a civil penalty.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0275

Immediate Suspension or Revocation

(1) A license may be immediately suspended or revoked upon a finding by the Department of Human Services for any of the following:

(a) There exists a threat to the health, safety or welfare of any individual.

(b) There is reliable evidence of abuse, neglect or exploitation of any individual.

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted thereunder.

(2) If the license is immediately suspended or revoked for the reason of abuse, neglect or exploitation of an individual, the provider may request a review in writing within 10 days after notice of the immediate suspension or revocation. If a request is made, the Director shall review all material relating to the allegation of abuse, neglect or exploitation and to the immediate suspension or revocation within 10 days of the request. The Director shall determine, based on review of the material, whether or not to sustain the decision to immediately suspend or revoke. If the Director determines not to sustain the decision, the license shall be restored immediately. The decision of the Director is subject to judicial review as a contested case under ORS chapter 183.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended or revoked, the Department may withhold service payments until the defective situation is corrected. For protection of individuals, the Department may arrange for them to move.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0280

Criminal Penalties

(1) Operating an AFH-DD without a license is punishable as a Class C misdemeanor.

(2) Refusing to allow Department access to the AFH-DD for inspection, Department access to individuals in order to interview individuals privately or to review records, or state and local fire inspector access to the AFH-DD regarding fire safety, is punishable as a Class B misdemeanor.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0290

Enjoinment of Adult Foster Home (AFH) Operation

The Department may commence an action to enjoin operation of an AFH pursuant to ORS 443.775(5):

(1) When an AFH-DD is operated without a valid license; or

(2) After notice of revocation or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0300

Zoning for Adult Foster Homes

An AFH-DD is a residential use of property for zoning purposes. An AFH-DD is a permitted use in any residential zone, including a residential zone that allows a single family dwelling, and in any commercial zone that allows a single-family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an AFH-DD in these zones that is more restrictive than a single-family dwelling in the same zone.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05

411-360-0310

Public Information

(1) The Department will maintain current information on all licensed AFH-DD's and will make that information available to prospective individuals, their families, and other interested members of the public.

(2) The information will include:

(a) The location of the AFH-DD;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Department;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and

(h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

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(3) Any list of adult foster homes maintained or distributed by the Department will include notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05

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**Department of Human Services,
Vocational Rehabilitation Services
Chapter 582**

Adm. Order No.: VRS 1-2005

Filed with Sec. of State: 1-11-2005

Certified to be Effective: 1-11-05

Notice Publication Date: 12-1-04

Rules Amended: 582-050-0050, 582-050-0060, 582-070-0040

Subject: 1. OAR 582-050-0050 and 582-050-0060 are amended to identify when OVRS services are available to non-residents. The amendments also identify when OVRS may close the case file of a client who relocates outside of Oregon.

2. OAR 582-070-0040 is amended to remove the expectation that OVRS repossess all non-expendable, non-prescription property purchased for clients and not needed for employment following a successful rehabilitation.

This amendment retains the expectation of repossession for such property with an aggregate value equaling or exceeding the threshold specified. For property with a lower aggregate value than the threshold specified, OVRS would have discretion to transfer the property to the client instead of repossession.

Rules Coordinator: Robert Trachtenberg—(503) 945-6734

582-050-0050

Citizenship

Citizenship is not a requirement for eligibility. A person may be eligible for Vocational Rehabilitation Services if he/she meets the basic criteria for eligibility in chapter 582, division 50 of the Oregon Administrative Rules and he/she is:

- (1) In the United States for other than a temporary purpose; and
- (2) Legally entitled to hold employment in this country.

Stat. Auth.: ORS 344
Stats. Implemented: ORS 344.511-344.690 & 344.710-344.730
Hist.: VRD 4-1981, f. & ef. 12-1-81; VRD 2-1991, f. & cert. ef. 9-11-91; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2005, f. & cert. ef. 1-11-05

582-050-0060

Residency

(1) There is no requirement for duration of residence in Oregon as part of the determination of eligibility.

(2) OVRS may provide services to an otherwise eligible individual, available and able to participate in services leading to an employment outcome, if the individual is:

- (a) Currently living in the State of Oregon, regardless of duration; or
- (b) Currently employed in the State of Oregon and seeking services to retain or advance in employment with the same employer; or
- (c) All of the following apply:

(A) The individual is currently living in a state not in an Order of Selection;

(B) The individual is currently at a site for which the closest OVRS office is the closest vocational rehabilitation office from the residence of the individual; and

(C) The individual is not in the state for the sole purpose of receiving vocational rehabilitation services.

(3) OVRS may, through mutual agreement, cooperate with another state's Vocational Rehabilitation Agency in the implementation or supervision of planned services of an Individualized Plan for Employment.

(4) Reasonable effort is made to assure that duplicate services are not provided concurrently in more than one state VR Agency nor shall more than one file per client be open and active within OVRS.

(5) When an Oregon client in open plan status establishes residence in another state and is no longer available to participate actively with the Oregon case-carrying counselor in the provision of services, the counselor may:

(a) Negotiate with the Vocational Rehabilitation Agency of the new state-of-residence to obtain assistance in supervision of the OVRS Services needed to complete the plan and obtain employment; or

(b) Close the case file as "ineligible" for further services due to the client's unavailability and, if requested by the client, provide copies of appropriate in-file data to the Vocational Rehabilitation Agency of the new state-of-residence.

(6) OVRS may close the case file of a client who relocates outside of Oregon if the client is not in open plan status and is not eligible under OAR 582-050-0060(2).

(7) OVRS may retain the case file of a client who relocates outside of Oregon if the client is in open plan status at the time of relocation and remains available to participate actively with the Oregon case-carrying counselor.

Stat. Auth.: ORS 344
Stats. Implemented: ORS 344.511-344.690 & 344.710-344.730
Hist.: VRD 4-1981, f. & ef. 12-1-81; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2005, f. & cert. ef. 1-11-05

582-070-0040

Repossession/Disposition of Non-Expendable Property

(1) For tools, supplies, equipment, vehicles, etc., funded by OVRS and needed by the client for employment at time of closure as employed (from Individualized Plan for Employment or post-employment services), ownership or title is transferred to the client.

(2) If a client is closed as other than rehabilitated, or if tools, supplies, equipment, vehicles, etc., are not needed while a client is receiving plan services or not needed by a client employed at the time of a successful closure, where practical and appropriate, such property shall be repossessed and reassigned or otherwise disposed of by OVRS if this property was funded by OVRS and has a current aggregate value of \$1000 or more:

(a) For such property with a current aggregate value under \$1000, the counselor may agree to transfer the property to the ownership of the client. Such agreements are only valid if the agreement is written. If there is no such agreement, the counselor shall make a reasonable effort to repossess the property through voluntary cooperation by the involved client, client's family or other individual who may be in current possession of said property, including small claims court; and

(b) For property with current values estimated to be \$1000 or more in the aggregate, OVRS may pursue, if necessary, other available legal means to regaining such property, or its equivalent value, including obtaining advice or assistance from the Office or the Attorney General.

(3) Any property funded by OVRS that has been purchased via prescription (such as glasses, hearing aids, wheelchairs) may be retained by the client, with justification at closure documented in the client record.

Stat. Auth.: ORS 344
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 2-1992, f. & cert. ef. 4-20-92; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2005, f. & cert. ef. 1-11-05

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**Department of Justice
Chapter 137**

Adm. Order No.: DOJ 16-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 1-3-05

Notice Publication Date: 11-1-04

Rules Adopted: 137-055-2165

Rules Amended: 137-055-1320, 137-055-2140, 137-055-3430, 137-055-4130, 137-055-5020, 137-055-6210, 137-055-6220, 137-055-6240

Subject: The proposed amendments to OAR: 137-055-1320 defines "custodial parent" for the purposes of this rule and clarifies the definition of legal guardian, 137-055-2140 to authorize ALJ's of OAH to allow or deny objections to withdrawals of contested case notices and to issue final orders; 137-055-2165 provides for a party to request to reschedule hearings and authorizes OAH to allow or deny and issue a final order regarding the request; 137-055-3430 clarifies that a party may request a motion for modification through the court if CSP denies a request for modification; 137-055-4130 clarifies that reduced income withholding may be granted in cases where arrears are owed to the obligee; 137-055-5020 corrects language missed in last filing updating electronic fund transfer to electronic payment withdrawal; 137-055-6210 clarifies what type of dishonored check is an advance payment and what kind of review is allowed; 137-055-6220 clarifies the type of dishonored check which is an overpayment and adds language to who might send a dishonored payment which would then be an overpayment; 137-055-6240 corrects language

ADMINISTRATIVE RULES

from DCS to DOJ and adds clarifying language for type of party that might send a dishonored payment.

Rules Coordinator: Shawn Irish—(503) 986-6240

137-055-1320

Access to FPLS for Purposes of Parentage Establishment; Child Support Establishment, Modification or Enforcement; or Determining Who Has or May Have Parental Rights

(1) For the purposes of this rule and OAR 137-055-1360, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services.

(b) "Original requestor" means a party to a paternity or child support case who is seeking FPLS information, directly, through an attorney, or through court request.

(c) "Custodial Parent" includes a caretaker or caretaker relative as defined in OAR 461-120-0610.

(d) "Legal Guardian" means a person appointed as a guardian under ORS chapter 125 or similar provision.

(e) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 418.042 not to establish paternity or to establish or enforce a support order against the original requestor; and

(C) A record that the person being sought has or had been granted a claim of risk not to have personal information included in a paternity or support order pursuant to OAR 137-055-1160 and that the other party in the legal action is or was the original requestor.

(f) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

(2) For the purposes of this rule, an authorized person is:

(a) A custodial parent, legal guardian, attorney, or agent of a child (other than a child receiving Temporary Assistance for Needy Families (TANF)), seeking to establish parentage or to establish, modify or enforce a support order.

(b) A court or agent of the court which has the authority to issue an order of paternity or support and maintenance of a child or to serve as the initiating court to seek such an order from another state; or

(c) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan.

(3) An authorized person as defined in section (2) of this rule, may request information to facilitate the discovery or location of any individual:

(a) Who is under an obligation to pay child support;

(b) Against whom a child support obligation is sought;

(c) To whom a child support obligation is owed; or

(d) Who has or may have parental rights with respect to a child.

(4) If available from FPLS, the information that may be provided about an individual described in subsections (3)(a)–(d) of this rule includes:

(a) The address and verification of the social security number of the individual sought;

(b) The name, address and federal employer identification number of the employer of the individual sought; and

(c) Information about income from employment and benefits from employment, including health care coverage.

(5) A request pursuant to this rule must be made in writing directly to DCS and must contain:

(a) The purposes for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or if the individual is receiving federal compensation or benefits, if known; and

(e) If the request is from the court, the signature of the judge or agent of the court.

(6) The request may be made on a form adopted by the Child Support Program (CSP) and available from any CSP office.

(7) When DCS receives a request from an authorized person pursuant to subsections (2)(a) or (2)(b) of this rule, it shall determine if there is any record of possible domestic violence by the original requestor against the

individual sought or any record of possible child abuse by the original requestor.

(8) If reasonable evidence of domestic violence or child abuse is found pursuant to section (7) or FPLS does not return information due to a family violence indicator, an authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent or child, DCS will submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent or child, the request will be denied.

Stat. Auth.: ORS 25.265 & 180.345

Stats. Implemented: ORS 25.265 & 183.380

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0279; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1320; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-2140

Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

(1) Issue final orders without first issuing proposed orders.

(2) Issue final orders by default in cases described in OAR 137-003-0670, except in a case authorized by ORS 416.415. An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(5) but not in any other case authorized by ORS 416.425.

(3)(a) When a final order by default has not yet been signed by the Child Support Program, determine whether a reschedule request should be granted pursuant to OAR 137-003-0670(2), based on whether the requester's failure to appear for a scheduled hearing was beyond the reasonable control of the party; and

(b) Issue a final order allowing or denying the reschedule request.

(4) Issue final orders granting or denying late hearing requests pursuant to OAR 137-003-0528.

(5) Determine whether objections to withdrawals of contested case notices should be granted and issue final orders allowing or denying the withdrawals.

(6) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1).

(7) Order and control discovery.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 180.345

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-2165

Requests to Reschedule Hearing

(1) When a party fails to appear for a hearing, the party may request that the hearing be rescheduled. A request to reschedule a hearing must be submitted in writing to the Child Support Program (CSP).

(2) When the CSP receives a written request to reschedule a hearing, the CSP will review its record to determine whether a final order has been signed. After this review, the CSP will:

(a) Deny the request to reschedule if a final order has been signed; or

(b) Forward the request to the Office of Administrative Hearings (OAH) if no final order has been signed.

(3) When OAH receives the written request to reschedule, OAH will notify the parties that the request has been received and allow the parties 10 days to submit written testimony on whether or why the reschedule request should be accepted.

(4) Parties who submit written testimony to OAH must provide copies of the testimony to the other parties.

(5) After the time for response has expired, and after reviewing the request and any additional testimony received, OAH will make a determination whether the reschedule request should be allowed or denied.

(a) If the request is allowed, OAH will issue a final order allowing the request and scheduling the case for hearing; or

(b) If the request is denied, OAH will issue a final order denying the request.

(6) When the CSP receives an order from OAH which denies a rehearing request, the CSP may issue a final order by default on the underlying support issue.

ADMINISTRATIVE RULES

(7) OAH will include notice of the process set out in this rule in its order dismissing a hearing when a party fails to appear.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 180.345
Hist.: DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-3430

Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstances.

(3) The administrator will conduct a review based upon a request for a change of circumstances modification only when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator receives a written request for modification based upon a change of circumstances and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I); and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to provide health care coverage for the child(ren);

or

(I) A change in the physical custody of the child(ren) has taken place.

(d) And the requesting party:

(A) Completes a written request for modification based upon a substantial change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(4) Upon receipt of a written request for a review and modification, the administrator will notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice will inform the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days have passed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(5) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines .

(6) If the request for review is granted, the administrator will:

(a) Initiate a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Advise the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(7) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(8) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify both parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(9) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (9)(a).

(10) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(11) If the request for review is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 416.455, 180.345

Stats. Implemented: ORS 25.080, 25.287, 107.135, 416.425

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-4130

Reduced Income Withholding

(1) The Department of Justice may set a lesser amount to be withheld if:

(a) Withholding is only for arrears, the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support; and, if arrears are owed to the obligee, the obligee agrees to a reduced withholding amount; or

(b) The child(ren) is currently in paid state care or custody and the state and the obligor agree in writing to a reduced amount of withholding when there is evidence that:

(A) The order to withhold is a barrier to reunification of the family or rehabilitation of the youth; or

(B) Is prejudicial to the obligor's ability to provide for another child the obligor has a duty to support.

(2) When the child(ren) is currently in paid state care or custody, DCS may submit an agreement for reduced income withholding to the Department of Human Services (DHS) child welfare program or the Oregon Youth Authority (OYA) for approval or denial.

(3) Upon receiving notice of an approval or denial of an agreement, DCS will notify the obligor. If the DHS child welfare program or OYA do not respond within 30 days of receiving an agreement, the agreement shall be deemed denied.

(4) If the agreement is approved, the agreement does not take effect until it has been signed by the obligor and returned to DCS.

(5) If the obligor does not agree with the agency's denial of an agreement, the obligor may file a grievance with the DHS child welfare program or OYA pursuant to OAR 413-010-0450 or 416-100-0020.

(6) A written agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

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(a) The child(ren) leave(s) the care or custody of the state agency to which support has been assigned;

(b) According to the case record or as notified by the DHS child welfare program or OYA, the obligor is out of compliance with the agreement; or

(c) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.396 & 180.320 - 360

Stats. Implemented: ORS 25.396

Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-5020

Payment of Support Obligations

(1) Regardless of the provisions of a support order, the obligor must make all support payments to the Division of Child Support (DCS) while the obligee receives assistance in the form of TANF cash assistance, foster care or Oregon Youth Authority services.

(2) The obligor must continue to pay support to DCS after assistance ends, for as long as arrears are assigned to the state or support enforcement services are provided.

(3) When a case with a support order is activated on the Child Support Enforcement Automated System, DCS will send notice to the obligor and obligee of the requirement to pay through DCS. Except as provided in OAR 137-055-5060, DCS will begin billing in the first full calendar month following 30 days from receipt of the referral or from the date the TANF benefits are issued. DCS shall determine the arrears on a newly activated case pursuant to OAR 137-055-3240.

(4) An obligor may pay DCS by money order, personal check, certified check, cashier or traveler's check, earnings allotment, cash or by authorizing electronic payment withdrawal from the obligor's account at a financial institution.

(5) Payment by electronic payment withdrawal may be established by completing an application furnished by and delivered to DCS, subject to the following conditions:

(a) The obligor's financial institution must be a participant in the Oregon Automated Clearinghouse Association;

(b) The obligor must be subject to a support order requiring payment to DCS or support enforcement services are being provided under ORS 25.080;

(c) The application must be complete and signed by all signatories to the obligor's account at the financial institution;

(d) The application must establish a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid to DCS on each monthly withdrawal date from the obligor's account at the financial institution;

(e) DCS will notify the applying obligor and the obligee by mail if they qualify for the electronic payment withdrawal process and of the initial withdrawal date;

(f) The obligor may revoke the electronic payment withdrawal authorization by notifying DCS at least 10 days before the monthly withdrawal date;

(g) DCS may revoke the authorization when there are insufficient funds in the obligor's account to make the authorized payment and no advance notice of that has been received. DCS will mail a notice of revocation to the obligor and obligee;

(h) DCS may refuse an obligor's application if it is not fully completed, or if the obligor has made any support payment to DCS with insufficient funds in the 12-month period preceding the obligor's application.

Stat. Auth.: ORS 25.080, 25.427, 180.320 - 360

Stats. Implemented: ORS 25.020 & 25.396

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 4-1991, f. 1-28-91, cert. ef. 2-1-91; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0020; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-6210

Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c) DOJ has applied the money incorrectly through no fault or error of the obligee; and

(d) The payment is not the result of a dishonored check.

(2) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(3) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the obligee and will be assigned to the state as permanently-assigned arrears under OAR 137-055-6020. DOJ will notify the obligee in writing of the:

(a) Amount to be collected as permanently-assigned arrears;

(b) Right to object and request an administrative review.

(4) When an objection is received, DOJ will conduct an administrative review and notify the obligee in writing of the:

(a) Determination resulting from the review; and

(b) Right to challenge the determination by judicial review under ORS 183.484.

(5) Notwithstanding the provisions of section (3) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in OAR 137-055-2040.

(6) For the purposes of this rule, a "dishonored check" is not one which has been paid or made negotiable.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-6220

Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under OAR 137-055-6020(19); or

(b) DOJ receives a check from an obligor, other payor on behalf of the obligor, or withholder, transmits the appropriate amount from that check to the obligee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 14 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 14 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 14 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ will refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor or withholder under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must

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respond within 14 days of the date of the notice and request an administrative review.

(10) If the obligor or withholder requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor or withholder may appeal the result of the administrative review as provided in ORS 183.484.

(12) If the obligor or withholder fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ will refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345, 293

Stats. Implemented: ORS 25.020, 25.125

Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

137-055-6240

Dishonored Payments on Support Accounts

When the Department of Justice (DOJ) receives a check from an obligor, withholder, or other payor on behalf of the obligor; transmits the appropriate amount from that check to the obligee and that check is then dishonored, DOJ will:

(1) Remove credit for the dishonored amount from the obligor's case record; and

(2) Hold all future payments by check from that payor for 18 working days, or until the check clears the payor's financial institution, before forwarding payment to the obligee. DOJ may waive this requirement after a one year period if no further payments from that payor have been dishonored, or if the dishonored payment was dishonored for reasons that DOJ has determined were beyond the payor's control, such as an error on the part of the financial institution or on the part of DOJ.

Stat. Auth.: ORS 25.125, 180.345

Stats. Implemented: ORS 25.020 & 25.125

Hist.: AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0046; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0270; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6240; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05

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Adm. Order No.: DOJ 1-2005

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-13-05

Notice Publication Date: 11-1-04

Rules Amended: 137-008-0010

Subject: Amendment is necessary to reflect an increase in price of the Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the APA.

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; \$98/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; \$20;

(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

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Department of Oregon State Police,

Office of State Fire Marshal

Chapter 837

Adm. Order No.: OSFM 8-2004(Temp)

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 1-3-05 thru 6-30-05

Notice Publication Date:

Rules Amended: 837-040-0010

Subject: Amend the 2004 Edition of the Oregon Fire Code as follows:

1) Add a new section 3301.1.6-Manufacture, assembly and testing of explosives, explosives materials and fireworks.

2) Delete Table 907.10.1.3. Visible and audible alarms.

3) Amend Section 907.10.1.4 Group R-2.

4) Amend Chapter 45, Reference NFPA Standards 495, 1124 and 1142.

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

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-040-0010

Adoption of the International Fire Code

The 2003 edition of the **International Fire Code** as promulgated by the International Code Council is hereby adopted as the Oregon Fire Code, 2004 edition, subject to the exclusions there from and amendments thereto as hereafter set forth in these regulations.

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

Stat. Auth.: ORS 476.030, 479, 480

Stats. Implemented: ORS 476, 479, 480

ADMINISTRATIVE RULES

Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; FJM 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05

Adm. Order No.: OSFM 1-2005(Temp)

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-13-05 thru 7-11-05

Notice Publication Date:

Rules Amended: 837-012-0555

Subject: The wording of 837-012-0555(4) is unclear as to the length of time a wholesaler is prohibited from employing a person who has had their operator certificate revoked, denied, or suspended. This change is needed for clarification purposes.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0555

Prohibited Acts and Limitations

(1) Wholesale Permit holders shall not create, maintain, or allow the existence of a fire hazard at any location under their control where Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are stored, transported, sold, or used.

(2) No Wholesale Permit holder shall Sell or provide by any other means, including donation:

(a) Fireworks or Public Display Fireworks to any Individual under 21 years of age;

(b) Retail Fireworks or Agricultural Fireworks to any Individual under 18 years of age if the sale or provision of Retail Fireworks or Agricultural Fireworks is to an Individual in Oregon;

(c) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to any Person who does not possess a valid permit for such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks issued by the Office of State Fire Marshal, or if required, a valid license and/or permit issued by the equivalent agency in the Person's state of Residence or the state of destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(d) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks which have been altered in any manner.

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, shall participate in any manner in Wholesale Operations, for a period not to exceed three years.

(4) A Wholesale Permit holder shall not employ, or have direct business ties with, any Person whose Fireworks permit or operator certificate is revoked, denied or suspended.

(5) No Individual under 18 years of age shall participate in any manner in Wholesale Operations involving Fireworks, Retail Fireworks, or Agricultural Fireworks.

(6) No Individual under 21 years of age shall participate in any manner in Wholesale Operations involving Public Display Fireworks.

(7) A Wholesale Permit holder shall not fill out, complete or submit a general, limited, or special effects public display permit, retail permit, or agricultural use permit previously filled out or completed by a different Wholesaler unless the Wholesale Permit holder has applied for and received approval from the Office of State Fire Marshal to do so.

(8) Wholesale Permit holders shall not sell, provide, ship, transport, keep, offer for sale, expose for sale, possess, use, explode or have exploded any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks that have not been approved, certified or listed for transport by the United States Department of Transportation and/or the United States Consumer Product Safety Commission, or if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks do not have a United States Bureau of Explosives Temporary Transfer Permit.

(9) A Wholesale Permit or permit number that has expired or has not been issued, shall not authorize the purchase, use, discharge, transportation, storage, possession, sale or provision by any other means, including donation, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(10) Every Person who knows of, engages in, allows, or is otherwise a party to, Wholesale Operations not in conformance with ORS 480.110 through 480.165 and OAR chapter 837, division 12, may be subject to

denial, revocation, or suspension of the Person's Fireworks permit or operator certificate issued by the Office of State Fire Marshal, and/or a civil penalty.

(11) No Person shall purchase or otherwise obtain, possess, use, discharge, transport, offer for sale, sell, transfer or otherwise provide Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks without first applying for and obtaining the appropriate permit issued by the Office of State Fire Marshal pursuant to ORS 480.110 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 1-2005(Temp), f. & cert. ef. 1-13-05 thru 7-11-05

Department of Revenue Chapter 150

Adm. Order No.: REV 9-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-31-04

Notice Publication Date:

Rules Ren. & Amended: 150-285B.713 to 150-285C.180

Subject: This rule is renumbered to the current statute number and updates statutory reference in section (4).

Rules Coordinator: Xann-Marie Culver—(503) 945-8383

150-285C.180

Enterprise Zone Statutory Definitions

(1) "Additions to existing buildings or structures" means an enlargement of building space including construction which creates additional floor space or which creates more building volume by raising a ceiling or roof and in the case of a structure includes, but is not limited to, increasing the area of a parking lot to provide additional parking spaces.

(2) "Building" means a real property improvement erected to stand more or less permanently, usually with walls and roof, and designed for human use and occupancy or as a shelter. Building includes, but is not limited to, warehouses and manufacturing plants. Building also includes all structural components necessary to make the building usable such as wiring, plumbing, a foundation, heating and cooling ducts.

(3) "Construction in progress" means after work begins or that the foundation for the building or structure was partially or wholly laid.

(a) Acceptable documentation means a letter from the contractor, a building official or someone else who is not an employee of the firm concerning when work began.

(b) "Beginning date after interruption" means:

(A) If work begins and then stops for six months or more and/or a new building permit is issued, the beginning date is when work is resumed.

(B) If a firm goes out of business, stops construction and sells the property, the beginning date is when work is undertaken by the new owner.

(C) When rebuilding after a fire, or some other natural disaster, work begins when construction starts, not upon starting demolition or cleanup.

(4) "Destination resort" as used in ORS 285C.135(5) means a facility with hotel accommodations at which visitors stay in order to access amenities connected to the resort, including but not limited to a development that satisfies the criteria under ORS 197.435 to 197.467 for siting on certain lands and for limiting or allowing uses and activities in accordance with an acknowledged comprehensive plan.

(5) "Hotel or motel" as used in ORS 285C.135(5) and consistent with ORS 699.005 means a facility that:

(a) Offers rooms, suites of rooms, cabins, houses or other such units for transient lodging to persons typically from beyond the local area through direct overnight rental, time-share arrangements or other types of limited transactions;

(b) May include one or more visitor-oriented services, facilities or recreational activities, including but not limited to restaurants, laundry, conference rooms, golf course, swimming pool, tennis courts, ski runs, marinas or bicycle paths; and

(c) May be commonly described or labeled as an inn, resort, convention center or by other such names.

(6) "Machinery and equipment" means any property used in the business activity or process except land, buildings and structures. It does not include furniture, commercial fixtures or structural components of a building such as standard wiring, plumbing, heating or cooling systems. Specialized pipes, air filtration systems, specialized wiring or other systems

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necessary for the manufacturing process are considered machinery and equipment rather than a structural component of a building. Machinery and equipment that is not easily movable is considered to be real property. Machinery and equipment that is readily movable is considered as personal property. "Readily movable" property is generally unattached in any way to a building or structure and also is not connected to other real property machinery and equipment. An example of "readily movable" property would be tools, testing equipment or a personal computer.

(7) "Modification" means to alter or change the elements of a property by modernization, renovation or remodeling.

(a) "Modernization" means to take corrective measures to bring a property into conformity with changes in style.

(b) "Renovation" means the process by which older structures or historic building are modernized, remodeled or restored.

(c) "Remodeling" means a type of renovation that changes the basic plan, form or style of the property.

(8) "Personal or household use or consumption" means consumption normally undertaken by an end user and not by a business in the course of business operations.

(9) "Site preparation" means an activity carried on to prepare raw land for construction including fill, grading, leveling, installation of underground utilities and installation of utility connections.

(10) "Structure" means a real property improvement including ramps, loading docks, and parking surfaces. Structure does not include buildings.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 285C.180

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 6-1994, f. 12-15-94, cert. ef. 12-31-94, Renumbered from 150-284.115; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; REV 8-2000, f. & cert. ef. 8-3-00, Renumbered from 150-285.570-(A); REV 9-2004 f. 2-29-04 cert. ef. 12-31-04, Renumbered from 150-285B.713

Adm. Order No.: REV 10-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-31-04

Notice Publication Date: 9-1-04

Rules Amended: 150-305.220(1), 150-305.220(2)

Subject: These rules are being amended to adjust the interest rate charged on deficiencies and paid on refunds by the Department of Revenue.

Rules Coordinator: Xann-Marie Culver—(503) 945-8383

150-305.220(1)

Computation of Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2005, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of .4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at .0137 percent per day.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

Example A: A 1993 return is filed and a tax of \$500 is paid on February 25, 2001. Interest is computed as follows: [Table not included. See ED.]

The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 16th of the month.

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

Stat. Auth.: ORS 305.100 and ORS 305.220(3)(a)

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04

150-305.220(2)

Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2005, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of .4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at .0137 percent per day.

(2) Interest starting date. The interest starting date will be 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate will be the same as the interest rate on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

Example 1: Mary files her 1997 return on April 15, 1998. Mary later files a 1997 amended return on May 15, 2000, asking for a refund of \$500.

The refund is paid on July 22, 2000. The interest is computed as follows:

[Table not included. See ED.]

The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 30th of the month.

Example 2: Eric filed his 1998 return and paid the tax due on April 6, 1999. On November 1, 2000, Eric filed a 1998 amended return to claim a refund of \$1,000. The refund was paid on December 11, 2000. The interest starting date is May 30, 1999, the 45th day after the return was due. The interest is computed as follows: [Table not included. See ED.]

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

Stat. Auth.: ORS 305.100 and ORS 305.220(3)(a)

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16, Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04

Adm. Order No.: REV 11-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-31-04

Notice Publication Date: 11-1-04

Rules Adopted: 150-293.525(1)(b), 150-314.670-(A)

Rules Amended: 150-314.415(6), 150-314.650, 150-314.665(2)-(A), 150-315.262, 150-315.304(2), 150-316.014, 150-316.587(1), 150-316.587(5)(b), 150-316.587(5)(c), 150-317.715(3)(b)

Rules Repealed: 150-314.363-(A), 150-314.363-(B), 150-314.363-(C), 150-314.748(2)

Rules Ren. & Amended: 150-23.186 to 150-18.385, 150-23.186-(A) to 150-18.385-(A), 150-29.375(2)(c) to 150-18.902(6)

Subject: The Department of Revenue intends to adopt, amend, renumber, or repeal administrative rules relating to personal income tax, collections, and business income and excise taxes.

Rules Coordinator: Xann-Marie Culver—(503) 945-8383

150-18.385

Oregon Department of Revenue Tax Garnishments and Orders to Withhold Child or Spousal Support.

(1) The Department of Revenue is authorized to continuously garnish up to 25 percent of an employee's disposable earnings to recover delinquent state tax debt. Concurrently, a district attorney or the Division of Child Support of the Department of Justice is authorized to request the courts to order the withholding of delinquent and current child or spousal support from an employee's disposable earnings.

(2) Under ORS 18.385(4), the maximum disposable earnings subject to garnishment is reduced by an order to withhold wages for child or

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spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. Normally, any other existing garnishments would then be limited to 25 percent of disposable earnings after subtracting the order to withhold wages. However, ORS 18.385(6) specifies that, for garnishments to pay state tax debt, the provisions of ORS 18.385(4) do not apply. Therefore, a garnishment to pay state tax debt would be calculated upon disposable earnings and not reduced by an order to withhold child or spousal support.

Example 1:

Larry has \$4,000 per month of disposable earnings. Larry owes delinquent child support totaling \$15,000. An order to withhold child support has been granted that requires Larry's employer to withhold a specified amount of \$1,400 from disposable earnings.

Larry also owes a state personal income tax debt totaling \$5,000. The department has garnished Larry's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold child support and the garnishment as follows: [Formula not included. See ED. NOTE.]

(3) If for any reason orders to withhold wages for child or spousal support and garnishments for state tax debt exceed the disposable earnings of the taxpayer, any orders to withhold wages under ORS 25.378 will have priority over any other legal process, including all garnishments for state tax debt or otherwise (ORS 25.375). The employer will reduce payments pursuant to the department's garnishment as needed.

Example 2:

Renee's employer has been paying a specified amount of \$1,400 from Renee's disposable earnings under an order to withhold child support. The employer now has received a Special Notice of Garnishment from the department that causes a one-time garnishment of 100 percent of Renee's disposable earnings. Since more than 100 percent of Renee's disposable earnings has been attached, under ORS 25.375, the order to withhold now takes priority. The employer would compute and distribute payments under the order and garnishment as follows: [Formula not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185 by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186, REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-18.385-(A)

Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by ORS 18.385(2)(a) through 18.385(2)(e) minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under ORS 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 18.385(2)(a) through 18.385(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 18.385(1) or the minimum exemption amount under ORS 18.385(2)(a) through 18.385(2)(e).

Example 1: Dick has \$1,000 per week of disposable earnings. Dick owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick's employer directing the employer to withhold a specified amount of \$218 from Dick's disposable earnings. Dick also owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Dick's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows: [Calculation not included. See ED. NOTE.]

Example 2: Assume the same facts as in Example 1 except that the order to withhold child or spousal support is \$350. The employer would calculate the order to withhold child or spousal support and garnishment as follows: [Calculation not included. See ED. NOTE.]

Example 3: John has \$200 per week disposable earnings. John owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows: [Calculation not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185(A) by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186(-A), REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-18.902(6)

Garnishment of Wages

Circumstances in which a debtor may be jeopardizing the collection of a tax, and which are considered justification for garnishment of 100% of the debtor's wages under ORS 18.902(6) include, but are not limited to, the following:

(1) The department receives information that, in the judgment of the department, indicates the debtor is attempting to jeopardize collection of the tax. For example: The debtor directs the employer to pay over the debtor's earnings to another entity;

(2) The department receives information that, in the judgment of the department, indicates the debtor may cease employment or change jobs to avoid paying taxes;

(3) The department receives information that, in the judgment of the department, indicates the debtor intends to leave the state to avoid paying taxes;

(4) The department receives information that, in the judgment of the department, indicates that the debtor has changed jobs in the past to avoid garnishment; or

(5) The debtor's failure to comply with Oregon tax laws in an attempt to avoid or evade the tax was the basis for assessment of the tax being collected by garnishment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 18.902

Hist.: RD 10-1983, f. 12-20-84, cert. ef. 12-31-84; RD 7-1988, f. 12-19-88 cert. ef. 12-31-88; Renumbered from 150-29.375(2)(c), REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-293.525(1)(b)

Notification of Requirement to Make Payments by Electronic Funds Transfer; Penalty for Noncompliance; Exceptions

(1) Any person, required by Treasury Regulation 31.6302-1 to make federal corporation estimated tax payments or federal payroll tax payments by means of electronic funds transfer (EFT), is also required to make such payments by EFT for Oregon corporation estimated tax (ORS 314.518) and Oregon combined quarterly payroll taxes and assessments (ORS 316.198).

(2) The department will notify a person, in writing, of the requirement to make payments by EFT. The notice will provide the person with information as to how to register and begin making EFT payments, and will inform the person of the penalty under this administrative rule for failure to comply.

(3) If a person does not begin making payments by EFT within 90 days after notification, as described in section (2), a penalty may be assessed equal to five percent of the payments made by means other than EFT received after the 90 days has expired.

(4) A penalty will not be assessed against payments made by means other than EFT if at the time payment is due:

(a) The person is not required to make such payments by EFT for federal purposes;

(b) Payment by electronic funds transfer is not possible because of the registration waiting period;

(c) The department's EFT system or the Automated Clearing House Network is not operational;

(d) The department has granted the person an exemption from the requirement to make payment by EFT; or

(e) Any other circumstance occurs which, in the judgment of the department, reasonably prevented the person from paying by EFT.

(5) The federal regulation referenced in section (1) of this rule is the federal regulation as it exists on the date that this rule takes effect.

Stat. Auth.: ORS 305.100, 293.525.

Stats. Implemented: ORS 293.525

Hist: REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-314.415(6)

Separate Refunds of Tax Withheld When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds of tax withheld when either spouse submits a signed request. To issue separate refunds when a joint refund check has already been issued, the check must be returned uncashed. The refund of withholding due each spouse is determined according to his or her proportion of their total joint gross earnings. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate gross earnings of each spouse is the total gross earnings from which tax has been withheld as shown by information returns provided by the employer, or other documentary evidence of withholding accepted by the department as verifica-

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tion of tax withheld. Separate gross earnings of each spouse are determined without regard to community property law.

(3) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(4) Pursuant to ORS 18.655(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-314.650

Apportionment Formula

(1) All business income of each trade or business of the taxpayer must be apportioned to this state by use of the apportionment formula set forth in ORS 314.650. The apportionment formula includes the property factor provided in ORS 314.655 and the rules thereunder, the payroll factor provided in ORS 314.660 and the rules thereunder, and the sales factor provided in ORS 314.665 and the rules thereunder.

(2) For tax years beginning on or after July 1, 2008, business income is apportioned using only the sales factor.

(3) For tax years beginning on or after July 1, 2006 and before July 1, 2008, the apportionment formula is the sum of five percent of the property factor, plus five percent of the payroll factor, plus ninety percent of the sales factor.

(4) For tax years beginning on or after July 1, 2006, the apportionment formula for a taxpayer in the forest products industry meeting the criteria provided in ORS 314.650, Note 1(2)(a) is the formula provided in sections (6) and (8) of this rule.

(5) For tax years beginning on or after May 1, 2003 and before July 1, 2006, the apportionment formula is 10 percent of the property factor, plus 10 percent of the payroll factor, plus 80 percent of the sales factor.

(6) For tax years beginning on or after January 1, 1991 and before May 1, 2003, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus two times the sales factor. The denominator of the apportionment formula is four.

(7) For tax years beginning before January 1, 1991, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus the sales factor. The denominator of the apportionment formula is three.

(8) For tax years beginning on or after January 1, 1989 and before May 1, 2003, if the denominator of the property, payroll, or sales factor is zero, the denominator of the apportionment formula is reduced by the number of factors with a denominator of zero.

(9) The apportionment factors of a corporation that is a member of a partnership, limited liability company treated as a partnership or unincorporated joint venture (i.e. the "related entity"), that is a part of the corporation's overall business operations, must include the corporation's share of the property, payroll and sales of the related entity. For the purpose of computing the apportionment factors, transactions between the corporation and the related entity must be eliminated to the extent of the corporation's percentage of interest in the related entity. The corporation's share of the related entity's property, payroll and sales are based on its percentage of interest in the related entity that is equal to the ratio of its capital account plus its share of the related entity's debt to the total of the capital accounts of all members of the related entity plus total related entity debt. The capital accounts of the members must reflect the average of the accounts for the period of the tax return. The average of the capital accounts may be computed by averaging the beginning and ending balances or monthly balances. Capital accounts of a related entity must be adjusted to reflect a member's adjusted basis in contributed property, rather than fair market value. The corporation's share of a related entity's debt is determined under IRC 752(a) and 752(b) and the regulations thereunder, irrespective of whether or not the related entity is a true partnership.

(10) For the purpose of computing the apportionment factors for a consolidated Oregon return, inter-company transactions between a unitary affiliate of a partner or member and the related entity described in section (9) of this rule are treated the same as intercompany transactions directly between the affiliated corporations, to the extent of the corporate partner's or member's ownership share of the related entity. Inter-company transac-

tions between affiliated corporations filing a consolidated Oregon return are eliminated as provided in section (3) of OAR 150-314.715(3)(b).

Example: Corporations A, B, and C file a consolidated Oregon return. A and B each own 50 percent of partnership P. P is part of the overall business operations of the three corporations. P buys 80 percent of its raw materials from C. The intercompany sales between P and C must be eliminated from the apportionment formula for the consolidated Oregon return of the corporations. Transactions between C and P are considered to be directly between the three corporations.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.650

Hist.: 8-73; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-314.665(2)-(A)

Sales Factor; Sales of Tangible Personal Property in this State

The rule adopts a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states.

(1) For purposes of apportioning income under ORS 314.665 and this rule, gross receipts from the sales of tangible personal property (except sales to the United States Government; see OAR 150-314.665(2)-(B)) are in this state:

(a) If the property is delivered or shipped to a purchaser within this state (Oregon) regardless of the f.o.b. point or other conditions of sale; whether transported by seller, purchaser, or common carrier; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller, who is subject to Oregon excise tax, must treat this as a sale of property delivered or shipped to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller is taxable in State A. The seller must treat this as a sale of property delivered or shipped to a purchaser in State A.

(2) Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example 2: The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in Oregon. The branch store in this state is the "purchaser within this state" with respect to \$25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example 3: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon is property "delivered or shipped to a purchaser within this state."

(4) The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in Oregon, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Oregon.

Example 4: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in Oregon, the sales are in Oregon.

Example 5: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Oregon in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Oregon.

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(6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Oregon if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oregon.

(a) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state imposes a net income tax on the seller.

(b) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state would have jurisdiction to tax the seller on net income under the constitution of the United States and federal Public Law (P.L.) 86-272.

(c) OAR 150-314.620-(C) provides that sales and activities in a foreign country will be treated the same as those in another U.S. state for determining if the foreign country has jurisdiction to tax the seller on net income.

(d) The guidelines provided by federal P.L. 86-272 apply equally to activities regarding sales to unrelated parties and sales to affiliated corporations.

(e) The immunity provided by P.L. 86-272 is not lost when a business engages in de minimis activities unrelated to the solicitation of orders in a state or foreign country where its only other activities are those protected by P.L. 86-272. Examples of such immune activities include the following:

(A) The board of directors of a corporation based in Oregon holds a meeting at a hotel in another state or in a foreign country,

(B) The president of a parent corporation based in Oregon meets with the managers of a subsidiary in a foreign country to discuss the subsidiary's five-year plan and capital acquisitions budget.

(C) The controller of a parent corporation based in Oregon meets with the accounting staff of a subsidiary in a foreign country to discuss federal financial reporting requirements.

Example 6: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Oregon. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Oregon for approval and are filled by shipment from the inventory in Oregon. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Oregon, the state from which the merchandise was shipped.

Example 7: A parent company sells its product to a subsidiary, organized in a foreign country, that uses the parent's product in manufacturing its product. Because of the parent-subsidiary relationship, orders are not solicited in the same way as sales to unrelated customers. Instead, the products are shipped as needed to the subsidiary. Officials from the parent company maintain a close liaison with the foreign subsidiary on the planning and design of the items sold. After the parties agreed on a contract in which the parent would manufacture and sell certain items to the subsidiary, the close working relationship continued between the technicians of both companies. Many of the parent's employees made regular trips to the subsidiary after the contract was signed, to take care of such items as manufacturing problems, installation problems, repair work, redesign discussions, and/or production problems. Parent's production engineers, production workers, metallurgists, quality control managers, and assembly supervisors were some of the personnel who spent several weeks of the year working closely with the foreign subsidiary. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is not considered to be protected under P.L. 86-272 and therefore is not required to attribute sales to Oregon.

Example 8: A subsidiary organized in a foreign country purchases products from its parent, a manufacturing company in Oregon. The subsidiary places a purchase order with the parent on an "as needed" basis. The parent, upon receipt of the purchase order, makes shipment to the subsidiary. The subsidiary, upon receipt of the product, makes payment to the parent. The parent has a relationship with its foreign subsidiary that is unrelated to the sale of its product. Officials from the parent company occasionally visit the foreign subsidiary to discuss matters unrelated to the sale of its product, including: (1) public relations, (2) personnel matters, and (3) government relations. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is considered to be protected under P.L. 86-272 and is required to attribute the sales to Oregon.

(7) If a taxpayer whose salesman operates from an office located in Oregon makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in Oregon.

Example 9: The taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the tax-

payer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Oregon.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665

Hist.: 12-70; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-314.670-(A)

Modified Factors for Publishing

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material. The rule adopts a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of these items by the states.

(1) In General. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity will be determined pursuant to ORS 314.650 through 314.665 and the rules thereunder.

(2) Definitions. The following definitions are applicable to the terms contained in this rule.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material will be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither of such terms will mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" will include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) Apportionment of Business Income.

(a) The Property Factor.

(A) Property Factor Denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business will be included in the denominator of the property factor.

(B) Property Factor Numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor in the ratio that the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outerjurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outerjurisdictional property that was used during the tax period to transmit from this state

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and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property will be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state.

Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, were determined to have an original cost of \$4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state: \$3,000,000

Value of mobile property:

$95/365$ (or $.260274$) \times \$4,000,000: \$1,041,096

Value of leased satellite property used in-state:

$.02 \times$ \$100,000,000: \$2,000,000

Total value of property attributable to state: \$6,041,096

Total property factor %: $\$6,041,096/\$500,000,000$: 1.2082%

(b) The Payroll Factor. The payroll factor will be determined in accordance with OAR 150-314.660 and the rules thereunder.

(c) The Sales Factor:

(A) Sales Factor Denominator. The denominator of the sales factor will include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under ORS 314.665 and the rules thereunder.

(B) Sales Factor Numerator. The numerator of the sales factor will include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(ii) Except as provided in subsection (3)(c)(B)(iii), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof will be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor will be determined for each individual publication by the taxpayer of printed material containing advertising and will be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication will be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor will be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Department of Revenue may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not

upon the basis of the circulation factor provided by subparagraph (3)(c)(B)(ii). Such attribution will be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method will be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, will be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

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

Stat. Auth.: ORS 305.100, 314.670

Stats. Implemented: ORS 314.670

Hist.: REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-315.262

Working Family Childcare Credit

(1) Definitions. For purposes of ORS 315.262 and this rule:

(a) "Qualifying child" means a son, daughter, stepson, or stepdaughter of the taxpayer, as defined in Internal Revenue Code (IRC) section 151 as of December 31, 2002, who is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption credit under ORS 316.099 is allowed.

(b) "Federal poverty level" is the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(c) Household size is the number of individuals related by birth, marriage, or adoption living in the home that are allowed as exemptions on the taxpayer's return.

(2) For purposes of this credit, a dependent child is included in the household size of the custodial parent even if the exemption was released to a noncustodial parent under IRC section 152(e). In situations where neither parent has custody of the child more than 50 percent of the year (primary physical custody), the child is included in the household size of the parent claiming the exemption. An individual cannot be counted in household size on more than one return.

Example 1: Dale and Lisa are divorced with two children. Lisa has primary physical custody of both children, but releases the dependent exemption for one child to Dale. Dale has the children on certain weekends, holidays, and one month in the summer. Lisa has remarried and her mother-in-law is a qualifying dependent having lived in the home the entire year. Both Dale and Lisa may claim the credit based on the child care expenses each paid. Lisa's household size equals five (herself, spouse, one dependent child, one dependent child whose exemption is released to the father, and mother-in-law.) Dale has not remarried so his household size equals one (himself). Although he claims one child on his tax return, Dale does not have primary physical custody. The child does not live with him and is not included in household size.

Example 2: Jason and Larena have three children and also support their parents who do not live with Jason and Larena in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Jason and Larena cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the working family child care credit is five.

(3) For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

Example 3: Maria and Kendall are not married and live together with their son, Michael. Michael's child care expense for the year is \$4,600 of which Kendall pays half. Maria claims Michael's dependent exemption and the working family child care credit. Maria may claim a working family child care credit based on the child care expenses she actually paid (\$2,300) and a household size of two. Kendall may claim the working family child care credit based on the \$2,300 of child care he paid and a household size of one. Kendall may not include Michael in his household size because Michael may only be claimed in the household size of one parent. Since Maria included him in her household size, Kendall cannot.

(a) Costs associated with child care include:

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(A) Child care expenses paid with amounts excluded from income as dependent care benefits under Internal Revenue Code (IRC) section 129;

(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or,

(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section 125.

Example 4: Joan's younger child (Susan) stays at her employer's on-site child-care center while she works. The value of the benefits from this child care qualifies to be excluded from her income under IRC section 129. She received this benefit instead of a salary increase. Her employer reports the value of this service as \$3,000 for the year. This \$3,000 is shown in box 10 of her Form W-2, but is not included in taxable wages in box 1. A neighbor cares for Joan's older child (Seth) after school, on holidays, and during the summer. She pays her neighbor \$2,400 for this care. Because the benefits Joan received from her employer qualify to be excluded from income under IRC 129 Joan may claim a working family child care credit based on \$5,400 in qualifying child care expenses.

Example 5: Jorge is single with one child. His employer provides him a \$1,000 qualified child care benefit under an IRC section 125 cafeteria plan. This \$1,000 is excluded from Jorge's income. Jorge's child care expense is \$2,900, of which \$1,000 is paid through the section 125 plan and \$1,900 is paid by Jorge. Jorge may claim a working family child care credit based on \$2,900 in qualifying child care expenses.

Example 6: Tanner has two children. He contributes \$4,000 pre-tax each year to a flexible spending account (FSA) under IRC section 125. He provides his employer with the required documentation in order to be reimbursed for his child care expenses. Tanner has \$5,000 in child care expenses for his two children. He paid \$1,000 with after-tax dollars and he was reimbursed \$4,000 from his pre-tax FSA. Tanner may claim the working family child care credit based on \$5,000 in qualifying child care expenses.

(b) Costs associated with child care do not include:

(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private institution;

(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other such activities unless the activities or courses are an ordinary part of the care provided to the child and cannot be separated;

(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking employment, or not a full-time or part-time student;

(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;

(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,

(F) Transactions that are not arm's-length or have no economic substance.

Example 7: Rusty has a five-year-old son who attends a local academy. He pays \$750 per month for his son's kindergarten and child care. Of the amount he pays each month, \$500 is the contract price for child care and \$250 is an additional amount he pays for the child's education. Rusty can only claim \$500 per month as qualifying child care.

Example 8: Jeff and Rochelle are married and they have a three-year old son, Jakob. Jeff and Rochelle are both gainfully employed and they send Jakob to a daycare center near Rochelle's work for child care. Jakob's parents signed him up for a swimming class through the daycare center that costs \$50 per month. They also signed him up for a \$75 per month second language class that the daycare center offers. The daycare center charges \$400 per month for the full-time care of a toddler. The daycare center bills Jeff and Rochelle \$525 per month for Jakob's child care and activities. Jeff and Rochelle can use the child care expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons or the language class.

Example 9: Kent and Kristen are married and Kent stays home to take care of their four children. Kristen earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care expenses they paid are not costs associated with both Kent and Kristen being gainfully employed, seeking employment, or being a full-time or part-time student. Kent and Kristen cannot claim the working family child care credit.

Example 10: Jim and Denise are married and have two children. Denise works full-time and earns \$25,000. Jim is a full-time student at the local college. He also works part-time and earns \$2,000. They paid \$3,600 in child care expenses while Jim was at school and work. Jim and Denise's qualifying child care expenses are \$3,600 because Denise is gainfully employed and Jim is a full-time student.

Example 11: Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year. Of the

\$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.

Example 12: Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.

(4) Schedule WFC, Working Family Child Care Credit.

(a) To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit. (5) Married Individuals Filing Separately

(a) Taxpayers filing separate returns who share a common household cannot claim the working family child care credit.

(b) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in the future, determine their household size based on the computation defined in subsection (1)(c) of this rule.

Example 13: John and Sue are married and have two children. They are legally separated and live apart permanently, and one child lives with each. John and Sue file separate returns for the tax year and each claims a child as a dependent. John and Sue will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit. Each of them may claim the credit based on the child care costs each paid.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.262

Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-315.304(2)

Pollution Control Facilities: Computation of Credit

(1) Definitions. For purposes of ORS 315.304 and this rule:

(a) "Certified cost" means that portion of total costs that the Environment Quality Commission (EQC) determines is allocable to a pollution control facility.

(b) "Facility" refers to one or more facilities certified under one certificate, with one serial number and with the same allowable percentages used in determining the certified costs and the maximum allowable credit.

(c) "Applicable percentage" means the percentage indicated on the certification issued by the EQC for that facility.

(d) "Useful life" is the remaining years of expected useful life at the time the facility is certified, but not more than 10 years.

(e) "Tax liability" is the amount of tax that is due after any offsets or other tax credits are taken, such as those permitted under ORS 316.082, 316.087, 316.102, 315.104, 315.354, and 315.324.

(2) The credit is equal to the lesser of:

(a) The applicable percentage multiplied by the certified cost and divided by the useful life of the property; or

(b) The taxpayer's tax liability after other credits.

(3) If additional costs are incurred after a pollution control certificate is issued and a revised certificate including those additional costs is issued, the credit for the additional costs may not be claimed prior to the year in which the revised certificate is issued. The credit for those additional costs must be spread equally over the remaining years on the original certificate.

(4) A pollution control facility's useful life is determined as of the date it is certified and may not be changed unless additional certified costs have been incurred. If a facility becomes obsolete and is abandoned before the end of its expected useful life, no remaining unused credit is allowable. If the life of a pollution control facility is extended by repair, which is not eligible for additional tax credit, the taxpayer continues to claim the original credit over the original useful life. If an error in the actual amount spent prior to certification by the EQC is later discovered and the EQC issues a revised certificate, the taxpayer must amortize the correct certified cost over the original useful life, and amend returns for those years for which credits have been claimed that are still open. Any cost incurred and certified after the original certification may be amortized over the new remaining useful life to the extent that the total life of the facility over which credits are claimed does not exceed ten years. The additional credit may be claimed beginning in the year in which certification for the additional cost was obtained.

(5) If a pollution control facility's certification is revoked by the EQC pursuant to ORS 468.185(1)(b), the allowable credit for the tax year must be prorated. The amount for the portion of the tax year before the certification is revoked is allowed. If no appeal is made, the certificate is considered revoked on the date the revocation is issued.

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Example 1: A calendar year taxpayer has a pollution control facility certified January 1, 1996. The credit otherwise allowable for 2000 is \$500. On June 30, 2000, the facility's certification was revoked by the EQC. The credit allowable for 2000 is computed as follows: [Example not included. See ED. NOTE.]

(6) When a certification is reinstated by the EQC under ORS 468.185(5) because the facility has been brought into compliance with the EQC's guidelines, the certificate is reinstated for the remaining period of certification, less the period of revocation. The period of revocation is from the date the revocation is issued to the date of reinstatement. The credit for the period of revocation is lost.

Example 2: Assume the same facts as in Example 1, except that the facility's certification was reinstated September 30, 2000. The credit allowable for 2000 is computed as follows: [Example not included. See ED. NOTE.]

(7) If a pollution control facility's certificate is revoked by the EQC pursuant to ORS 468.185(1)(a), because the certification was obtained by fraud or misrepresentation, all tax relief allowed in prior years is forfeited. The credit forfeited will be added to any other excise or income tax due from the taxpayer who had claimed the credit, for the tax year in which the certification is revoked.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.304

Hist.: 1-77; 12-31-77; 12-31-81; 12-31-83; 12-31-84; 12-31-87; 12-31-88; 12-31-89, Renumbered from 150-316.097(2); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.014

Oregon Net Operating Losses—Treatment After 1984

(1) Applicability of this Rule.

(a) This rule applies to the computation of net operating losses occurring in loss years beginning after December 31, 1984; and net operating loss deductions allowed or allowable in tax years beginning after December 31, 1984.

(b) For the computation and application of Oregon net operating losses for loss years beginning before January 1, 1985; net operating loss deductions with regard to loss years beginning before January 1, 1985; and net operating loss carrybacks and net operating loss carryovers applied in tax years beginning before January 1, 1985 that also originated in tax years beginning before January 1, 1985, see OAR 150-316.007.

(2) Definitions for Purposes of this rule.

(a) Prohibited amounts. "Prohibited amounts" means those amounts that the state of Oregon is prohibited from taxing, such as all stocks, bonds, Treasury notes, and other obligations of the United States as provided in 31 United States Code Section 3124. Prohibited amounts do not include such items as federally taxable social security benefits since Oregon is not prohibited from indirectly taxing such types of income.

(b) Oregon Adjusted Gross Income (Oregon AGI). For a full-year resident, Oregon AGI is generally the same as federal AGI. For a nonresident, "Oregon AGI" means the items included in federal adjusted gross income as defined in IRC Section 62 that relate to Oregon sources without modifications.

(c) Modified Oregon Taxable Income. "Modified Oregon taxable income" means Oregon AGI reduced by the sum of the following:

(A) Oregon itemized deductions. For a resident, Oregon itemized deductions are generally the same amount as federal. For part-year and nonresident taxpayers, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or

(B) Oregon standard deduction. For part-year and nonresident taxpayers, only the Oregon percentage of the standard deductions can be used;

(C) Federal personal exemption(s); and

(D) Prohibited amounts included in Oregon AGI.

(3) Computation of an NOL for a Resident.

(a) For Oregon purposes, a resident's net operating loss is computed in the same manner as for federal purposes without Oregon modifications. Generally, the Oregon NOL is the same as the federal NOL. The only modification necessary is to subtract prohibited amounts.

(b) The computation of the Oregon NOL begins with the Oregon adjusted gross income (AGI) to arrive at modified Oregon taxable income. Then the modified Oregon taxable income is adjusted as required by IRC Section 172(d).

Example 1: Susan and Joe filed joint 2003 federal and Oregon tax returns. On their federal return, they reported wages of \$16,000, a business loss of \$40,000, a gain on the sale of stock of \$400, and interest income of \$800 from a bank. They also reported total itemized deductions of \$10,800 which were all nonbusiness and claimed personal exemptions of \$6,100. On their Oregon return, Susan and Joe also report-

ed \$500 municipal bond interest from California that was exempt from federal income tax. Their allowable Oregon NOL is computed as follows: [Formula not included. See ED. NOTE.]

Note: Except for prohibited amounts, the Oregon NOL is computed based on the federal NOL method and definitions without Oregon modifications.

Example 2: The facts are the same as in Example 1, except that the interest of \$800 is from U.S. government securities (prohibited amounts). The Oregon NOL for Susan and Joe is \$(24,800) computed as follows: [Formula not included. See ED. NOTE.]

(4) Computation of an NOL for a Part-year Resident and a Nonresident

(a) A nonresident is allowed an Oregon NOL for any loss year when the NOL is attributable to Oregon sources. A taxpayer is not allowed an NOL or carryover on the Oregon return if the loss was incurred while the taxpayer was a nonresident and the loss was not attributable to Oregon. The computation of the allowable net operating loss for Oregon purposes begins with Oregon adjusted gross income as defined in this rule. Any modifications provided in IRC Section 172(d) apply to all items of income and deduction as they apply to modified Oregon taxable income with the exception of prohibited amounts.

(b) The IRC Section 172(d) modifications attributable to Oregon sources are the following:

(A) Oregon NOL deduction from prior years included in Oregon income after adjustments.

(B) Net Oregon capital loss deduction.

(C) Federal personal exemption amount.

(D) Excess of nonbusiness deductions over nonbusiness income included in modified Oregon taxable income.

Example 3: Herb and Sallie are married nonresidents and file a joint 2003 return. On their federal return, they have itemized deductions of \$12,400 (all nonbusiness) and claimed personal exemptions of \$9,150. They also had a business loss of \$25,000 from Oregon sources and \$1,000 non-Oregon source corporate bond interest. On their Oregon nonresident return, the Oregon percentage is zero (0). They compute their Oregon NOL as follows: [Formula not included. See ED. NOTE.]

(5) Application of an NOL:

(a) General rule. An Oregon net operating loss for any loss years is applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If the loss was not attributable to Oregon sources and was incurred while the taxpayer was a nonresident, there is no Oregon NOL to carry over even if the taxpayer later becomes an Oregon resident. In such cases, the amount of the NOL carryover that is not attributable to Oregon sources is added back on the Oregon resident tax return. If a taxpayer carries back a federal NOL, the taxpayer is treated as carrying the loss back for Oregon purposes as well. If a taxpayer makes an election to carry over the federal NOL, the taxpayer is treated as making the same irrevocable election for Oregon purposes as well.

(b) Exceptions:

(A) If a taxpayer has an Oregon NOL but does not have a federal NOL, the taxpayer may elect to carry the Oregon NOL over to the next succeeding year, if the taxpayer makes an irrevocable election on the timely filed Oregon loss year return (including extensions). If no such election is made, then the taxpayer may only carry the Oregon loss back in the same manner as provided in IRC Section 172(b).

(B) If a taxpayer is not required to file an Oregon return for all years to which the federal NOL deduction (NOLD) is applied, the following applies: In the case of an NOL carryback, if a taxpayer was not required to file an Oregon return for a carryback year prior to the Oregon loss year, the Oregon NOL is carried back to the year in which the loss may be first applied.

(C) The total number of years to which an NOL may be carried back or forward is the same for Oregon and federal, and is determined as follows:

(i) For net operating losses incurred in tax years beginning on or after January 1, 2003, the carry back period is two years with a twenty year carryover period.

(ii) For net operating losses incurred in tax years beginning on or after January 1, 2001 and before January 1, 2003, the carryback period is five years with a twenty year carryover period.

(iii) For net operating losses incurred in tax years beginning on or after August 5, 1997 and before January 1, 2001, the carryback period is two years with a twenty year carry over period.

(iv) For net operating losses incurred in tax years beginning prior to August 6, 1997, the carryback period is three years with a fifteen year carryover period. See IRC 172 and the regulations thereunder for exceptions

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to the general carryback periods for net operating losses attributable to certain casualty losses, disaster areas and farming losses.

Example 4: Joe has a net operating loss for federal and Oregon for tax year 2003. For federal purposes, Joe carried his federal NOL back to 2001. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 2001 Oregon tax return. If he is not required to file an Oregon tax return for 2001, he may carry his Oregon NOL to his 2002 Oregon tax return.

Example 5: Assume the same facts as in Example 4. However, Joe was not required to file an Oregon tax return prior to tax year 2003. Joe may carry his Oregon NOL over to his 2004 Oregon tax return even if the loss was carried back for federal purposes.

Example 6: Devin, a Washington resident, incurs a \$25,000 NOL in 2003 from his Washington area business and elects to carry the loss forward. Devin moves to Oregon on January 1, 2004. Since the loss was incurred while Devin was a nonresident of Oregon and the loss is not from an Oregon source, there is no Oregon NOL and Devin must make an addition on his 2004 Oregon return to add back the \$25,000 NOL included in federal adjusted gross income.

(6) A Net Operating Loss Deduction, Carryback and Carryover Amount.

(a) A taxpayer's net operating loss deduction (NOLD), carryback and carryover amount is computed in the same manner as for federal purposes. The method to compute the carryback and carryover amount is not modified for Oregon purposes.

(b) For a full-year resident, generally an NOLD, carryback and carryover amount is the same as for federal purposes except that prohibited amounts as defined in section (2)(a) of this rule are not taken into consideration.

Example 7: John and Joyce incurred losses in 2002 from partnerships and S corporations. They compute an NOL of \$12,000 and elect to carry the loss back. The 2000 return shows negative taxable income, so the 2002 NOL is first applied to 2001 where the loss is completely absorbed. John and Joyce have a federal AGI in 2001 of \$32,000. The fully absorbed 2002 NOL is applied as follows: [Formula not included. See ED. NOTE.]

Example 8: Assume the same facts in Example 7, except that John and Joyce elect to carry forward the 2002 NOL for federal and Oregon purposes. In 2003, John and Joyce have federal AGI of \$15,000 and have reported additions of \$8,000 and subtractions of \$3,000. John and Joyce will apply the NOL to 2003 and compute the amount carried over to 2004 as follows: [Formula not included. See ED. NOTE.]

(c) A part-year resident and a nonresident use the federal method without modifications, except that prohibited amounts are not taken into consideration, and the NOLD, carryback and carryover are based only upon amounts attributable to Oregon sources.

Example 9: In 2002, while residents of California, Ron and Valerie incurred losses from an Oregon partnership creating an Oregon only NOL in the amount of \$85,000. Prior to 2002, neither Ron nor Valerie needed to file Oregon returns. In 2003, Ron and Valerie moved to Oregon and filed a part-year Oregon return. They reported federal income after adjustments of \$385,000, Oregon income after adjustments of \$235,000, and itemized deductions of \$10,000. Ron and Valerie calculate their 2003 Oregon taxable income as follows: [Formula not included. See ED. NOTE.]

Example 10: Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 2002, Scott and Jill filed a nonresident Oregon return reporting an Oregon only NOL of \$6,000. Scott and Jill elected to carry the NOL forward. In 2003, Scott and Jill reported Oregon income after adjustments of \$1,600, federal income after adjustments of \$32,000, and federal itemized deductions of \$9,200. Their Oregon itemized deductions are \$460 $[(\$1,600/\$32,000) \times \$9,200]$. Scott and Jill calculate their net operating loss deduction for 2003 and the carryover to 2004 as follows: [Formula not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.014

Hist.: RD 4-1986(Temp), f. & cert. ef. 7-29-86; RD 7-1986, f. & cert. ef. 12-31-86; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.587(1)

Tax Used to Compute Underpayment of Estimated Tax

Any interest due for underpaying estimated taxes is to be computed using the total tax shown on the return. If the return is adjusted in initial processing, the recomputed tax must be used for determining any underpayment interest. Prior to October 6, 2001, subsequent amendments to the tax will not affect the underpayment interest amount unless the amended return is received prior to the statutory due date of the original return. Amended returns filed on or after October 6, 2001 will not affect the underpayment interest amount unless the amended return is received by the statu-

tory due date of the original return or within the extension period granted for the original return.

Example 1: Mary files an Oregon income tax return on a calendar year basis. She filed a return for tax year 2000 on February 15, 2001, showing a tax liability of \$1,700. On April 10, 2001, she filed an amended return for tax year 2000 showing a tax liability of \$1,450. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on April 10, 2001.

Example 2: Same facts as given in Example 1 except that Mary's amended return was filed on May 20, 2001. The original return filed on February 15, 2001, is the return for the taxable year for purposes of computing any interest on underpayment of estimated tax.

Example 3: Mark files an Oregon income tax return on a calendar year basis and had an extension to August 15, 2002 in which to file his 2001 return. He filed his 2001 return on May 1, 2002 showing a tax liability of \$2,150. On August 15, 2002, he filed an amended return for 2001 showing a tax liability of \$1,375. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on August 15, 2002.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.587

Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.587(5)(b)

Estimated Tax: Waiver of Underpayment Interest Due to Casualty, Disaster or Other Unusual Circumstances

(1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment that is caused by reason of casualty, disaster or other unusual circumstances where it would be against equity and good conscience to impose interest. The determination of whether unusual circumstances exist is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to comply with the law and make the required installments.

(2) The following are examples of situations that will be accepted by the department as unusual circumstances for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment was caused by death or serious illness of the taxpayer, or death or serious illness in the taxpayer's immediate family.

(b) Where the taxpayer's books and records are destroyed by fire, flood or other natural disaster and therefore, the taxpayer is unable to determine the correct estimated tax payment.

(c) Where the disaster is so overwhelming that the taxpayer neglects to make the necessary estimated tax payment.

(d) Where the failure to make the necessary estimated tax payment was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

(3) Example: Sharon filed her 2003 Oregon income tax return and had tax to pay of \$2,500. Interest on underpayment of estimated tax was imposed. Sharon's house was destroyed by fire on August 5, 2003 and all of her tax records were destroyed. The department will not impose the interest on underpayment of estimated tax for the third and fourth installment periods due to the casualty.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.587

Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.587(5)(c)

Estimated Tax: Waiver of Underpayment Interest Due to Reasonable Cause

(1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment if in or prior to the tax year the estimated tax payment was required to be made, the taxpayer retired after attaining age 62 or became disabled, and the underpayment was due to reasonable cause and not to willful neglect. The determination of whether the taxpayer's actions were due to reasonable cause and not willful neglect is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to assess the taxpayer's proper liability.

(2) The following are examples of situations that will be accepted by the department as reasonable cause for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

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(b) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by reliance on an information return or other facts, if under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. Reliance on information reported on a Form W-2, Form 1099 or other information is reasonable if the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction.

(c) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by incorrect professional advice and:

(A) The taxpayer relied upon the advice of an individual who the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved;

(B) The taxpayer supplied the individual with complete information connected with the advice given; and

(C) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(d) Where the taxpayer exercised ordinary business care and prudence and nevertheless was unable to make the necessary estimated tax payment or to pay the correct amount of estimated tax.

(e) Where the taxpayer is unable to obtain records necessary to determine the amount of estimated tax due, for reasons beyond the taxpayer's control.

(f) Where the taxpayer failed to pay the tax based on erroneous written information received from an employee of the Department of Revenue.

(g) Examples:

(A) Bob, age 65, retired from his job on March 30, 2003. Bob did not request that Oregon state tax be withheld from his retirement income and he didn't know that he needed to make estimated tax payments. When Bob filed his 2003 tax return he found he owed \$1,500 of tax. Since the underpayment was not due to reasonable cause, interest on underpayment of estimated tax will be imposed.

(B) Grace, age 62, retired from her job on February 1, 2003. Before Grace retired she consulted her tax consultant for advice on when to retire and what payment elections to make. Grace turned all her paperwork over to her tax consultant to fill out. The tax consultant neglected to have Oregon state tax withheld from Grace's retirement income. Because the underpayment was due to reasonable cause, interest on underpayment of estimated tax will not be imposed.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.587

Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-317.715(3)(b)

Consolidated Oregon Return: Apportionment Formula

(1) Each member of an affiliated group of corporations must be treated as a separate corporation for purposes of determining whether it is subject to the tax jurisdiction of Oregon. A corporation is subject to the tax jurisdiction of Oregon if it is "doing business" in Oregon as defined under ORS 317.010(4) or has income from Oregon sources taxable under ORS 318.020.

(2) In applying the apportionment provisions of ORS 314.280 or 314.605 to 314.670, each corporation subject to the tax jurisdiction of Oregon must be considered separately.

Example: Corporations A, B and C are members of the same unitary group and file a consolidated federal return. Corporation C is "doing business" in Oregon as defined under ORS 317.010(4) while Corporations A and B have no activities in Oregon. Since Corporation C is the only member of the affiliated group subject to the tax jurisdiction of Oregon, the Oregon property, payroll and sales included in the numerator of the apportionment formula are determined by applying the provisions of ORS 314.605 to 314.670 to the business activities of Corporation C. The denominator of the apportionment formula will include the total property, payroll and sales for Corporations A, B and C as determined by applying the provisions of ORS 314.655 to ORS 314.670. See OAR 150-314.665(6) and 150-314.665(6)(a) for an explanation regarding how ORS 317.715(3) and this rule work with the "primary business activity" provisions of ORS 314.665(6).

(3) The property, payroll, sales and other factors included in the apportionment formula of a consolidated Oregon return must be computed by eliminating transactions between members of the affiliated group filing the consolidated Oregon return. See OAR 150-314.650(10) regarding trans-

actions between members of an affiliated group filing a consolidated Oregon return and related pass-through entities such as partnerships and S corporations owned by other members of that affiliated group.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.715

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

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Adm. Order No.: REV 12-2004

Filed with Sec. of State: 12-29-2004

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Notice Publication Date: 11-1-04

Rules Adopted: 150-285C.170, 150-307.262(2), 150-309.100(5), 150-311.688, 150-321.348(2), 150-321.741(2), 150-321.751(3), 150-321.754(3), 150-321.805(4)

Rules Amended: 150-308.205-(A), 150-308.205-(D), 150-308A.718, 150-309.024, 150-309.100(2)-(B), 150-309.100(3)-(B), 150-309.110(1), 150-309.110(1)-(A), 150-311.690(4), 150-311.806-(A), 150-321.207(1), 150-321.307(4)

Rules Repealed: 150-285B.722, 150-285B.728, 150-308.010-(B), 150-308.010-(C), 150-311.723

Rules Ren. & Amended: 150-285B.719(8) to 150-285C.140(12), 150-OL 1997, Ch. 835, Sec. 38 to 150-285C.409, 150-OL 1997, Ch. 835, Sec. 39 to 150-285C.420, 150-308.010-(A) to 150-308.010, 150-321.358(2) to 150-321.358(4), 150-321.485(3) to 150-321.485(4), 150-321.805 to 150-321.839(4)

Subject: The Department of Revenue intends to adopt, amend, repeal and renumber administrative rules relating to property and timber taxation, enterprise zones, appraisal, appeals, valuation, tax deferral and refunds.

Rules Coordinator: Xann-Marie Culver—(503) 945-8383

150-285C.140(12)

Waiver of Enterprise Zone Application for Authorization Filing Deadline Requirement

(1) The Department of Revenue will waive the application for authorization filing deadline requirement under ORS 285C.140(1) if:

(a) The taxpayer had knowledge of the enterprise zone property tax exemption program prior to initiating its investment, as shown by contacts made by the taxpayer with the Oregon Economic and Community Development Department, the enterprise zone sponsor, the local zone manager or the county assessor; and

(b) The reason for the late submission of the application constitutes good and sufficient cause as defined in OAR 150-307.475.

(2) In addition to the extraordinary circumstances identified in OAR 150-307.475, good and sufficient cause may also include reasonable reliance on misinformation provided by enterprise zone sponsor personnel, local zone manager or Economic and Community Development Department personnel.

(3) The following is an example of a filing deadline waiver request that the Department of Revenue would grant:

Example: A company began meeting with the local zone manager in July 1999. The local zone manager assured the company that it would be authorized and that construction could proceed. The company was authorized in March 2000. Just prior to authorization in March 2000, during a physical inspection of the property, the county discovered that a building was already under construction. The company otherwise met the program criteria and filed a timely enterprise zone exemption claim.

Stat. Auth.: ORS 305.100, 285C.140, 285C.125

Stats. Implemented: ORS 285C.140

Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2000, f. & cert. ef. 8-3-00, Renumbered from 150-285.613(8); Renumbered from 150-285B.719(8), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-285C.170

Construction-in-Process Exemption for Enterprise Zones

(1) A business seeking an exemption for construction-in-process in an enterprise zone must file Form 150-310-020, entitled "Application For Cancellation Of Assessment On Commercial Facilities Under Construction," which is also used to claim an exemption under ORS 307.330 and 307.340.

(2) "The Application For Cancellation of Assessment on Commercial Facilities Under Construction" form must be filed with the county assessor on or before April 1 of the assessment year for which the exemption is being requested.

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(3) Property may be exempt under ORS 285C.170 for no more than two tax years, which must be consecutive. A separate claim must be timely filed for each year.

(4) In order to qualify for this exemption the property must not have been placed in service on or before January 1 of any assessment year in which the exemption is claimed. If the property for which the exemption is claimed is industrial, it may be tested for production without being placed in service.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 285C.125
Stats. Implemented: ORS 285C.170
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-285C.409

Commencement and Duration of Long-Term Nonurban Oregon Enterprise Zone Exemption

(1) For purposes of ORS 285C.409 and this rule, a facility is "in service" when a certified business has received a permit to occupy and use the building for its intended purpose.

(2) All real and personal property including improvements, machinery, and equipment newly located at the facility are exempt from ad valorem property tax for a minimum of seven and a maximum of 15 consecutive tax years. The period for the exemption commences with the first tax year for which the facility was placed in service as of the assessment date for that tax year. If there is no express written agreement between the certified business firm and the zone sponsor on the number of tax years for which the facility is to be exempt, the period for the exemption will be seven consecutive tax years.

(3) The following are examples of how to determine the tax year for which the exemption commences:

Example 1. The property for which the exemption is claimed was placed in service on November 15, 2002. The first assessment date after the property was placed in service is January 1, 2003. Therefore, the exemption commences with the 2003-04 tax year.

Example 2. The property for which the exemption is claimed was placed in service on February 15, 2003. The first assessment date after the property was placed in service is January 1, 2004. Therefore, the exemption commences with the 2004-05 tax year.

Stat. Auth.: ORS 305.100, 285C.125
Stats. Implemented: ORS 285C.409
Hist.: REV 8-2000, f. & cert. ef. 8-3-00; Renumbered from 150-OL 1997, Ch 835, sec. 38, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-285C.420

Assessor's Action When A Long-Term Nonurban Oregon Enterprise Zone Facility is Disqualified

(1) Upon discovering that a certified business no longer qualifies for the property exemption under ORS 285C.409, the assessor must give written notice of exemption disqualification.

(2) The notice must include:

(a) A statement that the property is disqualified from the exemption for the following tax year,

(b) A statement explaining the reason for the disqualification,

(c) A calculation of the additional tax liability, and

(d) A statement that the additional tax liability will be added to the next general property tax roll.

(3) The additional tax liability must equal the taxes that would otherwise have been assessed against the disqualified property for each of the tax years the property was exempt under ORS 285C.409.

Stat. Auth.: ORS 305.100, ORS 285C.125
Stats. Implemented: ORS 285C.420
Hist.: REV 8-2000, f. & cert. ef. 8-3-00; Renumbered from 150-OL 1997, Ch 835, sec. 39, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-307.262(2)

Extended Filing Period for War Veterans

A war veteran may file an initial application to claim an exemption under ORS 307.250 anytime within six months of the date of the initial notice from the United States Department of Veterans Affairs or any branch of the Armed Forces of the United States certifying a qualifying disability. The veteran's initial application will apply to the current tax year and up to three prior tax years, depending on the date of certified disability. If the veteran's initial application is filed between April 1 and June 30, the veteran may also file a second application to claim an exemption for the following tax year beginning on July 1. The veteran must file the second application within the time period allowed for the initial application. For subsequent tax years the veteran must file an application annually by April 1 to claim an exemption.

Example: A veteran receives a notice of certification in April 2004, certifying the disability as of March 2003. The veteran first applies for the

exemption on June 10, 2004, for the 2003-04 tax year. The veteran's second application for the 2004-05 tax year will be timely if application is made within six months of the date of the notice of certification, even though application is made after the annual April 1 filing deadline.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.262(2)
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308.010

Continuing Education Requirements for Registered Appraisers, Waiver of those Requirements, and Revocation of Registrations

(1) Registered appraisers in Oregon must participate in a continuing education program related to technical competency. To maintain their registration, appraisers must meet the continuing education requirements outlined in this rule. The requirements of this rule apply to any person who wishes to maintain registration, without regard to the person's place of employment.

(2) Definitions:

(a) For the purposes of this rule, a "registered appraiser" is a person who has satisfied the requirements of ORS 308.010 relating to employment and successful completion of an appraiser skills examination.

(b) "Continuing education credits" are units of training that are approved by the department in subjects related to assessment and taxation. Credits are equal to the number of hours in a course or presentation the department approves for continuing education.

(A) Technical credits are awarded for training in assessment and taxation subjects. Topics eligible for technical credit include, but are not limited to: mass appraisal, tax rate calculation, ratio studies, personal property, farm or forest uses, board of property tax appeals, property tax exemptions and special assessments and computer applications.

(B) Instructor credits are awarded for course development and presentation. The course instructor will receive instructor credits for the first training session equal to the number of hours the department approved for continuing education for that training session. For each subsequent training session on the same subject, the course trainer will receive one-half hour of instructor credit for each hour of department approved continuing education credit.

(3) Required Credit Hours

(a) Registered appraisers must accumulate 30 credit hours of continuing education every two calendar years following registration. Registered appraisers with less than three years appraisal experience with either the Department of Revenue or an Oregon county assessor's office or a combination of the two must accumulate 60 credit hours of continuing education credits within the first two calendar years following their registration.

(b) In the case of registered appraisers employed by the county, the assessor annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers employed by the State of Oregon, the direct supervisor of those employees annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers not employed by the county assessor or the State of Oregon, individuals annually will self-certify on a form provided by the Department of Revenue as to the satisfactory completion of continuing education requirements.

(c) The Department of Revenue will maintain a database of training it provides to registered appraisers. That database may be supplemented by records provided by the registered appraiser as to qualifying appraisal training received from sources other than the Department of Revenue.

(d) The department will provide sufficient training programs to allow registered appraisers to meet continuing education credit requirements. Credit hours are approved for appraisal related courses offered by the following organizations:

(A) Department of Revenue;

(B) International Association of Assessing Officials (IAAO);

(C) American Society of Appraisers (ASA);

(D) The Appraisal Institute.

(e) The department will approve credit hours provided through training given by other entities, individuals or by the county if it determines that the content of the training meets the definition for technical credits provided in this rule.

(4) Waiver of Requirement for Continuing Education Credits

(a) Any registered appraiser or the appraiser's employer on behalf of the appraiser may submit a request for waiver of the requirements for continuing education credit(s) for the current year to the Department of Revenue prior to December 31. A request for waiver must be in writing, signed by the requestor, and if it is a waiver for a registered appraiser

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employed by the county, the assessor must approve it. For registered appraisers employed by the Department of Revenue, the appraiser's immediate supervisor must approve the request for waiver.

(b) The waiver request must be filed during each calendar year to which it applies.

(c) The following are conditions for which the department may grant a waiver during the calendar year for which the waiver is requested:

(A) Formal retirement from regular employment, whether or not the appraiser is working on a temporary or part-time basis in an appraisal capacity.

(B) Absence from the state that prohibits the completion of continuing education requirements.

(C) Military service that prohibits the completion of continuing education requirements.

(D) Disability or illness that prohibits the completion of continuing education requirements.

(E) Accident or other uncontrollable events that prohibit the completion of continuing education requirements.

(F) Limited duration assignments within the Department of Revenue but outside the Property Tax Division for Department of Revenue appraisers.

(d) The department may grant a waiver request for more than three consecutive years only if one or more of the conditions described by (c)(A) through (E) are met.

(5) Validation of Accumulated Credits

(a) Prior to January 1 each year registered appraisers must provide the department with a statement that they have met their education requirement. The statement must be made on a form provided by the department.

(b) Prior to February 1 of each year the department will notify the Human Resource Services Division of the Department of Administrative Services of:

(A) Those individuals who have met the continuing education requirements of ORS 308.010 and this rule or

(B) Have been granted a waiver of the requirements.

(6) Revocation of Appraiser Registration The Human Resource Services Division of the Department of Administrative Services:

(a) May revoke appraiser registration under ORS 308.010(1) for fraud or deceit in appraising or in the securing of a certificate or for incompetence.

(b) Will revoke appraiser registration under ORS 308.010(4)(d) for failing to submit satisfactory evidence to the department that the registered appraiser has met the continuing education requirement.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.010

Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-308.010; 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.010; Renumbered from 150-308.010-(A), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308.205-(A)

Real Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment which comprise an integral part of the property or manufacturing operation) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Rural lands" means those lands with property classification 400, 401, 500, 501, 600, 601, 800, and 801 as defined by OAR 150-308.215. They are distinguished from platted land as acreages in varying sizes and are either improved or unimproved.

(d) "Utility" means the quality or property of being useful which may either add to or subtract from market value.

(e) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See *The Appraisal of Real Estate*, 12th edition (2001).

(2) Methods and Procedures for Determining Real Market Value:

(a) For the valuation of real property all three approaches-sales comparison approach, cost approach, and income approach-must be considered. For a particular property, it may be that all three approaches cannot be

applied, however, each must be investigated for its merit in each specific appraisal.

(b) The real market value of a unit of property shall not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, etc., each priced separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length market transactions. When nontypical market conditions of sale are involved in a transaction (duress, death, foreclosures, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the nontypical market condition.

(d) If there are no market transactions of property comparable to the subject, then it is still appropriate to use market value indications derived by the cost, income or stock and debt approaches.

(e) Sales on the basis of disposal at salvage or scrap levels are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(f) The cost approach must use the reproduction, replacement, or used equipment technique; however, original historical cost may be used when appraising property under ORS 308.505 to 308.730. The value estimate must include all costs required to assemble and construct the unit of property.

(g) The income to be used in the income approach must be the economic rent that the property would most probably command in the open market as indicated by current rents being paid, and asked, for comparable space. Income from the operation of the property may be utilized for property types, such as industrial plants that are not typically leased or rented.

(h) The real market value for rural lands is based on an average price per acre for each size of parcel. Adjustments to the value must be made to those acres with more or less utility. For improved parcels the value of the site developments as defined by OAR 150-307.010(1)(2)(a)(A) must be added.

(i) Determining highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(3) Valuation of Especial Property: Especial property is property specially designed, equipped, and used for a specific operation or use that is beneficial to only one particular user. This may occur because the especial property is part of a larger total operation or because of the specific nature of the operation or use. In either case, the improvement's usefulness is designed without concern for marketability. Because a general market for the property does not exist, the property has no apparent immediate market value. Real market value must be determined by estimating just compensation for loss to the owner of the unit of property through either the cost or income approaches, whichever is applicable, or a combination of both.

(4) Real market value for all personal property must be as of the date of assessment in accord with the statutory definition and must take into account the location and place in the level of trade of items of property in the hands of manufacturers, producers, wholesalers, distributors, retailers, users, and others.

(5) Valuation of Land Under Improvements Having Only Partial Exemption. This does not apply to those cases where land is not eligible for inclusion in the exemption.

(a) The value of land under a single story improvement when part of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the value of each portion.

Example 1: There is a one-story building of which a part representing 80 percent of total value is under exemption and the remaining part is taxable and consists of new construction representing 20 percent of the total value. The value of the land under the building would be apportioned 80 percent to the exemption and 20 percent to the taxable or market value each year.

(b) The value of land under a multiple story improvement when all or part of one or more stories of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the contribution of the current market value of each portion.

Example 2: There is a two story building which occupies a 100' x 100' lot in its entirety.

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The first story is under exemption, and the value carried on the roll represents 60 percent of the total improvement value. The second story, valued at market, represents 40 percent of the total improvement value. The value of the land under the building must be apportioned 60 percent to the exemption and 40 percent to the property valued at market.

(c) Where an improvement does not fully occupy the land and where only a portion of the improvement and land are used for an exempt purpose, then the value of the improvement and land must be allocated between the exempt and taxable portions of the parcel. Any portion of the land or improvement that is not used, developed, or that is being held for future expansion is fully taxable.

Example 3: Assume a parcel that measures 200' by 200', a building measuring 100' x 100', paved parking measuring 100' x 100' and unimproved land measuring 200' x 100'. One-half or 50% of the building and parking are used by an exempt entity. One-half (50%) or 5000 square feet of the building is exempt, one-half (50%) of the parking is exempt. The remainder of the building, the parking lot and unimproved land are fully taxable.

Example 4: There is a building measuring 100' x 100' located on one-fourth of a 200' x 200' lot. The remaining portion of the lot is a parking area. The taxable portion of the building rents or leases a 100' x 100' parking area and has exclusive use. The value of the remaining 100' x 200' area of the lot is exempt only to the extent it is used as a parking area for the exempt entity. If 100' x 100' of this 100' x 200' parking area is used for parking and the remainder is held by the exempt entity for future expansion, the area held for expansion is fully taxable.

(d) When an improvement is partially exempted and that improvement contains common areas (i.e., hallways, restrooms, conference rooms, etc.), the percentage of the total area of these common areas that receives exemption shall be the same as the percentage of the total net rentable area occupied by the exempt entity.

(6) Valuation of Land Under Improvements Having Only Partial Special Assessment: The procedures described in Section (5) of this rule also apply to properties receiving a partial special assessment, such as a partial historical designation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: 1-54; 12-55; 11-59; 8-62; 1-64; 12-65; 1-66; 3-70; 11-71; 12-31-79; 12-31-81; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308.205-(D)

Industrial Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment erected upon the land or attached to the land or structures) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See *The Appraisal of Real Estate*, 12th edition (2001).

(2) If the highest and best use of the unit of property is an operating plant or an operating integrated complex, the real market value will be considered to be a "going concern." The going concern concept recognizes that the value of an assembled and operational group of assets usually exceeds the value of an identical group of assets that are separate or not operational.

(3) Methods and Procedures for Determining the Real Market Value of Industrial Property:

(a) For the valuation of industrial property all three approaches sales comparison, cost, and income, must be considered. For a particular property, it may be that all three approaches can not be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The market value of a unit of property must not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, machines, conveyors, etc., each price separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length transactions. When non-typical market conditions of sale are involved in a transaction (duress, death, foreclosure, bankruptcy, liquidation, interrelated corporations or persons, etc.) the transaction will not be used in the sales compar-

ison approach unless market-based adjustments can be made for the non-typical market condition.

(d) Properties utilized in the sales comparison approach, although not necessarily identical, at the very least must be similar in many respects. Adjustments must be made for differences in location, product, production capacity, and all other factors that may affect value. Excessively large adjustments or an excessive number of adjustments is an indication that the properties are not comparable.

(e) When utilizing the sales comparison approach, the appraiser must take into consideration difference between the subject and the comparable properties for physical condition, functional obsolescence and economic obsolescence. Adjustments must be made for differences between the subject and comparable properties for factors such as physical condition, functional deficiencies, operating efficiency, and economic obsolescence. If the properties are functionally or economically equivalent, verification of the equivalency must be included in the appraisal.

(f) Sales for the disposal of properties through auction, liquidation or scrap sales are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(g) The cost approach may utilize either the reproduction, replacement, or the used equipment technique. It is acceptable to use trended historical cost to estimate the reproduction cost new. The value estimate must include all costs required to assemble and construct the unit of property.

(h) When using the income approach, the income from the operation of the property may be utilized for industrial properties and other properties that are not typically leased or rented. When the income from the property's operation is used, the unit of property must be valued as a going concern. In utilizing the income approach for the valuation of industrial properties, the discounted cash flow technique is one of the appropriate methods to derive a value estimate. Consideration in the discounted cash flow technique is given to items such as the anticipated free cash flow available to the debt and equity holders, inventory valuation methods, intangible assets, income taxes, net working capital, capital reinvestment, etc. When utilizing the discounted cash flow technique, the capitalization or discount rate must be derived in accordance with OAR 150-308.205-(C).

(i) Determining the highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(4) Basic information for an appraisal. Basic data and procedures in making appraisals normally include the following when applicable:

(a) Location of property by tax codes and tax lot numbers;

(b) Map or sketch of land owned and layout of plant;

(c) Inventory of physical plant;

(d) Reproduction or replacement cost computations, as applicable;

(e) Analysis of depreciation;

(f) Analysis of economics as they affect valuation;

(g) Analysis of sales data, when applicable;

(h) Field inspection;

(i) Research and familiarization with typical properties of the industry;

(j) Annual reports to stockholders;

(k) Fixed assets schedules;

(l) Income statements;

(m) Such other data that may affect value.

(5) Basic information for an appraisal utilizing the annual report method. Basic data for an appraisal utilizing the annual report method normally includes the following:

(a) Report of additions;

(b) Report of retirements;

(c) Knowledge of miscellaneous technical and economic conditions that affect value;

(d) Trending factors:

(A) Separate factors for yard improvements, buildings, and equipment classified as real property must be developed.

(B) The development of the factors must use data published by the United States Department of Labor, the Oregon Building Construction Trades Council, and other sources the Department of Revenue deems to be reliable indicators of property value over time.

(C) Data developed by physical inspection together with appraising a segment of the total property or making a general review of the total value under certain circumstances may supplement the data utilized in (A) above.

(e) Depreciation allowances;

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(f) Real market value for prior year.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91;
REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308A.718

Disqualification Notification Procedures

(1) Notice of Disqualification:

(a) A notation must be made on the assessment and tax roll on or before June 30 to indicate that a disqualification of farmland, forestland, or a homesite as listed in ORS 308A.718 has taken place. The assessor must mail notice to the owner or person claiming special assessment within 30 days after the date that land is disqualified.

(b) If the disqualification occurs because the land is no longer in farm or forest use, as described under ORS 308A.113(3) (Exclusive Farm Use), 308A.116(6) (Non-Exclusive Farm Use), 321.366 (Western Oregon forestland), or 321.845 (Eastern Oregon forestland), the disqualification is effective only if the notice of disqualification is mailed on or before August 14.

(2) The notice to the person claiming special assessment must state:

(a) That the subject property has been disqualified from special assessment;

(b) That the property will be assessed under ORS 308.156;

(c) The amount of the additional tax liability that will be imposed or if the land is not used for another use the amount of the potential additional tax liability (ORS 308A.706(1));

(d) Provisions and timing for change of type of special assessment under ORS 308A.724; and

(e) Appeal rights.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.399 & ORS 308A.718

Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87;
RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.399; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.024

Record of Board of Property Tax Appeals Meetings

A record of the proceedings of the board of property tax appeals must be kept by the county clerk.

(1) The record may be either written or audio minutes and may be maintained as a separate record called Board of Property Tax Appeals Proceedings. The record must be organized by date of meeting or numerical order of petition and kept on media that meets the retention requirements of OAR chapter 166, division 40.

(2) The administrative record of the board must include, but is not limited to:

(a) A copy of the order appointing board members to the pools described in ORS 309.067 or a copy of the minutes of the meeting of the county governing body during which the pools were appointed;

(b) Oaths of office of members;

(c) Verification of training;

(d) Designation of legal counsel, if appropriate;

(e) Affidavit of publication of notice of session and copies of all published notices;

(f) Record of appointment of board appraiser, if applicable;

(g) Daily or weekly agendas; and

(h) Summary of Actions as required by OAR 150-309.360.

(3) The individual record of each meeting held during which the board makes a decision or obtains material that will be used in making a decision, must include, but is not limited to:

(a) Date of meeting;

(b) A list of those present, including all members and any person who presents evidence;

(c) The substance of any discussion on any matter;

(d) All material presented as evidence;

(e) All motions and who made them;

(f) Results of all votes and how each member voted;

(g) Petitions, marked with date received and assigned number;

(h) Authorizations to represent or powers of attorney;

(i) Defective petition notices, if applicable;

(j) Copy of hearing notice;

(k) The board's order, which must contain the original or facsimile signatures including orders issued pursuant to stipulations filed on or after the date the board convenes; and

(l) Stipulations filed on or after the date the board convenes.

(4) The record must also include stipulations filed with the clerk of the board under ORS 308.242(3).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.024

RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-02, Renumbered from OAR 150-309.012(5); REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.100(2)-(B)

Withdrawing Petitions

(1) Petitioners may withdraw appeals filed with the board of property tax appeals for any reason prior to the time the board issues the order. A request for withdrawal must be submitted in writing to the clerk of the board.

(2) The board must issue an order of dismissal for each petition for which a request for withdrawal has been submitted except when a stipulation has been filed under ORS 308.242(3) prior to the date the board convenes.

(3) The clerk of the board must keep the request for withdrawal and the board's order in the permanent record of the board.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1); REV 10-2002, f. & cert. ef. 12-31-02; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.100(3)-(B)

Board of Property Tax Appeals (BOPTA) Deficient Petition Process

For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(1) The clerk of BOPTA will review the filed petitions for compliance with OAR 150-309.100(3)-(A).

(2) If the petition is defective, the clerk will provide written notice to the petitioner unless a representative is named on the petition. If a representative is named on the petition, the clerk will provide written notice to the petitioner's representative. The notice may be personally delivered or mailed to the mailing address on the petition. If the petitioner's representative has not provided a mailing address and the notice cannot be personally delivered, the clerk will provide notice of the defective petition to the petitioner.

(3) The notice must include the following information:

(a) The nature of the defect,

(b) The time allowed by section (4) or section (6) of this rule to correct the defect, and

(c) A statement that failure to correct the defect within the time allowed will result in dismissal of the appeal without further notice.

(4) If the board clerk provides notice of a defective petition by mailing or personal delivery more than 20 days before the last day of the board session described in ORS 309.026, the petitioner or petitioner's representative has 20 days from the date the notice of defective petition was mailed or personally delivered, or until the last day for filing a petition with BOPTA, whichever is later, to correct the defect. Time is computed from the first day following the date the written notice was mailed or personally delivered and includes the last day unless the last day falls on a legal holiday, Saturday, or Sunday. The time is then extended to the next working day. Corrected petitions may be faxed to the county clerk and will be considered timely filed under the guidelines listed in Section (4) of OAR 150-309.100(2)-(A).

(5) In addition to amending a petition to comply with OAR 150-309.100(3)-(A) under (4) above, a petition may be amended up to and including the time of the hearing for the following reasons:

(a) To add or delete land or improvements that are components of the account originally appealed.

(b) To add a separate account that together with the original account appealed creates a "parcel" within the meaning of OAR 150-308A.256(1)(a). A petition may not be amended to include a separate account that is not part of an identified parcel.

(c) To add a manufactured structure account that is sited on the original account under appeal.

(d) To change the value requested.

(6) If the board clerk provides notice of a defective petition by mailing or personal delivery within 20 days of the last day of the board session described in ORS 309.026, the board clerk may give the notice described in section (3) of this rule by any practical means such as telephone, fax, or letter. In this circumstance, the petitioner or petitioner's representative has until 3:00 p.m. of the last day of the board session to file an amended petition correcting the defect. However, if the petitioner or petitioner's representative appears at the hearing, all corrections must be made at that time.

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(7) The board must dismiss the petition as defective if the petitioner or petitioner's representative does not correct the petition within the time periods prescribed in Sections (4) and (6) of this rule.

(8) If, after the board has adjourned, the clerk discovers petitions that the board did not act upon, the clerk must notify the petitioner or petitioner's representative within 10 days. The notice must be in writing and indicate the petitioner's right to appeal to the Magistrate Division of the Oregon Tax Court.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1)-(A); REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.100(5)

BOPTA Hearing Notice Mailed to Representative

If a person listed under ORS 309.100(4)(a) is authorized to represent a petitioner at a board of property tax appeals hearing and the representative has requested to be present at the hearing, the BOPTA clerk must mail or personally deliver the hearing notice to the representative. If the representative has not provided a mailing address and the notice cannot be personally delivered, the clerk will provide notice of the hearing to the petitioner.

Stat. Auth.: ORS 305.100, 306.115
Stats. Implemented: ORS 309.100
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.110(1)

Contents of Board Order for Property not Specially Assessed

(1) Orders issued by the board of property tax appeals for property that is not specially assessed must contain the following information when the petitioner has appealed the real market value of the property:

(a) The real market value of each component (land, improvements, manufactured structure) and the total real market value of the property on the current tax roll.

(b) The real market value of each component (land, improvements, manufactured structure) and the total real market value of the property as found by the board.

(c) The real market value of the exception on the current tax roll, if applicable.

(d) The real market value of the exception as found by the board, if applicable.

(e) The total maximum assessed value of the property on the current tax roll.

(f) The total maximum assessed value as found by the board.

(g) The total assessed value on the current tax roll.

(h) The total assessed value as found by the board.

(2) Orders issued by the board of property tax appeals for property that is not specially assessed must contain the following information when the petitioner has appealed the assessed value of the property, but has not appealed the real market value of the property:

(a) The total maximum assessed value of the property on the current tax roll.

(b) The total maximum assessed value as found by the board.

(c) The total assessed value on the current tax roll.

(d) The total assessed value as found by the board.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; Administrative correction 12-14-98; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.110(1)-(A)

Mailing of Board Orders

(1) The clerk of the board will keep the order containing the original or facsimile signatures as the official record of the action of the board.

(2) The clerk of the board must mail a copy of the original order to the mailing address shown on the petition unless the order is personally delivered at the hearing.

(3) If a person listed under ORS 309.100(4)(a) is authorized to represent a petitioner at a board of property tax appeals hearing, the clerk of the board must mail or deliver a copy of the original order of the board to the representative. In such a case, the clerk of the board is not required to mail or deliver a copy of the order to the petitioner. If the representative has not provided a mailing address and the order cannot be personally delivered, the clerk will mail the order to the petitioner.

(4) Copies of orders mailed to petitioners or petitioners' representatives must be mailed within five days of the date issued and no later than five days after the board has adjourned.

(5) Copies of orders must be delivered to the officer in charge of the roll and the assessor on the same day they are mailed or delivered to the petitioner or the petitioner's representative.

(6) Within five days of the date an order is mailed or delivered, the clerk of the Board of Property Tax Appeals must mail or fax a copy of any order affecting industrial property appraised by the Department of Revenue to the department's Valuation Section or any order changing the value of specially assessed forestland to the department's Timber Tax Unit.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-311.688

Election by Spouse to Continue Tax Deferral

(1) When any one of the circumstances listed in ORS 311.684(1) to (3) occurs, a qualifying spouse may continue the property in deferred tax status as active or inactive.

(a) When an account continues as active, the department continues to pay the yearly property taxes to the county. The account balance continues in deferral, and interest continues to accrue on all taxes paid.

(b) When an account continues in an inactive status, the department does not continue to pay property taxes to the county. The deferral account balance of past-deferred taxes, accrued interest, and recording fees remains deferred and interest continues to accrue on the past-deferred taxes.

(2) If a spouse did not apply jointly with the taxpayer for the original Senior or Disabled deferral or was not eligible for deferral, the spouse must file a new deferral application in order to continue the account as active or inactive.

(a) For the deferral account to remain active, in addition to the filing of a new deferral application all the following is required:

(A) The spouse is at least 59-1/2 years of age or is disabled as defined in ORS 311.666(2) the day a circumstance in ORS 311.684(1) to (3) occurs,

(B) The property is the homestead of the spouse,

(C) The total household income continues to be less than the allowable yearly limitation, and

(D) The property ownership meets the requirement in ORS 311.670(2).

(b) When a spouse meets all of the requirements of section (2) (a) of this rule except the age requirement of 59-1/2, or a disability as defined in ORS 311.666(2), the spouse may only continue the deferral account in an inactive status. The spouse is responsible to pay all future property taxes to the county. When the spouse turns 62 years of age before April 15 of any year, or if the spouse becomes disabled and begins to receive or becomes eligible to receive federal Social Security disability benefits, the spouse may file a new application to change the deferral account status from inactive to active..

(3) In the case of a divorce if the circumstances in (3) of ORS 311.684 occurs before the divorce, then the spouse remaining in the homestead may file an application to continue the deferral. The requirements of section (2) of this rule determine if the account remains active or becomes inactive.

(4) All applications to continue deferral must be filed in the time and manner as provided in ORS 311.668. The department may determine that good and sufficient cause exists to accept a late filed application. The application may be filed within 180 days after the department mails or delivers to the applicant the deferred tax due and payable notice.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.688

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-311.690(4)

Voluntary Payments on Property Tax Deferral Accounts

(1) When the department receives voluntary payments, it will apply the payments in the following order:

(a) Against all accrued interest first;

(b) Then to the deferral tax balance until fully paid; and

(c) Lastly to the lien recording and release fees.

(2) Subject to ORS 311.684 and 311.686(2), when the department receives full payment on the account and a written statement from the taxpayer asking for removal of the property from the deferral, the department will release the lien against the property. When the department receives full payment on a disqualified account, the department will release the lien against the property.

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Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.690
Hist.: 10-14-92, REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-311.806-(A)

Process for Determining Recipient of Property Tax Refund

(1) Definitions: For the purpose of this rule:

(a) "Owner of record on the tax roll" means the owner or an owner of the property or the person(s) in whose name(s) the property is assessed on the last certified tax roll.

(b) "At the time of the refund" means the time at which the tax collector calculates the refund and any applicable interest.

(2) The tax collector must determine the recipient(s) of a refund as follows:

(a) Whenever a refund is the result of an appeal, the refund for the year(s) included in the petition must be made payable to, and be mailed or delivered, to the petitioner as shown on the petition.

(b) If an appeal results in a lowering of value under ORS 309.115 for subsequent year(s) that were not included in the petition and a refund results, the refund for the subsequent year(s) must be made payable to, and be mailed or delivered to the petitioner for each year in which that person was the owner, an owner, or the person in whose name the property was assessed, and to the current owner of record on the tax roll at the time of the refund for each year thereafter.

(c) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(d) Whenever through excusable neglect or through an error subject to correction under ORS 311.205, taxes are paid on property in excess of the amount actually due, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(e) Whenever taxes are paid on the property of another by mistake of any kind, the refund must be made payable to, and be mailed or delivered to the payer of the tax.

(f) Pursuant to OAR 150-309.110(1)-(D), a refund resulting from a petition to Board of Property Tax Appeals, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided interest must be apportioned to all of the owners of the property according to the percentage of interest owned.

(3) Notwithstanding section (2) of this rule, the refund will not be mailed or delivered to the petitioner, owner of record on the tax roll, or payer of the tax if:

(a) The refund is the result of an appeal as described in section (2)(a) or (2)(b) of this rule and the petitioner is represented by an attorney. The refund to which the petitioner is entitled must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney.

(b) The refund is the result of an appeal as described in section (2)(f) of this rule and the petitioner who filed the appeal is represented by an attorney. The refund apportioned to the petitioner must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney. The refund or refunds due to the other owners who did not file petitions must be made payable to, and be mailed or delivered to those individual owners.

(c) The petitioner, owner of record, or payer of the tax named in section (2) of this rule is not represented by an attorney and instructs the tax collector, in writing, to make the refund payable to or to mail or deliver it to someone else. The tax collector must follow such instructions.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.806
Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806-(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.207(1)

Forestland Valuation Rule

(1) Purpose: The purpose of this rule is to describe the modeling process used to annually develop preliminary forestland values and to clarify the role of the models in the establishment of the final certified forestland values (ORS 321.216).

(2) General Concepts:

(a) Values to be developed by this rule are the values of bare forestland.

(b) Models will be developed to determine the statistical relationship between market sales of highest and best use forestland and reasonable indicators of value related to the forest industry in Oregon.

(c) The relationship between market sales and the indicators that best reflect the changes in forestland value over time will be used to establish the preliminary values.

(d) Separate models will be developed for Eastern Oregon and Western Oregon.

(3) Forestland Sales Data:

(a) The department will collect and verify forestland sales data. Only sales with the following characteristics will be considered:

(A) The current or immediate future use of the land is the growing and harvesting of timber;

(B) The improvement values and other nonforestland values can be accurately extracted from the sale price;

(C) The transaction is at arm's-length;

(D) The purchase consideration is cash or a financing method standard to the real estate market;

(E) The allocated bare land value is greater than \$0, except for the FX productivity class in Western Oregon; and

(F) For Western Oregon sales, the value relationship between acres of each productivity class occurring on the property and sales price is identifiable.

(b) The department will compile the sales data in a forestland sales database.

(c) The department will analyze fiscal year (July 1 to June 30) data to determine a bare land value for each productivity class in Western Oregon and one value for Eastern Oregon. In doing so, the department will:

(A) Exclude individual forestland sales data that indicates values more than two standard deviations from the arithmetic mean of the forestland values for each Western Oregon productivity class or the arithmetic mean of all of the value of sales in Eastern Oregon. The department will apply this exclusion only once, either to all sales data within a productivity class on a fiscal year basis or on all sales over all years (1993 to current). If a sale is excluded for three consecutive appraisal cycles, it will be permanently excluded.

(B) Calculate the fiscal year forestland value for each productivity class as the arithmetic mean of individual sales data occurring during the fiscal year for classes FA-FX in Western Oregon and for Eastern Oregon as a whole. Only those sales remaining after elimination of any outlying sales as provided in paragraph (3)(c)(A) of this rule will be used to create the average.

(C) Replace fiscal year forestland value data that is unavailable for any of the Western Oregon classes or Eastern Oregon values due to lack of sales or after the application of paragraph (3)(c)(A). The missing data will be replaced as follows:

(i) If the missing data occurs for the first or last fiscal year, then the values will be replaced by the arithmetic average of the two closest available years for the same class.

(ii) If the missing data occurs in the intervening years, then the missing data will be replaced with the arithmetic average of the preceding and following years of the missing data for the same class.

(D) Develop acreage weighted average forestland value for Western Oregon (WAVWOR) from sales data for the current appraisal year. The acreage weights used in the WAVWOR calculation are: [Table not included. See ED. NOTE.]

(E) Develop average forestland value for Eastern Oregon.

(4) Forestland Models:

(a) Generally:

(A) The modeling process is intended to find statistical relationships between the WAVWORs for Western Oregon or the average forestland value for Eastern Oregon for the period 1993 to present and leading or coincident indicators of forestland value (such as log price trends, stumpage price trends, lumber price trends, and other indicators to be determined by the Department of Revenue).

(B) Indicators of forestland value suitable for use as inputs in the models to obtain forestland values must be:

(i) Developed based on calculation methods and assumptions that are consistent over time,

(ii) Commonly used by the forest industry as indicators of the economic potential for the production of forest products,

(iii) Readily available and verifiable, and

(iv) Relevant to the operation of the forest products industry in Oregon.

(C) The models will be based on statistically significant structural relationships between historical forestland values and leading or coincident indicators of forestland value. If such a structural model cannot be found,

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then appropriate time series models may be substituted for the structural models.

(D) The relationships between economic variables in the models may not be contradicted by generally accepted economic theories.

(E) The models may be amended and new models may be added in the future if a more statistically significant correlation becomes evident after the addition of subsequent years' sales data.

(F) The models will be re-estimated in each future year after the addition of the subsequent year's sales data. Re-estimation may include changes to the specification of the error or lag structure.

(G) Forecasts of forestland value will be based on a single model and not the average forecasts of several models.

(b) Model Selection Criteria:

(A) Tentative models will be estimated with stumpage, delivered log prices, dimension lumber prices, or other relevant market data at lags of zero to four years to determine the best explanatory variable for inclusion in the final model.

(B) In determining the explanatory variables to be included in the final model, both in- and out-of-sample forecasts will be compared as well as the ability to forecast turning points in forestland values.

(C) The model that displays the best correlation between the WAVWORS or average forestland value for Eastern Oregon over time and the trends in the indicators will be selected to determine the annual average forestland values (AAFV). "Best" means that the resulting statistical analysis shows major turning points in values while maintaining a close statistical relationship between the forestland values and the indicators.

(5) Determination of Preliminary Forestland Values:

(a) Western Oregon Model:

(A) The selected Western Oregon model will determine AAFV to be used as the basis for the preliminary values.

(B) Western Forestland Class Spread (WFCS) is the percentage of initial value by productivity class, FA through FX, as it relates to the acreage weighted average of these values. This spread is shown below: [Table not included. See ED. NOTE.]

(C) The WFCS will be used to transform AAFV into preliminary forestland class, FA through FX, values. This will be accomplished by multiplying the AAFV by the WFCS percentage for each individual productivity class.

(b) Eastern Oregon Model: The selected Eastern Oregon model will determine the AAFV to be used as the preliminary value for Eastern Oregon.

(6) Response to Preliminary Values:

(a) Data pertinent to the forestland valuation process that was not evaluated previously may be collected during a review by the Forestland Value Advisory Committee (ORS 321.213) or through written comments submitted during the public hearing on proposed specially assessed forestland values (ORS 321.210). The pertinent data that meets the standards in subsection 3(a) of this rule will be added to the forestland sales database.

(b) The forestland database will be re-analyzed as in subsection 3(c). This includes screening of any outlying sales data as provided in paragraph (3)(c)(A).

(c) Models will be re-evaluated considering the new forestland sales data and pertinent input on indicators that have met the standards of section (3).

(d) The process in sections (4) and (5) will be used to create revised preliminary values.

(7) Final Values: The Department of Revenue will use the revised preliminary values and any other information provided by additional research by the agency, the Forestland Value Advisory Committee, submitted written comments, or the hearing process to determine the final values to be certified under ORS 321.216.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.257

Hist.: REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.307(4)

Distribution of Western Oregon Timber Tax Account Receipts

Monies distributed under ORS 321.307(4) are distributed to each Western Oregon county in the same proportion that the assessed value of forestland in that county bears to the total assessed value of forestland in Western Oregon. The department will use the forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stats. Implemented: ORS 321.307

Hist.: 12-31-81; RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.348(2)

Redetermination of Forestland Land Classes

(1) The department will change forestland land classes described under ORS 321.348(1) upon the request of an owner of forestland if the department's investigation reveals that the land class is now inaccurate.

(2) If an owner of forestland believes his or her property is not classed correctly, the owner may request a review by the department.

(a) The request must be submitted to the department in writing stating the basis of the request. Information that may be submitted as a basis for the request includes, but is not limited to:

(A) A third party evaluation;

(B) Soil surveys;

(C) Aerial photos or contour maps;

(D) Narrative that describes geographical characteristics that influence site class.

(b) The request must identify the property, including:

(A) County;

(B) Property tax account number;

(C) Legal description;

(D) Total forestland acres; and

(E) Physical location and number of forestland acres to be reviewed.

(3) The department must receive requests by April 1 in order to have a redetermination of land classes reflected on the tax roll for the tax year beginning the following July 1. If the department receives the request after April 1, any resulting redetermination will take effect with respect to the tax year commencing July 1 of the following calendar year.

(4) The department will review the information submitted, other reference materials (contour maps, aerial photos, soil surveys, land class cards, or site tree data), and may conduct a field inspection of the property.

(5) The department will send written notice of its decision to the owner. Any redetermination of land class will be immediately certified to the county assessor. This will be done prior to July 15 of the tax year for which the review decision first applies.

(6) Pursuant to ORS 305.275, the owner may appeal the department's determination described in section (5) to the Magistrate Division of the Oregon Tax Court. This appeal must be made within 90 days of the date of the written notice.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.348

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.358(4)

Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon

(1) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces.)

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to fulfilling planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

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(3) To qualify, the area to be designated must be at least two contiguous acres in one ownership.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.358

Hist.: 12-6-82, 12-31-82; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.358(4), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.485(4)

Distribution of Eastern Oregon Privilege Tax Account Receipts

Monies distributed under ORS 321.485(4) are distributed to each Eastern Oregon county in the same proportion that the assessed value of forestland in that county bears to the total assessed value of forestland in Eastern Oregon. The department will use the forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.485

Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-321.485(3), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.741(2)

Due Date for Filing Severance Tax Returns and Requesting an Extension

(1) The department will mail severance tax returns to owners of timber, as shown on the Notification of Operations (permit) issued by the Department of Forestry, from lands assessed as small tract forestland.

(a) The returns and tax are due on or before the last day of January following the year of harvest.

(b) When the department mails the returns less than ten business days prior to the last day of January, the department will not impose any penalty on the tax due provided that the taxpayer files the return and pays the tax within twenty calendar days of the mailing date of the return.

(2) The department may grant an extension of time to file a return upon receipt of a written request for extension from the taxpayer. The department may grant up to thirty days from the due date in which to file. The extension only pertains to the filing of the return and does not extend the time in which the tax must be paid. A request for extension must be:

(a) Submitted to the department in writing, stating the reason for the request and

(b) Postmarked no later than the due date of the return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.741

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.751(3)

Distribution of Severance Tax Receipts for Western Oregon

Monies distributed under ORS 321.751(3) are distributed to each Western Oregon county in the same proportion that the assessed value of small tract forestland in that county bears to the total assessed value of small tract forestland in Western Oregon. The department will use the small tract forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.751

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.754(3)

Distribution of Severance Tax Receipts for Eastern Oregon

Monies distributed under ORS 321.754(3) are distributed to each Eastern Oregon county in the same proportion that the assessed value of small tract forestland in that county bears to the total assessed value of small tract forestland in Eastern Oregon. The department will use the small tract forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.754

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.805(4)

Definition of "Sound Management Practices"

For the purpose of ORS 321.805(4), "Sound management practices," in addition to growing trees may include but are not limited to: range management, fire protection, soil erosion control, stream protection, cooperative wildlife management, and road access control.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.805

Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.839(4)

Minimum Stocking and Acreage Requirements for Designation as Forestland in Eastern Oregon

(1) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces.)

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(3) Certain lands do not support sufficient stocking requirements; however, when the use of these lands supports sound management practices and the harvest of forest crops on surrounding lands, these lands may be designated as forestland. Examples of such lands include:

(a) Roads, landings, and rock pits used for forest roads that are necessary for forest management and the harvest of forest crops.

(b) Land that is subject to power transmission and distribution easements or gas line easements that are not centrally assessed under ORS 308.505-308.665 or 308.805-308.820 if the lands would otherwise qualify for designation as forestland if, but for the easement, sufficient stocking of trees would be permitted.

(4) To qualify for designation, the land must meet the minimum stocking requirements of sections (1) or (2) of this rule. However, when the circumstances listed in section (3) of this rule are present, and at least 80 percent of the total area applied for meets the minimum stocking requirements, the total area of the application will be assessed as designated forestland.

(5) To qualify, the area to be designated must be at least two contiguous acres in one ownership.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.805

Hist.: 11-71; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.805, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 7-2004

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 734-071-0060

Rules Amended: 734-071-0005, 734-071-0010, 734-071-0030

Subject: These amendments relate to allowable vehicle lengths without need for a special variance permit. The amendments clarify vehicle definitions for the purpose of Division 71, state Department policy regarding a pickup truck towing oversized trailers or a combination of two truck trailers, create a new table that identifies routes where a variance permit is not required and limits vehicles utilizing a tow dolly to the vehicle's maximum towing capacity. Changes to definitions and adoption of a rule related to pickup trucks are needed to address the evolving increase in pickup truck size and current industry needs, such as a pickup truck capable of safely tow-

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ing two empty horse trailers from an out-of-state manufacturer for delivery in Oregon.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-071-0005

Scope

(1) Oregon's statutes are basically quite restrictive in establishing length of vehicles, loads, and combinations of vehicles. The lengths established are for those vehicles or combinations which can be operated safely upon any highway including older highways not reconstructed to present day standards.

(2) Nearly all of the state highway system can safely accommodate vehicles and combinations with lengths in excess of those established under the basic statutes. The statutes recognize this by allowing longer lengths on designated highways subject to special permits issued pursuant to ORS chapters 810 and 818 or under the authority of administrative rules adopted by the Oregon Department of Transportation.

(3) OAR 734-071-0005 through 734-071-0060 do not apply to vehicles authorized by the Surface Transportation Assistance Act of 1982 when operating on National Network Highways or highways where reasonable access beyond one mile has been granted. These vehicles are authorized by OAR chapter 734, divisions 73 and 74.

(4) OAR 734-071-0005 through 734-071-0060 do not apply to vehicles licensed, or which can be used as recreational vehicles as defined in ORS 446.003(37), or to any combination of more than two vehicles not used exclusively for commercial purposes and subject to ORS chapter 823 and 825.

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060 & 818.200

Stats. Implemented: ORS 810.060

Hist.: 1 OTC 5-1980, f. & ef. 3-27-80; 2HD 8-1983, f. & ef. 3-30-83; HWY 2-1995, f. & cert. ef. 10-16-95; HWY 5-1997, f. & cert. ef. 5-9-97; HWD 1-2003, f. & cert. ef. 8-21-03; HWD 7-2004, f. 12-28-04, cert. ef. 1-1-05

734-071-0010

Designated Highways and Definitions

(1) The types of vehicles, combinations of vehicles, or loads listed in **Table 1** or **Table 2** may operate without special permit upon:

(a) Group 1, Group 2 and Group 3 highways as shown on Group Map 1 as published by the Department when the dimensions do not exceed those listed in **Table 1** for the corresponding highway group. Group Map 1, revised January 2005 is adopted by reference and made a part of Division 71 rules; and

(b) Routes listed on Route Map 7 as published by the Department when the dimensions do not exceed those listed in **Table 2** for the corresponding route listed in **Table 2**. Route Map 7, revised January 2005 is adopted by reference and made a part of Division 71 rules.

(c) **Table 1** and **Table 2** are available from the ODOT Over-Dimensional Permit Unit at 550 Capitol St. NE Salem, OR 97301-2530 or on the Motor Carrier Transportation Division Web site at: www.oregon.gov/ODOT/MCT/docs/Div71tables.pdf.

(2) Definitions for the purpose of Division 71 rules:

(a) "Auxiliary axle" is an axle that qualifies as a booster axle, flip axle or lift axle;

(b) "Booster axle" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning;

(c) "Dromedary truck-tractor" means a motor vehicle designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer;

(d) "Flip axle" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length and hauling capacity of the trailer;

(e) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298;

(f) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground;

(g) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation;

(h) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers;

(i) "Overall length" includes the vehicle or combination of vehicles and any load overhangs. Exclusions to overall length determination are provided in OAR 734-071-0050.

(j) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use;

(k) "Pickup truck" means a motor vehicle designed to carry passengers and to carry a load and which shall not tow more than one vehicle, except as provided in OAR 734-071-0060;

(l) "Stinger-steered" is as defined in ORS 801.507;

(m) "Tow-away operation" means an operation where empty trailers constitute the commodity being transported; and

(n) "Truck-tractor" means a motor vehicle designed and used primarily for drawing (towing) other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as drawn

[ED. NOTE: Tables and Maps referenced are available from the agency.]

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

Stats. Implemented: ORS 810.060, 818.220

Hist.: 1 OTC 5-1980, f. & ef. 3-27-80; 2HD 5-1982(Temp), f. & ef. 10-5-82; 2HD 8-1983, f. & ef. 3-30-83; HWY 3-1993(Temp), f. & cert. ef. 7-13-93, HWY 3-1994(Temp), f. 5-19-94, cert. ef. 5-20-94; HWY 2-1995, f. & cert. ef. 10-16-95; HWY 5-1997, f. & cert. ef. 5-9-97; TO 5-1998, f. & cert. ef. 4-16-98; TO 2-2001, f. & cert. ef. 6-14-01; TO 10-2002, f. & cert. ef. 12-13-02; HWD 1-2003, f. & cert. ef. 8-21-03; HWD 5-2004, f. & cert. ef. 5-20-04; HWD 7-2004, f. 12-28-04, cert. ef. 1-1-05

734-071-0030

Equipment Requirements

(1) In vehicle combinations featuring more than one trailer or semi-trailer, the shortest trailer shall be positioned to the rear of the combination, except that a motor carrier may position the shortest trailer at the front when it is more than 1,500 pounds heavier than the other trailer or semi-trailer.

(2) A tow dolly, designed to support one axle of a towed vehicle, may be utilized when one vehicle is towing another. The towing vehicle must be a full size motor vehicle (e.g., truck, motor home, automobile or pickup). Compact or subcompact motor vehicles shall not be used. It is recommended that:

(a) The vehicle being towed not exceed the weight limitations recommended by the tow dolly manufacturer; and

(b) The towing vehicle must not exceed the manufacturer's rated towing capacity.

Stat. Auth.: ORS 184.616, 184.619, 810 & 818

Stats. Implemented: ORS 810.060

Hist.: HWY 2-1995, f. & cert. ef. 10-16-95; HWD 7-2004, f. 12-28-04, cert. ef. 1-1-05

734-071-0060

Pickup Truck Allowance

A pickup truck may tow:

(1) A single truck trailer that exceeds 40 feet in length, but does not exceed 53 feet in length if:

(a) The pickup truck is not carrying a load other than the towed vehicle;

(b) The coupling device for the trailer is a ball to socket hitch located above and not behind the tire tread of the rearmost axle of the pickup truck;

(c) The trailer has operating brakes on all wheels; and

(d) The load on the truck-trailer shall not extend past the rear of the trailer by more than five feet; or

(2) Two truck trailers in a tow-away operation if:

(a) The pickup truck is not carrying a load other than the towed vehicle;

(b) The coupling device for the lead trailer is a ball to socket hitch located above and not behind the tire tread of the rearmost axle of the pickup truck; and

(c) The trailers have operating brakes on all wheels.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 818.200

Stat. Implemented: ORS 810.060

Hist.: HWD 7-2004, f. 12-28-04, cert. ef. 1-1-05

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Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTD 4-2004

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040

Subject: Provisions of the International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure

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Oregon remains current with national and international IFTA standards. The International Registration Plan (IRP) and 26 CFR Part 41 (Heavy Vehicle Use Tax - HVUT) relate to commercial motor vehicle registration and heavy vehicle taxation respectively. Amendments to OAR 740-200-0010 and 740-200-0020 adopt IRP and HVUT and amendments thereto in effect as of January 1, 2005, and ensure Oregon remains current with national and international commercial motor vehicle registration standards.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-200-0010

Prorate Registration

(1) The provisions contained in the "International Registration Plan" (IRP), the IRP Audit Procedures Manual and the IRP Policies and Procedures Manual and all amendments thereto in effect January 1, 2005, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in ORS 825.490;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes shall be the previous July through June twelve-month period.

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

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 826.005 & 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)

The Department hereby adopts the rules of the United States Internal Revenue Service contained in 26 CFR Part 41 (HVUT) and all amendments thereto in effect January 1, 2005. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in CFR Title 26 Part 41.6001-2(b)(3), the Department will suspend the registration of a vehicle for which proof of HVUT payment has not been received within four months of the effective date of registration.

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

Stat. Auth.: ORS 823.011 & 826.007

Stats. Implemented: ORS 803.370(5) & 826.033

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2005, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

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

Stat. Auth.: ORS 823.011 & 825.555

Stat. Implemented: ORS 825.490 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05

Department of Transportation, Public Transit Division Chapter 732

Adm. Order No.: PTD 2-2004

Filed with Sec. of State: 12-16-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 732-005-0061, 732-005-0066, 732-005-0071, 732-005-0076, 732-005-0081

Rules Amended: 732-005-0000, 732-005-0005, 732-005-0010, 732-005-0016, 732-005-0021, 732-005-0027, 732-005-0031, 732-005-0036, 732-005-0041, 732-005-0046, 732-005-0051, 732-005-0056, 732-010-0005, 732-010-0010, 732-010-0015, 732-010-0020, 732-010-0025, 732-010-0030, 732-010-0035, 732-010-0045, 732-020-0005, 732-020-0020, 732-020-0025, 732-020-0030, 732-020-0035, 732-020-0040, 732-020-0045

Rules Repealed: 732-005-0005(T), 732-005-0010(T), 732-005-0027(T), 732-005-0031(T), 732-005-0051(T), 732-010-0010(T), 732-010-0035(T), 732-010-0040, 732-020-0010, 732-020-0015

Subject: The rules in Chapter 732, Divisions 5, 10 and 20 have been amended to conform with two laws passed by the 2003 Oregon Legislature. Senate Bill 180 added Indian tribes in Oregon as eligible to receive STF moneys. A temporary rule was adopted effective July 15, 2004 to allow for distribution of funds to the Indian tribes. These amendments make the changes permanent. House Bill 3522 requires ODOT to write rules to develop a program that includes contracts with fund recipients and requires funds to be withheld or paid back in case of misuse of funds. New rules and amendments increase the requirements for management of the Special Transportation Fund Program. The changes require the districts, counties and Indian tribes receiving the Special Transportation Funds to have a program for fund distribution that includes planning for distribution of funds and contract management. The rules also establish qualifications for eligibility of recipients, as providers of transportation services. Other non-substantive changes are made to clarify language and reorganize the rule text into a more logical sequence.

Rules Coordinator: Brenda Trump—(503) 945-5278

ADMINISTRATIVE RULES

732-005-0000

Purpose of Rule

The rules in chapter 732, divisions 5, 10 and 20 establish the procedures and requirements of the Public Transit Division for the administration of the Special Transportation Fund (STF) for the Elderly and Disabled.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0005

Statutory Authority and Procedure

ORS 391.810 requires the Public Transit Division to adopt rules necessary for the administration and implementation of the STF under ORS 391.800 through 391.830.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0010

Definitions

The following definitions apply to rules in chapter 732 divisions 5, 10 and 20:

(1) "Administration" means the essential activities incurred by the STF Agency: receiving, disbursing and accounting for STF moneys.

(2) "Administrative Allotment" means a fixed amount, disbursed annually to a STF Agency, for Administration.

(3) "Advisory Committee" means a committee appointed by a STF Agency to advise and assist the STF Agency in carrying out the purposes of the Special Transportation Fund.

(4) "Capital Item" means a single item of durable equipment, a vehicle, a structure (facility) and real estate with an acquisition cost of \$5000 or more.

(5) "Coordination" means working cooperatively with Providers and other individuals and agencies representing people unable to drive, low-income, Elderly and People with Disabilities, to more effectively apply funding and other resources to meet common transportation needs. Coordination actions may reduce duplication of service, reduce cost, increase service levels or make services more widely available in a community.

(6) "Disabled", also "People with Disabilities" means a person or persons who, by reason of illness, injury, advanced age, congenital malfunction, or other permanent or temporary incapacity, have a physical or mental impairment that substantially limits one or more of their major life activities. This definition does not include substance abuse disorders resulting from the current illegal use of drugs.

(7) "Discretionary Account" means a Special Transportation Fund account for distribution of the remaining cigarette tax receipts and other revenues contributed to the STF set aside following distribution of the Formula Allocation, Minimum Allocation and Administrative Allotment.

(8) "Discretionary Grant" means a grant award from the Discretionary Program.

(9) "Discretionary Program" means a program financed by the Discretionary Account that may be offered by the Division to support Projects benefiting the Elderly and People with Disabilities.

(10) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a transportation district organized under ORS 267.510 to 267.650.

(11) "Division" means the Oregon Department of Transportation, Public Transit Division.

(12) "Elderly" means 60 years of age or older.

(13) "Formula Allocation" means an amount of STF moneys made available to a STF Agency on the basis of the STF Agency's share of resident population in proportion to the population of the state as a whole.

(14) "Formula Program" means the program of regular distribution of STF moneys from the Division to the STF Agencies that is composed of the Formula and Minimum Allocations, plus the Administrative Allotment.

(15) "Incidental Use" means a use of a Project that is not the primary purpose of the Project.

(16) "Indian Tribe" means a federally recognized Indian Tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.

(17) "Minimum Allocation" means a minimum annual amount for which each STF Agency will be eligible, composed of the Formula

Allocation moneys plus moneys from the Discretionary Account sufficient to equal the Minimum Allocation.

(18) "Oregon Transportation Commission" means a commission established under ORS 184.612.

(19) "Project" means a Public Transportation Service, a Capital Item or any associated activity including, but not limited to, planning and needs assessment, training, and research and that falls within the purposes defined in OAR 732-005-0016.

(20) "Provider" means a city, county, district, Indian tribe, or any other person or agency, whether public or private, that maintains, operates, or sponsors vehicles and facilities for Public Transportation Services for profit or on a nonprofit or voluntary basis.

(21) "Public Transportation Services" means any form of passenger transportation by car, bus, rail or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter or sightseeing or exclusive school bus) on a regular and continuing basis. Such transportation may include services designed to meet the needs of a specific user group, including for the Elderly and People with Disabilities, and for purposes such as health care, shopping, education, employment, public services, personal business or recreation.

(22) "Recipient" means a city, county, transportation district, mass transit district, county service district, Indian tribe, public or private nonprofit corporation, or other person or agency, that is in receipt of STF moneys to finance in whole or part a Project for the elderly and people with disabilities.

(23) "Representative of Disabled Persons" means an individual who is familiar with the needs of People with Disabilities and is knowledgeable or aware of the transportation needs of People with Disabilities.

(24) "Representative of Elderly Persons" means an individual who is familiar with the needs of the Elderly and is knowledgeable or aware of the transportation needs of the Elderly.

(25) "Special Transportation Fund for Elderly and Disabled" also "STF" means moneys generated by a tax on cigarettes, or from other sources, appropriated to the Division for distribution to STF Agencies for the purpose of financing and improving transportation programs and services for the Elderly and People with Disabilities.

(26) "STF Agency" means the mass transit district, transportation district, county in which no part of a mass transit or transportation district is located or Indian tribe that is eligible to receive STF moneys directly from the Division.

(27) "STF Plan" means a plan developed by the STF Agency to guide the investment of STF moneys over at least a three year period.

(28) "STF Program" means a set of policies and procedures that guide the expenditure of STF moneys to benefit transportation services for the Elderly and People with Disabilities.

(29) "User of Transportation Services" means a person who is Elderly or a Person with Disabilities and who makes use of transportation programs and services for the Elderly and People with Disabilities financed in whole or part with STF moneys.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990 f. & cert. ef. 5-31-90; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0016

Purpose and Use of the STF Moneys

(1) The STF Program is intended to provide a flexible, coordinated, reliable and continuing source of revenue in support of transportation services for the Elderly and People with Disabilities.

(2) STF moneys will be used for the purpose of financing and improving transportation programs and services for the Elderly and People with Disabilities and may be used for the following purposes:

(a) Maintenance of existing transportation programs and services for the Elderly and People with Disabilities.

(b) Expansion of such programs and services.

(c) Creation of new programs and services.

(d) Planning for, and development of, access to transportation for the Elderly and People with Disabilities who are not currently served by transportation programs and services.

(3) The STF moneys may be used as matching funds for state and federal programs also providing transportation programs and services to the Elderly and People with Disabilities.

(4) When funded by STF moneys:

(a) Projects will comply with the requirements of USDOT Federal Transit Administration regulations, 49 CFR PART 37 TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (Americans with

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Disabilities Act) section 37.3, as applicable to the specific Project and Provider.

(b) Projects financed in whole or part with STF moneys will be coordinated with other transportation programs and services to the maximum extent feasible.

(5) Exception in the case of a uniform budget reduction, STF moneys will not be used to supplant moneys currently appropriated by STF agencies for transportation projects benefiting the Elderly and People with Disabilities.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0060(3)(a-d); PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0021

Administration of Funds by the Public Transit Division

(1) The Division will conduct the necessary activities to manage the STF and implement a program.

(2) Activities conducted by the Division include, and are not limited to, distribution of funds, application and review processes, agreement procedures, program oversight, protests, statewide planning and research, training and technical assistance.

(3) After payment of the state administrative costs of the program, the Division will make available moneys from the STF:

(a) Three-fourths of STF moneys will be made available annually to STF Agencies on the basis of population distribution. This will be known as the Formula Allocation; and

(b) Of the remaining one-fourth of STF moneys:

(A) An Administrative Allotment of \$2,000 will be made available annually to each STF Agency:

(i) The annual Administrative Allotment of \$2000 is intended to defray the STF Agency's cost of Administration of their STF program: receiving, disbursing and accounting for their STF moneys.

(ii) The STF Agency will not use moneys from the STF Formula Allocation to defray administrative costs.

(iii) Additional costs of developing and managing the STF program including, and not limited to, planning, advisory committee management, contract management, and technical assistance, are not defined as Administration, and may be supported by moneys from the Formula Allocation.

(iv) The STF Agency may finance the cost of administration of STF discretionary grants awarded in accordance with OAR 732-020-0030 with funds from the grant award.

(B) A Minimum Allocation will be made available annually as a supplement to the moneys made available based on population.

(i) Each STF Agency will have no less than the minimum allocation made available, irrespective of population, under the STF Formula Program. This Minimum Allocation, when combined with formula moneys, will be defined by the Oregon Transportation Commission;

(ii) The Minimum Allocation will equal at least \$15,000; and

(iii) The Minimum Allocation will be based on factors defined by the Division related to the cost of providing transportation services and programs by the STF Agencies with the least population.

(C) Any remaining moneys will be set aside to a Discretionary Account. The Discretionary Account is intended to provide a flexible resource for addressing the transportation needs of the Elderly and People with Disabilities in accordance with OAR 732-005-0016. Discretionary Account moneys may be used for:

(i) A Discretionary Program to award Discretionary Grants in accordance with OAR 732-020-0005 through 732-020-0045; or

(ii) Projects of statewide importance identified and implemented by the Division.

(iii) Discretionary Grants and Projects of statewide importance will be approved by the Oregon Transportation Commission.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0015(1); PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0027

STF Agencies Eligible for STF Moneys

(1) After payment of the state's administrative costs of the program, the Division will make available moneys from the STF. STF moneys will be distributed to the following:

(a) To Districts where they exist;

(b) To counties where no Districts exist; and

(c) To federally recognized Indian Tribes in Oregon.

(d) If two or more Districts are located in one county, the moneys will be distributed to the Mass Transit District. If there is no Mass Transit District located in the county, then the moneys will be distributed to the Transportation District with highest population.

(2) Districts, Indian Tribes and counties receiving STF moneys are known as STF Agencies.

(3) Withdrawal from Eligibility: STF Agencies eligible to receive STF moneys may voluntarily withdraw from eligibility to receive STF moneys:

(a) A STF Agency intending to withdraw its eligibility will notify the Division of the decision to withdraw and the reason for withdrawal;

(b) A STF Agency may rescind its withdrawal at any time; and

(c) After a three-year period, the STF Agency that has withdrawn from eligibility will not be included in the population-based distribution of STF moneys in accordance with OAR 732-010-0010:

(A) The population of the Indian Tribe that has withdrawn from eligibility will be included in the resident population of Districts and counties; and

(B) The population of a District or county that has withdrawn from eligibility will be included in the population of another STF Agency identified by the Division.

(4) Failure to apply for Formula Program moneys for three or more consecutive years will be considered withdrawal from eligibility to receive STF Funds.

(5) Accumulation of Formula Program moneys allocated to a STF Agency that has withdrawn will:

(a) Not exceed the total of three consecutive years dating from the year of withdrawal, or from the first year of failure to apply for Formula Program moneys;

(b) The Administrative Allotment will not accumulate;

(c) The STF Agency that rescinds its withdrawal may receive up to three years of accumulated Formula Program moneys; and

(d) The STF Agency that rescinds its withdrawal is eligible to receive one year of Administrative Allotment for the year of application.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0015(1)(a-c); PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0031

Advisory Committee Requirements

(1) The STF Agency will appoint an Advisory Committee.

(2) The purpose of the Advisory Committee is to advise and assist the STF Agency in carrying out the purposes of the STF.

(3) The Advisory Committee will:

(a) Advise the STF Agency regarding the opportunities to coordinate STF moneys and STF-funded Projects with other transportation programs and services to avoid duplication and gaps in service;

(b) Review the proposed distribution of Formula Program moneys and make recommendations to the STF Agency;

(c) Review Discretionary Grant proposals and make recommendations to the STF Agency;

(d) Adhere to Oregon Public Meetings laws, as applicable;

(e) Meet a minimum of two times per year, or a sufficient number of times so as to advise the STF Agency in carrying out the purposes of the STF;

(f) Participate in developing in the STF Plan that will be used to perform the activities described in this section; and

(g) Be guided by written bylaws that may include, but are not limited to, committee membership criteria, terms of office for the committee members, procedures of the committee, meeting schedule and other operating and decision-making procedures.

(4) To perform the activities described in subsections (3)(a) through (c) of this rule, the Advisory Committee will review the Projects proposed for funding by Formula Program and Discretionary Program moneys, including the proposed Recipient, Project purpose, intended User of Transportation Services, and the proposed funding level.

(5) The Advisory Committee may recommend to the STF Agency any changes to the proposed distribution of Formula Program moneys or Discretionary Grant applications it considers necessary.

(6) The terms of office for the Advisory Committee members are at the discretion of the STF Agency.

(7) The Division will be notified by the STF Agency of changes in the Advisory Committee membership.

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(8) Copies of Advisory Committee bylaws, minutes and meeting notices will be made available to the Division, upon reasonable notice.

(9) Indian Tribes:

(a) The Advisory Committee of a STF Agency that is an Indian Tribe will be composed of at least three members; and

(b) To be qualified to serve on an Advisory Committee of an Indian Tribe, an individual must be able to represent the transportation needs of the Elderly and People with Disabilities served by the Indian Tribe.

(10) Districts and Counties: The Advisory Committee of a District or county will be composed of at least five members, of which a majority will meet the qualifications of paragraphs (11)(c)(A) through (D) of this rule.

(11) To be qualified to serve on the Advisory Committee for a STF Agency that is a District or county, an individual will:

(a) Reside in the District or county;

(b) Be knowledgeable about the transportation needs of the Elderly and People with Disabilities; and

(c) Be a person who:

(A) Is Elderly or a person with a disability and is a User of Transportation Services in the District or county;

(B) Is Elderly or is a person with a disability and who lives in an area of the District or county where there are no Public Transportation Services;

(C) Is Representative of Elderly persons residing in the District or county;

(D) Is Representative of People with Disabilities residing in the District or county; or

(E) Represents a Provider of services to the Elderly or People with Disabilities residing in the District or county.

(d) The STF Agency will consider geographic diversity and balance of the membership qualifications identified in paragraphs (11)(c)(A) through (E) of this rule when appointing STF Advisory Committee members.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1986, f. & ef. 1-10-86; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0065; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0036

Accounting Requirements

(1) The STF Agency will receive and disburse STF moneys from a separate governmental fund. Any money realized as a result of interest accrued to the fund will be added to the STF moneys and will be reported to the Division.

(2) Record Retention:

(a) The STF Agency will maintain all financial records for at least three years after the Division's final disbursement for the fiscal year; and

(b) The STF Agency will maintain all records relating to Capital Items for three years after disposition.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0070; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0041

Capital Item Requirements

(1) Capital Items may be purchased with STF moneys:

(a) Incidental Use of a Capital Item for other Public Transportation Services is authorized if associated with Coordination to benefit the Elderly and People with Disabilities; and

(b) The Incidental Use will not substantially reduce the effective use of the Capital Item for the Elderly and People with Disabilities.

(2) The STF Agency will inventory the Capital Items purchased in whole or part with STF moneys. The inventory will include date of purchase, purchase price, percentage of STF moneys contributed to the purchase, the source of other funds, the authorized use and the Recipient using the Capital Item.

(3) The STF Agency will maintain continuing control of a Capital Item purchased in whole or part with Formula Program during the period of useful life established in accordance with subsection (4)(a) of this rule. The STF Agency may exert continuing control beyond the period of useful life, under its own authority. Continuing control is defined as use, management and disposal of a Capital Item.

(4) STF Agencies will use their own procedures for continuing control, excepting where specified by this section. At a minimum, STF Agencies will:

(a) Establish minimum useful life standards for Capital Items:

(A) Useful life may be based on standards for depreciation established by the Internal Revenue Service or other standard in reference to the specific type of capital; and

(B) For vehicles, the definition of useful life will be consistent with the policy established by the Division for vehicles financed with federal grant funds;

(b) Use the STF Agency's own procedures for disposal of a Capital Item;

(c) Return the net proceeds from a sale of a Capital Item to the local STF. If other funds were used in the purchase, then only the proportion representing STF participation will be returned to the STF;

(d) Establish procedures to ensure that a Capital Item is maintained in safe operating condition, as appropriate;

(e) Establish procedures for transfer of a Capital Item to an eligible Recipient;

(f) Establish procedures for lease of a Capital Item to a Recipient;

(g) Establish insurance requirements adequate to protect the interests of the Transportation Users, the Recipient and the STF Agency, as appropriate;

(h) Ensure that facilities and real property will be used for the originally authorized purpose by use of a restrictive deed covenant, as feasible and appropriate; and

(i) Ensure that vehicles purchased in whole or in part with STF moneys are registered with the Oregon Department of Transportation Driver and Motor Vehicle Services Division in the name of the STF Agency or in the name of the Recipient receiving the equipment:

(A) If the vehicle is registered in the name of the Recipient receiving the equipment, and that Recipient is not the STF Agency, the STF Agency will be listed on the vehicle title as security interest holder;

(B) For leased vehicles, the lease will be recorded on the vehicle title, in accordance with Oregon Department of Transportation Driver and Motor Vehicle Services Division procedures;

(C) Vehicles purchased with other local, state or federal funds in addition to STF moneys will be titled in accordance to the requirements of the specific source. The STF Agency will be listed on the title as a security interest holder; and

(D) The STF Agency may release their security interest in the vehicle after the defined period of useful life is past.

(5) The STF Agency will notify the Division of the sale or transfer of the Capital Item purchased with STF moneys and will report the use of proceeds from the sale.

(6) The Division may establish requirements for Capital items purchased with Discretionary Program moneys, including and not limited to:

(a) A minimum threshold of insurance coverage,

(b) Annual inspections of vehicles used for Public Transportation Programs; and

(c) A requirement that the use of facilities and real property will be secured by a restrictive deed covenant, as feasible and appropriate.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0075; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0046

Audit Requirements

(1) STF moneys will be specifically addressed in the STF Agency's annual audit. If requested by the Division, the STF Agency will provide the Division with a copy of the audit report.

(2) The Division may request additional information including, but not limited to, audits of specific Projects.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0080; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0051

Reporting Requirements

(1) The purpose of reporting is to:

(a) Ensure that STF moneys are being used for the purpose of financing and improving transportation programs for the Elderly and People with Disabilities;

(b) Measure the effects of the program; and

(c) Provide information to the Oregon State Legislature.

(2) The STF Agency will prepare, or require its Recipients to prepare, a quarterly report to the Division. The STF Agency will approve and sign reports prepared by Recipients prior to submission to the Division:

ADMINISTRATIVE RULES

(a) For Projects funded by the Formula Program, a report form, provided by the Division, will be completed for each Recipient on the List of Projects;

(b) A STF Agency may require additional reporting information from its Recipients;

(c) Reports will be due within 45 days following the end of a quarter. The fourth quarter report may be a preliminary report, subject to adjustment after completion of the STF Agency's audit.

(3) Failure to submit the required reports may result in withholding of Formula Funds:

(a) The Division may withhold Formula Funds if reports have not been submitted for a period of three consecutive quarters; and

(b) A STF Agency may negotiate an alternate reporting schedule with the Division.

(4) For Projects funded by the Discretionary Program, a report form will be provided by the Division:

(a) The report is required for payment of Discretionary Grant moneys;

(b) The Division may identify alternate dates for reporting; and

(c) Recipients of Capital Items will report regularly during the period of useful life of the Capital Item.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0085; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0056

Withholding of Funds from a STF Agency

(1) The Division may withhold payment of STF moneys if:

(a) The funds are not being used in accordance with these rules;

(b) All required reporting has not been submitted; or

(c) There are any unresolved audit findings relating to the STF.

(2) If an audit or a review of the agreement finds that STF moneys were used improperly, the STF Agency will repay the STF that portion used improperly.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0050; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0061

Management of Agreements

(1) The Division will enter into an agreement with a STF Agency after approval of the STF Agency's application for STF moneys.

(a) The agreement will include:

(A) A description of the use of the funds;

(B) A beginning and end date;

(C) Termination and suspension clauses;

(D) Other applicable requirements of these rules; and

(E) Sanctions for failure to comply with the requirements of the agreement, including and not limited to, withholding and repayment of funds for cause.

(b) Inspection of records and Projects:

(A) An STF Agency, and any organization acting on the STF Agency's behalf, will permit the Division, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to the STF moneys.

(B) The Division, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, may inspect the Projects financed with STF moneys including, but not limited to, the financial records, physical premises and Capital Items used to deliver Public Transportation Services.

(2) The STF Agency will enter into written agreements with Recipients for Projects financed with Formula Program and Discretionary Program moneys.

(a) The form of the agreement will include:

(A) A statement of work to be performed in consideration of the STF moneys;

(B) A beginning and end date;

(C) Termination and suspension clauses;

(D) Other applicable requirements of OAR 732-005-0000 through 732-020-0045; and

(E) Sanctions associated with failure to perform, including but not limited to, withholding and repayment of funds for cause.

(F) The STF Agency may impose additional requirements under its own authority.

(b) The STF Agency will submit copies of Recipient agreements to the Division.

(c) The STF Agency will monitor the performance of the agreement on a regular basis, and will take action when the terms and conditions of the agreement are not being met.

(d) Recipients, and any organization acting on the Recipient's behalf, will permit the STF Agency, the Division, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to the transportation system supported in whole or part by the STF including, but not limited to, the physical premises and Capital Items used to deliver transportation services.

(e) The Division may terminate or suspend an agreement between itself and a STF Agency, and may require repayment of funds, if the STF Agency fails to take action against a Recipient failing to comply with OAR 732-005-0000 through 732-020-0045.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0066

STF Agency Joint Management of the STF Program

(1) Two or more STF agencies may jointly manage their STF Programs. Joint Management means two or more STF Agencies joining together to manage their STF Programs by consultation and acting independently, or by jointly managing the functions of the STF program.

(a) Joint management through consultation does not require an agreement between the parties.

(b) Joint management of the functions including, and not limited to, pooling STF moneys and jointly allocating funds to Projects, requires an agreement between the STF Agencies.

(2) When two or more STF Agencies jointly manage the functions of the STF program, they will:

(a) Designate a lead STF Agency who will perform all of the functions of the program as defined in this rule;

(b) Ensure that the Advisory Committee appointed by the lead STF Agency is representative of each of the participating STF Agencies; and

(c) Meet together for consultation and review of the jointly managed STF Program at least once per year.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0071

Protest Procedure

The Division will conduct a process to resolve protests of funding decisions made by the Oregon Department of Transportation.

(1) Within 30 days of notification of a funding decision, the STF Agency may file a protest of the decision.

(a) The STF Agency will address the protest to the Administrator of the Division; and

(b) The protest will identify the project or proposed project affected by the funding decision, the Recipient or proposed Recipient affected by the decision, any arguments pertaining to the protest, and the requested remedy.

(2) The Division will investigate the protest and will make a written statement of finding within 30 days.

(3) Within 10 working days of receipt of the statement of finding, the STF Agency may request a review of the statement of finding. After a review of the statement of finding, the Administrator of the Division will issue a final decision.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0076

Recipient Qualifications

(1) To be eligible to receive STF moneys for a Project, a Recipient will meet, or have the capacity to meet, the following qualifications, as applicable to the type of Project being funded. A Recipient will:

(a) Be an entity eligible to enter into agreements;

(b) Have the legal, managerial and operational capacity to perform the Project;

(c) Not be debarred or suspended from federal grants;

(d) Maintain compliance with federal, state and local laws and regulations including, and not limited to, those pertaining to passenger transportation, civil rights, labor, insurance, safety and health, as applicable;

(e) Comply with the laws or rules of this program;

ADMINISTRATIVE RULES

- (f) Properly use STF moneys; and
- (g) Perform the Project in a safe, prudent and timely manner.

(h) If a Recipient is identified as ineligible to receive other funds offered by the state or federal government resulting from a failure to meet the criteria identified in subsection (a) through (g) of this section, the Recipient may be ineligible to receive STF moneys.

(2) A STF Agency may require additional eligibility qualifications of Recipients as necessary to implement its STF Program.

(3) The Division may require additional eligibility qualifications of Recipients as necessary to implement the Discretionary Program.

(4) The STF Agency will confirm the eligibility of a Recipient prior to awarding STF moneys and entering into an agreement.

(5) The STF Agency will ensure that Recipients maintain eligibility while receiving STF moneys.

(6) A Recipient found by the STF Agency or Division to be ineligible may be required to repay moneys received during the period of ineligibility.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.810 - 391.830
Hist.: PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-005-0081 STF Plan

(1) A STF Agency will develop, adopt, and regularly update a written STF Plan:

(a) The purpose of the STF Plan is to set out the long term vision for public transportation in the STF Agency's service area, and guide investment of STF moneys to maximize benefit to the Elderly and People with Disabilities within that area.

(b) The STF Agency will adopt its first plan no later than June 30, 2007.

(c) The STF Plan will:

(A) Cover at least a three year period;

(B) Counties will consider the transportation needs of the Elderly and People with Disabilities residing within the county;

(C) Districts will consider the transportation needs of the Elderly and People with Disabilities residing in the in-district and out-of-district areas of the county(ies); and

(D) Indian Tribes will consider the needs of tribal members and other Elderly and People with Disabilities served by the tribe.

(2) The STF Plan may include, and is not limited to, the following types of information:

(a) Inventory of transportation services and capital resources currently available for the Elderly and People with Disabilities, without regard to how they are funded;

(b) Identify current and forecast county and tribal population and demographics;

(c) Inventory of current and future needs for transportation services and programs. The inventory may include, and is not limited to, changes in employment opportunities, housing, access to medical services, and special issues affecting access to public transportation services for the Elderly and People with Disabilities;

(d) Identify opportunities to coordinate transportation services within the county, District, or tribal area and with other agencies and areas to improve efficiency and effectiveness of service; and

(e) Identify time-based, quantified goals, benchmarks, and performance measures to assess the progress of Recipients in achieving the STF Agency's vision over time.

(3) A STF Agency may adopt as its STF Plan another plan with content meeting the intent of this rule including, and not limited to, a county Transportation System Plan, a transit development plan, the transportation element of an Area Plan for an Area Agency on Aging, or any other plan that comprehensively addresses the transportation needs of the elderly and people with disabilities.

(4) STF Agencies may join together, and with other agencies serving the Elderly and People with Disabilities, for mutual benefit to meet these requirements.

(5) Prior to adopting a STF Plan, the STF Agency will consult with the STF Advisory Committee and the public. The purpose of this consultation is to ensure that the Elderly and People with Disabilities, representatives of the Elderly and People with Disabilities, transportation Providers, and other interested parties have the opportunity to review and comment on the proposed plan.

(6) A STF Agency will review its STF Plan at least biennially, and update it to reflect changes in the service area, demographics, funding levels, service availability or other factors, as needed.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830
Hist.: PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0005

Formula Program

(1) Revenues from the STF are made available annually.

(2) STF Agencies may apply at any time.

(3) Money is paid regularly to the STF Agency upon approval of its application, and submission of reports required by OAR 732-005-0051.

(4) In order to be eligible to receive Formula Program moneys, the STF Agency has, or will have, one or more Projects eligible for funding, as specified by OAR 732-005-0016.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0010

Formula Distribution

For those STF moneys distributed by formula:

(1) The Division will distribute STF moneys regularly, and at least quarterly.

(2) Each January, prior to the state biennium, the Division will estimate the STF moneys to be distributed during the biennium:

(a) The estimate will include the reconciliation of STF receipts from prior years and funds unclaimed by STF Agencies; and

(b) If necessary, the estimate may be adjusted during the biennium, in January, to reflect actual tax receipts and other revenues contributing to the STF moneys.

(3) Formula allocation moneys will be made available to STF Agencies on the basis of population distribution:

(a) Each STF Agency will receive a portion of the moneys based on their share of the state's population;

(b) The county population of STF Agencies that are counties and Districts will be determined by the most recent annual estimate of population of cities and counties by the State Board of Higher Education (ORS 190.510 to 190.610); and

(c) Each Indian Tribe that is a STF Agency will receive STF moneys as share of their tribal population residing in Oregon:

(A) Tribal population is defined as the members of each tribe residing in Oregon;

(B) Each Indian Tribe will provide to the Division its population residing in Oregon by county of residence; and

(C) The tribal populations will be subtracted from county populations before calculating the population of the Districts and counties.

(4) The Division will supplement the Formula Allocation with Discretionary Account moneys as necessary to ensure that each STF Agency receives the Minimum Allocation or the Formula Allocation, whichever is greater.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0015(2-5); PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0015

Application Procedures for Formula Program Moneys

(1) The Division will inform each STF Agency of the amount of Formula Program moneys for which they are eligible.

(2) To apply for Formula Program moneys, the STF Agency will submit a completed application on forms supplied by the Division.

(3) The information required in the application will be sufficient to ensure that the requirements of these rules are met.

(4) An authorized official of the STF Agency will sign the application.

(5) A STF Agency may apply for funds at any time.

(6) If a STF Agency fails to apply for Formula Program moneys, the moneys will remain available to the STF Agency for a period not to exceed three years.

(a) Funds held by the Division due to failure to apply will not accrue interest; and

(b) The Administrative Allotment will be available during the year of application.

Stat. Auth.: ORS 184.616, 184.619 & 391.810
Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0020; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

732-010-0020

Formula Program Application Review

(1) The Division will review and approve Formula Program applications:

(a) The Division will consider material submitted in the application as the basis for application approval; and

(b) The Division may ask for further information or clarification.

(2) The Division may disapprove the application and, if disapproved, will inform the STF Agency of the reason for disapproval.

(a) Reasons for disapproval may include, and are not limited to, the following:

(A) No Advisory Committee or improper membership;

(B) Advisory Committee failure to meet and confer;

(C) STF Agency failure to confer with the Advisory Committee;

(D) A Recipient that is ineligible;

(E) For Formula Program applications by Districts, disproportionate allocation inside and outside District boundaries;

(F) The use of STF moneys to supplant the STF Agency's local appropriation currently used to provide transportation services benefiting the Elderly and People with Disabilities; and

(G) Proposed Projects are not eligible for funding in accordance with OAR 732-005-0000 to 732-010-0045.

(b) Disapproved formula program applications may be improved and resubmitted by the STF Agency.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0030; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0025

Submission of Amended Formula Program Applications

(1) The STF Agency may amend their application at any time by filing an amended application with the Division.

(2) The STF Agency will retain authority over costs and allocations within its jurisdiction and may shift funds among Recipients and Projects identified in an application approved by the Division as necessary for the desired services:

(a) The STF Agency will submit an amended application if there are additional Recipients or Projects;

(b) Changes in the distribution of funds among already approved Recipients do not require Division approval. The STF Agency will notify the Division of any changes; and

(c) Changes in the Advisory Committee do not require an amended application.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0035; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0030

Disbursement of Formula Program Moneys

(1) Upon approval of the application for the Formula Program moneys, the Division will enter into an agreement with the STF Agency.

(2) After the agreement is signed by both parties, the Division will disburse the moneys.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.810 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0040; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0035

STF Agency's Distribution of Formula Program Moneys

(1) The STF Agency will determine the purposes for which the Formula Program moneys will be used, in accordance with their STF Plan.

(2) The STF Agency may use procedures of its choice to distribute Formula Program moneys.

(3) The STF Agency that is a District is responsible for funding Projects benefiting the Elderly and People with Disabilities both within its boundaries and outside them in the surrounding county(ies):

(a) Projects outside the district will receive a proportionate amount of the Formula Program moneys based on the population outside the District;

(b) The proportion is based on the last decennial federal census; and

(c) The District will report the distribution of Formula Program moneys in its application to the Division.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0045; PTD 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-010-0045

Redistribution of Program Funds

For formula moneys, the Division will redistribute funds that have not been requested after three years to participating STF Agencies.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1986, f. & ef. 1-10-86; PTD 1-1987, f. & ef. 11-24-87; PTD 1-1989(Temp), f. & cert. ef. 12-29-89; PTD 1-1990, f. & cert. ef. 5-31-90; Renumbered from 732-005-0055; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0005

Discretionary Program

(1) Discretionary Account moneys may be distributed through a Discretionary Program managed by the Division.

(2) The Division will announce the amount of funds available for distribution and will make applications and application procedures publicly available.

(3) The Oregon Transportation Commission may establish requirements for the Discretionary Program, including and not limited to:

(a) Specific goals and objectives;

(b) Priorities;

(c) Project type and purpose; and

(d) A matching contribution.

(4) The Discretionary Program will:

(a) Be available on a cycle to be determined by the Oregon Transportation Commission;

(b) Be a competitive award process; and

(c) Award moneys based on the requirements of the Discretionary Program.

(5) The Division may combine moneys from the Discretionary Account with other state and federal moneys available to the Division into a unified discretionary grant program.

(6) A STF Agency may request Discretionary Program moneys by submitting a complete application. The STF Agency may submit more than one application, and may submit applications prepared by entities other than the STF Agency.

(a) If an application is prepared for submission by an entity other than the STF Agency, the STF Agency will:

(A) Acknowledge the application by providing a signature;

(B) Verify willingness to enter into an agreement with the applicant to receive and disburse the Discretionary Grant moneys for the Project; and

(C) Submit the application to the Division.

(b) Prior to submitting an application to the Division, the STF Agency will:

(A) Consult with its Advisory Committee regarding the proposed project; and

(B) Ensure that the proposed project is consistent with the STF Agency's STF plan or other plan addressing the transportation needs of the public including the Elderly and People with Disabilities.

(C) The STF Agency is not obligated to submit an application to the Division that does not meet its approval.

(c) The Advisory Committee will meet at least one time to review all of the applications and make recommendation to the STF Agency.

(d) If more than one application is prepared for submission, the STF Agency will rank the projects reviewed in priority order before submitting them to the Division.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 1-1994, f. & cert. ef. 12-30-94; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0020

Application Review

(1) The Division will establish a process for reviewing Discretionary Program applications that will include, and is not limited to:

(a) An initial screening of applications for compliance with Discretionary Program requirements. If program requirements are not met:

(A) The Division may ask for further information or clarification; and

(B) May recommend disapproval of the application to the Oregon Transportation Commission and advise the STF Agency of the reasons for recommending disapproval;

(C) Reasons for the Division to disapprove an application may include, and are not limited to, the following:

(i) No advisory committee, or improper membership;

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- (ii) STF Agency failure to confer with the Advisory Committee;
- (iii) Purpose of the project is not in accordance with the requirements of the program; and
- (iv) The potential recipient identified in the application is ineligible to receive STF moneys.

(b) A review of the qualified applications will be conducted by the appointed grant review panel;

(c) The Discretionary Program application review may be conducted in conjunction with the review of other state and federal grant applications submitted to the Division; and

(d) After consideration of the grant review panel's recommendation, the Division shall submit a final recommendation for funding to the Oregon Transportation Commission.

(2) Criteria for review and selection of Discretionary Grants will be established by the Oregon Transportation Commission, and may include, and not be limited to:

- (a) Public support for the proposed Project;
- (b) The need for the proposed Project;
- (c) The effectiveness of the proposed Project;
- (d) The efficiency of the proposed Project;
- (e) The appropriateness in scope or scale of the proposed Project;
- (f) A satisfactory history of applicant performance, if appropriate;
- (g) Consistency with state and local priorities and needs as identified in planning documents; and

(h) Demonstration of Coordination of transportation resources.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0025

Discretionary Grant Review Panel

(1) The Division will establish a grant review panel to review Discretionary Program applications and recommend Discretionary Grant awards.

(2) The grant review panel will be composed of members with knowledge of the transportation needs of the Elderly and People with Disabilities:

(a) Members of the panel, and the agencies they represent, may not benefit monetarily from any funding decision; and

(b) The Oregon Transportation Commission will appoint individuals to serve on the grant evaluation panel. The panel members may represent state agencies, local government, organizations representing the Elderly and People with Disabilities, the community, local transportation planners and the transportation service industry.

(3) The grant review panel will:

(a) Use the criteria established in accordance with OAR 732-020-0020(2) when reviewing the applications; and

(b) Adhere to the Oregon Public Meeting Law.

(4) The grant review panel may review and recommend procedures and additional review criteria to the Division as necessary to perform their duties in a timely manner.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 1-1994, f. & cert. ef. 12-30-94; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0030

Award of Funds

(1) Upon approval of the Discretionary Program applications by the Oregon Transportation Commission, the Division will:

(a) Notify the applicant of the approval or denial of their application; and

(b) For an approved application, enter into a written agreement with the STF Agency to award funds.

(2) Discretionary Grants that are for planning, needs assessment, research, demonstration and operating projects:

(a) Payments will be made based on reported expenditures; and

(b) Final payment will be made upon receipt of final reports.

(3) Discretionary Grants that are for capital projects, payment may be made upon receipt of vendor invoice or billing.

(4) Other arrangement for payment is at the discretion of the administrator of the Division.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0035

Use of Funds

The uses of the STF Discretionary Grant moneys will be consistent with purposes defined by OAR 732-005-0016, and will be directly associated with activities conducted to complete the project.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0040

Discretionary Project Monitoring

(1) The Division will monitor each Discretionary Grant agreement on an ongoing basis by:

(a) Review of project reports;

(b) An on-site visit to the STF Agency, as appropriate; and

(c) Review of other information, as appropriate.

(2) Discretionary grant agreements may be terminated or suspended by the Division before the date indicated in the agreement. Grounds for termination or suspension of an agreement will include, and are not limited to, a finding by the Division that:

(a) A Recipient is in clear violation of state or local laws or regulations governing passenger transportation;

(b) A Recipient is in clear violation of the laws or rules of this program, or is improperly using program funds; and

(c) A project is incapable of being performed, or has not been performed, in a safe, prudent and timely manner.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

732-020-0045

Redistribution of Funds

For Discretionary Account moneys, the Division will return funds awarded, but not used, back to the Discretionary Account upon termination of a grant.

Stat. Auth.: ORS 184.616, 184.619 & 391.810

Stats. Implemented: ORS 391.800 - 391.830

Hist.: PTD 1-1990, f. & cert. ef. 5-31-90; PTD 2-2004, f. 12-16-04, cert. ef. 1-1-05

Employment Department Chapter 471

Adm. Order No.: ED 7-2004

Filed with Sec. of State: 12-17-2004

Certified to be Effective: 12-19-04

Notice Publication Date: 11-1-04

Rules Amended: 471-031-0070

Subject: The Employment Department is amending:

OAR 471-031-0070 to clarify that domestic employers may report and pay annually.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-031-0070

Taxes

(1) All employers shall make and file a quarterly tax report except domestic employers, who may report annually. Reports shall be made upon forms provided by the Director. Quarterly taxes shall be payable for each calendar quarter with respect to wages paid within such calendar quarter. Annual taxes shall be payable for each calendar year with respect to wages paid within that calendar year. Quarterly taxes shall be due and payable on or before the last day of the month following the close of the calendar quarter. Annual taxes shall be due and payable on or before the last day of January of the following year. If the due date specified falls upon a Saturday, Sunday, or a legal holiday, then reports and payment of taxes shall not be due until the next business day.

(2) When any employer goes out of business, any and all taxes required by the Employment Department Law or the regulations of the Director shall be immediately due and payable.

(3) An employer who fails to pay taxes as required by section (1) of this rule is delinquent. If such delinquency continues following the mailing of a notice of delinquency to the employer's last-known address as shown by the records of the Director, such employer may be required to report and pay taxes monthly until all delinquent taxes have been paid in full and the Director approves an application pursuant to procedures adopted by the Director to make quarterly reports and pay taxes as provided in section (1) of this rule.

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(4) When an employer has become delinquent in the payment of taxes and is required to pay said taxes monthly, such monthly taxes shall become due and payable on the last day of the month following the close of the month for which such taxes are payable. If the taxes are not so paid, the employer shall be deemed to be delinquent.

(5) Any employer found to be delinquent in the payment of taxes as provided in this rule shall be subject to the penalties as specified in ORS 657.515, and further may be assessed an additional penalty as provided in ORS 657.457.

(6) When taxes or reports have been sent to the Director through the U. S. Mails, postage prepaid for delivery to the Director, the date they are postmarked by the Post Office shall be the date of receipt by the Director. Such date shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law. In the absence of a post-marked date, the date of receipt shall be the most probable date of mailing as determined by the Director.

Stat. Auth.: ORS 183, 657.457, 657.610 & Ch. 778, OL 1993
Stats. Implemented: ORS 657.457 & 657.504 - 657.575
Hist.: IDE 150, f. & ef. 2-9-76; ED 3-1994, f. 8-24-94, cert. ef. 8-28-94; ED 7-2004, f. 12-17-04, cert. ef. 12-19-04

Adm. Order No.: ED 8-2004

Filed with Sec. of State: 12-17-2004

Certified to be Effective: 12-19-04

Notice Publication Date: 10-1-04

Rules Adopted: 471-030-0017, 471-030-0078

Rules Amended: 471-030-0036, 471-030-0038

Subject: The Employment Department is adopting:

OAR 471-030-0017 & 471-030-0078 to incorporate Trebesch & Employment Appeals Board decisions into rule, & to establish eligibility for offshore workers.

The Employment Department is amending:

OAR 471-030-0036 & 471-030-0038 to incorporate Trebesch & Employment Appeals Board decisions into rule, & to address separation of temporary/leasing agency employees.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-030-0017

Defining and Allocating Remuneration, Holidays, and Vacations

(1) Definitions. For purposes of applying ORS 657.100 and 657.150, and as used in this rule:

(a) For the purposes of this rule, “earnings” means remuneration.

(b) Where an employer-employee relationship exists, “remuneration” means all compensation resulting from the employer – employee relationship, including but not limited to wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, tips, gifts and gratuities.

(c) Where no employer-employee relationship exists, “remuneration” means the gross amount of compensation for the product or service, less only the value of tangible components involved in producing or providing the product or service and limited to the tangible components that remain with the party receiving the service or product.

(d) For purposes of ORS 657.150(7), the term “holiday” means those holidays listed in ORS 187.010(1)(b)–(j) and (2), 187.020 and any holiday designated by the employer, union contract or otherwise.

(e) For purposes of ORS 657.150(7), the term “vacation” means a specific period of time, paid or unpaid, during which the individual is freed from work/job/employment duties and responsibilities and is free to use the time away from work for any purpose the individual chooses.

(2) For purposes of section (1) of this rule, except for agricultural labor and domestic service, remuneration shall include the value, determined pursuant to OAR 471-031-0055(3), of compensation paid in any medium other than cash.

(3) Allocating Remuneration: For purposes of ORS 657.100 and 657.150(6) remuneration or an applicable pro-rata share thereof shall be allocated as follows:

(a) In the case of services, allocated to the week in which the service was performed;

(b) In the case of products, allocated to the week in which the product was sold.

(c) If the dates of sale or service are not clearly established, allocation shall be made upon a reasonable estimate provided by the claimant. If the individual cannot or will not provide a reasonable estimate, the remunera-

tion shall be allocated equally over the period during which services were rendered or products were sold.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.100 & 657.150
Hist.: ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

471-030-0036

Eligibility Factors

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under ORS 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual’s customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in 1(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the work week customary for the type of work being sought except:

(a) An occasional and temporary disability for less than half of a customary work week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term “physical or mental impairment” (as defined at 29 CFR §1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the work week customary for the work being sought, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the work week customary for the work being sought, and no opportunity to work or referral to work was missed by such absence.

(e) However, an individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR §1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(f) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed in which the individual has an opportunity to perform suitable work and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.

(g) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during

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weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.

(4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is not willing to or capable of working a particular shift because of a lack of care for any child under 13 years of age or a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

(5) For purposes of ORS 657.155(1)(c) an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. In determining whether an individual is conducting an active search for work, the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work with regular employer or in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule.

(6)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in this or any other state or in any other country in which the individual has authorization to work.

(a) When seeking work in any other state, the geographic area shall be defined by local office employees of that state's Work Force Agency, based on the criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the labor market where the individual sought work.

(b) When seeking work in any country outside the United States, the geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the country where the individual sought work.

Stat. Auth.: ORS 657.610

Stats. Implemented: 657.155 & 657.190

Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; IDE 4-1979(Temp), f. & ef. 7-5-79; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1982, f. & ef. 6-30-82; ED 2-1992, f. & cert. ef. 6-29-92; ED 5-1994(Temp), f. 10-13-94, cert. ef. 10-16-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97; ED 5-2003, f. 4-11-03, cert. ef. 4-13-03; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

471-030-0038

Work Separations, Job Referrals and Job Refusals

(1)(a) As used in ORS 657.176(2)(a), (b) and (c) and sections (1) through (5) of this rule the term "work" means the continuing relationship between an employer and an employee. An employment relationship exists even in circumstances where the work performed is not subject employment as set forth in ORS Chapter 657. This section does not apply where no employment relationship exists because the worker is an independent contractor or operating an independently established business. With the exception of the provisions of ORS 657.221(2)(a), the date an individual is separated from work is the date the employer-employee relationship is severed. In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends.

(b) In the case of absence due to labor dispute, the employee is separated from work on the date there is a complete dissociation from all participation in the labor dispute and no re-employment rights are claimed.

(c) As used in this rule, "wantonly negligent" means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.

(d) As used in this rule, the following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

(2) The distinction between voluntary leaving and discharge is:

(a) If the employee could have continued to work for the same employer for an additional period of time the separation is a voluntary leaving of work;

(b) If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer the separation is a discharge.

(3)(a) As used in ORS 657.176(2)(a) and (b) a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.

(b) Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct.

(c) The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

(4) Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. For all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

(5) In applying section (4) of this rule:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay:

(A) An amount equal to or in excess of the weekly benefit amount; or
(B) An amount greater than the work left.

(b) Leaving work without good cause includes, but is not limited to:

(A) Leaving suitable work to seek other work;

(B) Leaving work rather than paying union membership dues;

(C) Refusing to join a bona fide labor organization when membership therein was a condition of employment;

(D) Leaving to attend school, unless required by law;

(E) Willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occu-

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pation involved, so long as such failure is reasonably attributable to the individual;

(F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;

(G) Leaving work for self employment.

(c) Good cause for voluntarily leaving work while on layoff status shall be determined solely under the provisions of section (4) of this rule without regard to the provisions of subsections (a) and (b) of this section;

(d) Reduction in rate of pay: If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the average rate of pay for similar work in the individual's normal labor market area. The average rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

(A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.

(B) An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission.

(C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.

(D) If the Employment Department cannot determine the average rate of pay, the provisions of OAR 471-030-0038(4) apply.

(e) Reduction in hours: If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received;

(f) Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule.

(6) As used in ORS 657.176(2)(d) and (e), the term "work" means the performance of services for which remuneration, compensation or wages is intended to be received or earned. Good cause as used in ORS 657.176(2)(d) and (e) is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause is such that a reasonable and prudent person with the characteristics and qualities of such individual, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. In determining disqualification under this section, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195.

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

Stat. Auth.: ORS 657.176, 657.260, 657.265 & 657.610

Stats. Implemented: ORS 657.176

Hist.: IDE 1-1979(Temp), f. & ef. 4-30-79; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1984, f. & ef. 3-21-84; IDE 2-1986, f. & ef. 4-14-86; ED 5-1992, f. & cert. ef. 12-14-92; ED 2-1993(Temp), f. & cert. ef. 8-12-93; ED 4-1993, f. & cert. ef. 11-22-93; ED 6-1999, f. 9-23-99, cert. ef. 9-26-99; ED 7-2001(Temp), f. 5-17-01, cert. ef. 5-20-01 thru 11-11-01; ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

471-030-0078

Eligibility for Offshore Workers

(1) As used in this rule, an offshore worker is an individual who resides and seeks work outside the United States, Canada, Puerto Rico or the U.S. Virgin Islands and:

(a) Is a citizen or permanent legal resident of the United States or possesses unexpired documentation of permission to work in the United States, and

(b) Is authorized to work in the country in which the individual is residing and in which the individual is seeking work.

(2) An offshore worker shall not be determined ineligible for benefits under ORS 657.155 solely on the basis of the individual's physical location provided the individual is otherwise eligible for benefits.

(3) An individual is not available for work under ORS 657.155 if the individual's permission to work in the United States or in the country in which the individual now resides or is seeking work has expired, been revoked, terminated or otherwise ended.

Stat. Auth.: ORS 657.610, 657

Stats. Implemented: ORS 657.155

Hist.: ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

Employment Department, Child Care Division Chapter 414

Adm. Order No.: CCD 6-2004

Filed with Sec. of State: 12-17-2004

Certified to be Effective: 12-17-04

Notice Publication Date: 11-1-04

Rules Amended: 414-061-0080

Subject: The Employment Department, Child Care Division, is amending:

OAR 414-061-0080 to change from "two" to "one" the number of properly completed FBI fingerprint cards required under the rule.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-061-0080

Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Criminal History Registry.

(5) CCD will charge the subject individual \$46 for an FBI records check, to be paid at the time of the request.

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

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 6-2004, f. & cert. ef. 12-17-04

Oregon Department of Education Chapter 581

Adm. Order No.: ODE 34-2004

Filed with Sec. of State: 12-16-2004

Certified to be Effective: 12-16-04

Notice Publication Date: 9-1-04

Rules Amended: 581-011-0072

Subject: Adoption of Instructional materials as specified in ORS 337.050 is done through administrative rule making process. The amendment of OAR 581-011-0072 will add to the reference list programs in the Social Sciences.

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

581-011-0072

Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education adopts by reference "State-Adopted Instructional Materials for the Social Sciences, 1999-2005," listing basic instructional materials in the following categories:

(a) Social Science, Grades K-5;

(b) Social Science, Grades 6-8;

(c) Civics, Grades 9-12;

(d) Economics, Grades 9-12;

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- (e) Geography, Grades 9–12;
- (f) U.S. History, Grades 9–12;
- (g) World History, Grades 9–12.

(2) The recommended materials referred to in section 1 of this rule are adopted for the adoption cycle beginning July 1, 1999, and ending June 30, 2005.

(3) The State Board of Education adopts by reference “Social Sciences Instructional Materials — Contract Years 2005-2011” for the following categories:

- (a) Social Sciences, Grades K–5/6;
- (b) Social Sciences, Grades 6–8;
- (c) Civics, Grades 9–12;
- (d) Economics, Grades 9–12;
- (e) Geography, Grades 9–13;
- (f) U.S. History, Grades 9–12;
- (g) World History, Grades 9–12.

(4) The recommended materials referred to in section 3 of this rule are adopted for the adoption cycle beginning July 1, 2005, and ending June 30, 2011.

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

Stat. Auth.: ORS 337.055

Stats. Implemented: ORS 337.050

Hist.: 1EB 6-1985, f. 1-30-85, ef. 1-31-85; 1EB 13-1985, f. 6-17-85, ef. 7-1-85; 1EB 11-1986, f. 3-21-86, ef. 3-24-86; 1EB 14-1986, f. 4-25-86, ef. 4-28-86; 1EB 19-1986, f. 5-20-86, ef. 5-23-86; EB 1-1991, f. & cert. ef. 1-24-91; ODE 18-1998(Temp), f. & cert. ef. 11-9-98 thru 5-8-99; ODE 1-1999, f. & cert. ef. 1-12-99; ODE 34-2004, f. & cert. ef. 12-16-04

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 5-2004(Temp)

Filed with Sec. of State: 12-17-2004

Certified to be Effective: 12-17-04 thru 6-14-05

Notice Publication Date:

Rules Adopted: 813-230-0001

Rules Amended: 813-230-0010, 813-230-0015, 813-230-0020

Rules Ren. & Amended: 813-230-0000 to 813-230-0006, 813-230-0005 to 813-230-0008

Subject: These rules designate Oregon Housing and Community Services Department as the state agency responsible for administering state and federal anti-poverty programs in Oregon. Amendments to the rules are primarily administrative. 813-230-0010(2) removes the requirement that an agency service area have a population of at least 50,000 individuals.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-230-0001

Purpose and Objectives

The rules of OAR chapter 813, division 230, is promulgated to carry out the provisions of ORS 458.505 to 458.545, specifically ORS 458.505 to 458.515, which designates the Housing and Community Services Department as the state agency responsible for administering state and federal anti-poverty programs in Oregon. These administrative rules describe the designation and responsibilities of Community Action Agencies as a delivery system at the local level for federal antipoverty programs in Oregon.

Stat. Auth.: ORS 184.082 & ORS 458.505 - ORS 458.515

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

813-230-0006

Definitions

All terms are used in OAR chapter 813, division 230, as defined in the Act, and as provided herein. As used in these rules, unless otherwise indicated by the context:

(1) “Community Action Agency” or “CAAs” refers to an organization that is established under the provisions of ORS Chapter 65, or an office or agency of a political subdivision designated by the Department of Health and Human Services as a Community Action Agency pursuant to the Economic Opportunity Act of 1964, which meets the requirements outlined in ORS 458.505(4) and has been established to carry out the goals of OAR 813-210-0030.

(2) “CADO” refers to the Community Action Directors of Oregon.

(3) “Department” Oregon Housing and Community Services (OHCS).

(4) “Director” means the Director of Oregon Housing and Community Services.

(5) “Federal Anti-Poverty Programs” means the Community Services Block Grant, Low-Income Energy Assistance Block Grant, United States Department of Energy Weatherization Assistance Program and other federally funded programs which benefit low-income populations.

(6) “Governor” means the Governor of the State of Oregon.

(7) “Monitor” to carry out field reviews of CAAs and other subgrantees.

(8) “OHDC” means Oregon Human Development Corporation, a private, nonprofit agency which serves migrant workers and families.

(9) “Program Manager” means those Department staff designated by the Administrator to administer specific anti-poverty programs.

Stat. Auth.: ORS 184.082 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 3-1987, f. & ef. 12-30-87; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-110-0000; HSG 9-1993, f. & cert. ef. 10-1-93; Renumbered from 813-230-0000, OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

813-230-0008

Administration

(1) The Department has been designated by the Governor as the state agency responsible for administration of federal anti-poverty programs.

(2) The Department shall administer those programs through subcontracts with CAAs, OHDC and other eligible local entities.

(3) In those areas of the state served by a CAA, the CAA shall have the right of first refusal in contracts for anti-poverty program administration, unless it has been determined by the Department that a CAA is incapable of effective program administration.

(4) In areas of the state not served by a CAA, federal anti-poverty funds, other than the Community Service Block Grant, may be distributed to agencies which HCS has identified because of their established service delivery systems as being able to effectively serve poverty populations.

(5) CADO shall provide advice and recommendations to the Department regarding administration and funding of anti-poverty programs.

Stat. Auth.: ORS 184.082 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 3-1987, f. & ef. 12-30-87; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-110-0005; HSG 9-1993, f. & cert. ef. 10-1-93; Renumbered from 813-230-0005, OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

813-230-0010

Designation of Community Action Agencies

(1) CAAs established under the Economic Opportunity Act of 1964 or the direct successor to such CAAs, have been recognized by the Department as designated CAAs for established service areas.

(2) Agencies eligible for recognition as a CAA are political subdivisions of the state: Private, nonprofit community organizations and migrant/seasonal farm worker organizations. An applicant agency must demonstrate its programmatic and administrative capabilities for implementing and operating anti-poverty programs.

(3) New CAAs will be designated by the Department for unserved areas of the state only if CAAs contiguous with or closest to the unserved areas decline to serve such areas.

(4) Except in situations where an agency’s status as a CAA is terminated voluntarily or involuntarily, changes in service area designations shall be initiated at the local level and submitted to the Department for approval.

(5) Efforts to establish new CAAs in unserved areas of the state shall be initiated at the local level and submitted to the Department for approval.

Stat. Auth.: ORS 184.082 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 3-1987, f. & ef. 12-30-87; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-110-0010; HSG 9-1993, f. & cert. ef. 10-1-93; OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

813-230-0015

Monitoring

(1) The Department shall designate Department staff to monitor subgrantees’ activities. Each subgrantee shall be monitored at least once during its program year.

(2) Monitoring shall include, but not be limited to: Entrance interview, inspection of client files, program records and reports, fiscal records including original receipts for expenditures, compliance with contract provisions, compliance with state and federal regulations and exit interview.

(3) Each subgrantee shall be advised within 30 days after the monitoring’s conclusion of problem finding resulting from the monitoring of its program. If the monitor believes that the subgrantee’s record keeping or

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reporting system is deficient, that the program is out of compliance with contract provisions or that the program is out of compliance with state or federal regulations, the Program Manager shall issue preliminary findings which provide specific examples of each such issue, request corrective action on each deficiency and offer assistance to the subgrantee in developing a corrective action plan.

(4) Subgrantees shall respond to preliminary finding corrective action request within 30 days from receipt of the request. The response either shall include a corrective action plan which specifically addresses identified deficiencies or explain why the preliminary findings were in error.

(5) The Department shall notify the subgrantee within ten days of the Department's acceptance or rejection of all or parts of the subgrantee's response. The subgrantee shall be given an additional 20 days from the receipt of the Department's notification to provide an acceptable corrective action plan for any remaining, unresolved deficiencies.

(6) If unresolved deficiencies remain, the Department shall transmit to the subgrantee a finding of facts detailing the specific deficiencies, required corrective actions and establishing a 30-day time period for corrective action to take place.

(7) If at the end of that 30-day period, specific corrective actions have not been effected, the Department shall inform the subgrantee of the sanctions which shall be applied due to non-compliance. Such sanctions shall include withholding of funds, disallowance of costs, suspension of contract, or termination of contract. The Department shall inform the subgrantee of any appeal rights and procedures to state and federal authorities in the sanction transmittal.

Stat. Auth.: ORS 184.082 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 3-1987, f. & ef. 12-30-87; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-110-0015; HSG 9-1993, f. & cert. ef. 10-1-93; OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

813-230-0020

Termination of Community Action Agencies

(1) A CAA shall not be terminated by the State of Oregon unless, and after notice and opportunity for hearing, it has been determined that cause existed for termination.

(2) Such notice shall be sent to a CAA by the Department and a hearing shall be held before the Department when in his or her opinion probable cause for termination exists.

(3) A CAA may appeal the Department's decision to the Director for hearing on the record.

(4) A CAA may appeal the Director's decision to the Governor for hearing on the record.

(5) The decision to terminate a CAA will be transmitted to the Secretary for the U.S. Department of Health and Human Services for review within ten working days of that decision being finalized.

Stat. Auth.: ORS 184.082 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: HR 3-1987, f. & ef. 12-30-87; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-110-0020; HSG 9-1993, f. & cert. ef. 10-1-93; OHCS 5-2004(Temp), f. & cert. ef. 12-17-04 thru 6-14-05

Oregon Liquor Control Commission
Chapter 845

Adm. Order No.: OLCC 15-2004

Filed with Sec. of State: 12-22-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 845-009-0200

Subject: This rule lays out standards for OLCC, law enforcement agencies and licensees who operate minor decoy programs. When we adopted this rule in 2002, we included the concept that the history or status of the "business" could be used in determining if there was a documented compliance problem, as defined in section (5) of the rule. Including "business" was beyond the scope of the statute, which intended to focus on a particular licensee or agent. We amended the rule to remove the concept of "business" from section (5) definitions.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-009-0200

Uniform Standards for Minor Decoy Operations

(1) Purpose. ORS 471.346 directs the Oregon Liquor Control Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees and agents operating stores

on behalf of the Commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages. It is the Oregon Liquor Control Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

(a) The minor must be under 21 years of age; and

(b) The minor may not use false identification; and

(c) The minor must look under the age of 26 years; and

(d) The minor may not lie about their age.

(3) Uniform standards for operations. In cities with populations of 20,000 or more, minor decoy operations must be conducted on either a random or targeted basis.

(a) "Random" decoy operations. Selection of the agent(s) or licensee(s) to be visited will be done using simple random sampling which ensures to the greatest extent possible that each licensee or agent has an equal chance of being selected. The simple random sampling may be performed using a variety of generally accepted simple random sampling tools, such as a random number table, a random number generator, or other method.

(b) "Targeted" minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation.

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor Control Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

(a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and

(b) Law enforcement agencies provide the Commission with copies of their minor decoy policies;

(c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(5) DEFINITIONS: Documented compliance problem. For purposes of this rule, "documented compliance problem" means:

(a) OLCC or Law Enforcement has received one or more documented complaints about an agent, licensee or license applicant alleging one or more of the following occurred at the retail sales agency or on the licensed premises:

(A) Failed to check, or failed to properly check identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors; or

(b) The agent, licensee or license applicant has received one or more citations, or administrative Notice of Warning or Notice of Violation tickets for one or more of the following:

(A) Failed to check, or failed to properly check identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors.

(6) Uniform standards for licensees. A licensee using a person under the age of 21 years for the purpose of investigating possible violations by employees of the licensee for sale of alcoholic beverages to a person or persons who are under the age of 21 years must:

(a) Comply with the uniform standards for minors used in minor decoy operations; and

(b) Notify the Director of OLCC's Regulatory Program and the Chief or Sheriff of their local law enforcement agency of the minor decoy's name, date of birth, provide a current photograph of the minor decoy, and the date(s) and location(s) of the minor decoy operation(s) at least 24 hours prior to the use of the minor decoy.

(7) Licensees, service permittees, licensee's employee(s), agents, and agent's employee(s) must immediately return identification presented by the minor decoy upon request of law enforcement or an OLCC representative.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 30.960, 165.805 & 471.430

Hist.: OLCC 11-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; OLCC 8-2002, f. 6-12-02 cert. ef. 6-30-02; OLCC 15-2004, f. 12-22-04, cert. ef. 1-1-05

Adm. Order No.: OLCC 16-2004

Filed with Sec. of State: 12-22-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 9-1-04

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Rules Amended: 845-005-0312

Subject: This rule lists the documents the Commission requires license applicants to submit as part of their application. Section (1)(f) of the rule addresses premises managers and what documents we will require from them. We amended the rule to change the definition of premises manager, and to add a list of situations in which the Commission will require the license applicant to submit an individual history form for their premises manager(s).

Rules Coordinator: Katie Hilton—(503) 872-5004

845-005-0312

Forms Required for License Applications

(1) As a part of the application:

(a) The applicant or applicants for a license shall submit a completed Liquor License Application form.

(b) The licensee submitting a request for approval of a change as required by Commission rules must submit a signed and dated request in writing.

(c) All individual applicants, all general partners in a limited partnership, limited partners whose investment commitment is ten percent or more of the total investment commitment, all members in a limited liability company or partnership whose investment commitment or membership interest is ten percent or greater, all directors who own or control three percent or more of the voting stock, principal officers (as defined in OAR 845-006-0475) of corporate applicants, and all natural person stockholders owning or controlling ten percent or more of the voting stock of corporate applicants will submit a completed Individual History form.

(d) All applicants will submit a statement of funding, and verification of the funding source(s). As part of investigation under OAR 845-005-0311, Commission staff may require any applicant to submit additional financial information, including, but not limited to, a financial statement and documentation of the origination of funds.

(e) Any applicant that is a registered entity, and any registered entity that has a ten percent or greater ownership interest in an applicant-registered entity, must complete a questionnaire that lists, as appropriate, the officers, directors, shareholders, general and limited partners, or members of the entity. If a corporation has more than twenty shareholders or a limited partnership has more than twenty limited partners, only those with a ten percent or greater investment interest need be listed.

(f) The Commission requires applicants to submit Individual History forms from managers when the applicant is inexperienced or new to the industry, or when the applicant will not personally manage the premises, or when the applicant's premises has a history of problems or is located in a problem area. For purposes of this rule a manager is an individual who has the authority to act on behalf of the applicant when the applicant is not on the premises.

(2) For the purposes of this rule, a registered entity is a legal form of organization required to register as such with the Oregon Secretary of State and includes such forms as a corporation, limited liability company, limited liability partnership and limited partnership. Trusts, family trusts, and general partnerships are not registered entities for the purposes of this rule.

(3) If a legal entity applying for a license is wholly owned by another legal entity and was created in whole or in part to apply for the license, the Commission may require the parent legal entity to complete the forms and disclosures this rule requires of an applicant, and may treat the parent legal entity as an applicant for the purposes of determining eligibility for a license.

(4) The Commission's Administrator or the License Process Director may waive the requirements of this rule to take account of unusual or extraordinary circumstances. These circumstances may include the following:

(a) Previous licensing by the Commission of the applicant;

(b) General reputation of the applicant;

(c) Information from other state or federal regulatory agencies that the Commission could use in lieu of the information this rule requires.

(5) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest in the business or place of business. The Commission may require a personal history or fingerprints from any person who has a financial interest in the licensed business to help determine if this person is licensable.

(6) Nothing in this rule prevents the Commission from requiring additional information or information from other persons where there is reason to believe that this information may help the Commission determine the merits of a license application or to otherwise perform its statutory duties.

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

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.757

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 16-2004, f. 12-22-04, cert. ef. 1-1-05

Adm. Order No.: OLCC 17-2004

Filed with Sec. of State: 12-22-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 845-015-0175

Subject: This rule regulates advertising in retail sales agencies (liquor stores). We received a request from an industry member to amend section (2) of the rule to allow more flexibility in marketing products. Old rule language allowed one 50-ml sized "mini" bottle to be added as an on-pack to a 750-ml sized bottle of distilled spirits. The rule will retain that standard for mini on-packs, but has been amended to add language that will allow Commission staff to approve exceptions (a slightly larger sized mini bottle, or perhaps two mini bottles) to allow promotions which deviate from the rule standard.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-015-0175

General Requirements for Advertising in a Retail Liquor Store

(1) Advertising Liquor in a Retail Liquor Store. ORS 471.750(2) allows signs and displays advertising distilled spirits products in retail liquor stores and gives the Commission the authority to regulate this advertising. The Commission prohibits advertising liquor in a retail liquor store other than as permitted by this rule and OAR 845-015-0177.

(2) General Requirements. The Commission allows signs and displays that:

(a) Comply with ORS 471.750(2), and Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations;

(b) Are temporary in nature and not permanent fixtures in the retail liquor store;

(c) Are truthful, in good taste and not lewd, sexist or racist;

(d) Do not obstruct another distillery's products;

(e) Advertise a rebate (as OAR 845-015-0165 allows), sweepstakes or offer a premium or an on-pack for the consumer. However,

(A) The sweepstakes or premium offer must not require the purchase of liquor in order to receive a prize or merchandise, unless the manufacturer or distillery representative donates the prize or merchandise to a charitable cause or community non-profit entity.

(B) When the on-pack is liquor, it must:

(i) Not exceed one 50 ml per bottle, unless an exception is approved by Commission staff;

(ii) Not be a size that has a current, regular listing;

(iii) Be attached to a non-like product; and

(iv) Be attached only to bottles 750 ml in size or larger.

(3) Signs and displays must not contain:

(a) False or misleading information;

(b) Claims that the alcoholic beverage has curative or therapeutic effects;

(c) Claims that any government agency endorses or supports the alcoholic beverage;

(d) Materials so appealing to minors that it encourages them to purchase, possess or drink alcoholic beverages;

(e) A person appearing to be under 26 years of age displayed drinking an alcoholic beverage;

(f) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;

(g) Statements or illustrations that an alcoholic beverage causes athletic or sexual or artistic success or sexual prowess;

(h) Material that encourages excessive or rapid consumption.

(4) In addition to the requirements and restrictions in sections (2) and (3) of this rule, the Commission may prohibit any sign it deems inappropriate for use in a retail liquor store.

(5) The Commission retains the right to remove point of sale material(s) the Commission finds objectionable.

(6) The Commission allows and must approve the sale and distribution of on-packs.

(7) For this rule:

(a) "Sweepstakes" means a contest for prizes not prohibited by law and offered by a distillery or its representative. A participant may pick up

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an entry blank at a retail liquor store, but any prize must be delivered to the winner at a location other than a retail liquor store.

(b) "Premium" means an item, offered to promote a product, which a person may order from the distillery or its representative. A person may pick up an order form at a retail liquor store, but the item must be delivered at a location other than a retail liquor store. Examples of a premium include t-shirts, watches, and cameras.

(c) "On-pack" means any item, including distilled spirits, attached to a distilled spirits product for sale in retail liquor stores.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)
Stats. Implemented: ORS 471.750(2)
Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 13-1996, f. 9-30-96, cert. ef. 10-7-96; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0091; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 17-2004, f. 12-22-04, cert. ef. 1-1-05

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 1-2005

Filed with Sec. of State: 1-11-2005

Certified to be Effective: 1-11-05

Notice Publication Date: 12-1-04

Rules Amended: 416-250-0000, 416-250-0010, 416-250-0020, 416-250-0030, 416-250-0040, 416-250-0050, 416-250-0060, 416-250-0070, 416-250-0080, 416-250-0090

Subject: These rules are amended to revise and update language usage.

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-250-0000

Purpose and Scope

(1) These rules establish an OYA procedure for audits of any service provider agreeing to offer services through direct contract with the OYA, and the provider's subcontractors and vendors. These rules also establish basic record keeping standards for programs subject to audit under these rules, establish procedures for appealing audit findings, and set out a process to implement the findings of the final audit report.

(2) Under these rules, the OYA may audit any service provider that provides any part of OYA services. The scope of the audit will include only OYA funds or related matching funds. However, OYA may include other funds in its tests to the extent necessary to audit OYA funds or matching funds.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0010

Definitions

(1) **Audit:** The examination of documents, records, reports, systems of internal control, accounting and financial procedures, and other evidence for one or more of the following purposes:

(a) To ascertain whether the financial statements present fairly the financial position and the results of financial operations of the fund types and/or account groups in accordance with Generally Accepted Accounting Principles and federal and state rules and regulations;

(b) To determine compliance with applicable laws, rules, regulations and contract provisions;

(c) To review the efficiency and economy with which operations are carried out; and

(d) To review effectiveness in achieving program results.

(2) **Capital construction:** An expenditure related to construction or remodeling of physical facilities with a projected cost of \$250,000 or more.

(3) **Capital improvement:** An expenditure related to construction or remodeling of physical facilities with a projected cost of more than \$5,000 but less than \$250,000.

(4) **Capital outlay:** Purchases of equipment and tangible personal property of a non-expendable nature which have a useful life of more than one year. The minimum dollar threshold for determining if a purchase is capital outlay can not exceed the amount set for state purchases of capital outlay. The current threshold for the State of Oregon is \$5,000, however, a lesser amount may be used.

(5) **Direct contractor:** A person or organization which operates under a direct contract with the OYA to provide services to youth offenders in OYA's care.

(6) **Internal auditor:** Auditors within the OYA.

(7) **Internal control structure:** The plan of organization including all of the methods and measures adopted within a business to safeguard its assets, check the accuracy and reliability of its accounting data, and promote operational efficiency and adherence to management's policies.

(8) **Non-allowable expenditures:** Expenditures made by a contractor or subcontractor of the OYA which are not consistent with relevant federal and state laws, rules, regulations or contract provisions. To be allowable, expenditures must be necessary and reasonable for the proper and efficient performance of the contracted services. If only state funds are involved, expenditures will be evaluated based on state laws and rules, the contract provisions, and whether they are necessary and reasonable for the proper and efficient performance of the contracted services. When federal funds are involved, determination of allowable expenditures includes, but is not limited to, those rules and regulations itemized and referred to in applicable Office of Management and Budget circulars.

(9) **Reasonable cost:** A cost that in nature or amount does not exceed that which would be incurred by a prudent person under the circumstance prevailing at the time the decision was made to incur the cost. Consideration will be given to whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization; what restraints or requirements exist such as those imposed by factors of generally accepted sound business practices, federal and state laws and regulations, and terms and conditions of the contract; whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, their employer, their clients, the public and the governments; and whether significant deviations from the organization's established practices unjustifiably increase costs.

(10) **Service provider:** A public or private community agency or organization contracted by the OYA that provides recognized OYA service(s) either directly or through subcontractors or vendors, and is approved by the OYA or other appropriate agency to provide these service(s). For the purpose of this rule, "provider" or "program" is synonymous with "service provider."

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010
Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0020

Revenue

(1) A service provider will maintain a revenue account for each income source which results from the operation of the service or is used to support the service. For example, separate revenue accounts will be established for each program for which the provider receives payment from OYA, direct federal payments, donations, fees, interest earned, rentals collected from subleases, sales of capital equipment, training grants or any other source of income.

(2) Only cash revenue may be used to match state funds unless the OYA gives prior authorization in writing to use contributed services or property to match state funds.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010
Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0030

Expenses

(1) A service provider subject to audit under these rules will keep its accounting records consistent with Generally Accepted Accounting Principles. Accounting records will be retained for three years from the date of the expiration of the OYA's agreement or from the finalization of an audit, whichever comes later. Allocation methods for expenses will be documented. Relevant calculations representing allocations will be shown. The allocation method will reasonably distribute expenses shared by service providers or programs. Charges assessed against a service provider by a related organization will be justified by the related organization as to the method and reason for relevant cost allocation. The expense invoice will list the location where services and supplies purchases are delivered for any item in excess of \$1,000.

(2) **Record requirements for personal services:**

(a) Reports reflecting the distribution of labor of each employee must be maintained for all staff members, professional and nonprofessional, whose compensation is charged in whole or in part to OYA funds. To support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s). Reports maintained to satisfy these requirements must meet the following standards:

ADMINISTRATIVE RULES

(A) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to OYA funds;

(B) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization;

(C) The reports must be signed by the individual employee, or by a responsible supervisory official having first-hand knowledge of the activities performed by the employee, to attest that the distribution of activity represents a reasonable distribution of the actual work performed by the employee during the periods covered by the reports;

(D) The reports must be prepared at least monthly and must coincide with one or more pay periods;

(E) Periodic time studies, in lieu of ongoing time reports, may be used to allocate salary and wage costs. However, the time studies used must meet the following criteria:

(i) A minimally acceptable time study must encompass at least one full week per month of the cost reporting period.

(ii) Each week selected must be a full work week (e.g., Monday to Friday, Monday to Saturday or Sunday to Saturday).

(iii) The weeks selected must be equally distributed among the months in the cost reporting period, e.g., for a 12 month period three of the 12 weeks in the study must be the first week beginning in the month, three weeks the second week beginning in the month, three weeks the third and three weeks the fourth.

(iv) No two consecutive months may use the same week for the study, (e.g., if the second week beginning in April is the study week for April, the weeks selected for March and May may not be the second week beginning in those months).

(v) The time study must be contemporaneous with the costs to be allocated. Thus, a time study conducted in the current cost reporting year may not be used to allocate the costs of prior or subsequent cost reporting years.

(vi) The time study must apply to a specific provider. Thus, chain organizations may not use a time study from one provider to allocate the costs of another provider or a time study of a sample group of providers to allocate the costs of all providers within the chain.

(b) Any person being compensated for services to a service provider who is not an employee of the organization will have a written contract with the service provider. The contract will set forth the specific services being purchased, the contract time period, the rate at which compensation will be paid and an hourly rate where applicable.

(3) Record requirements for capital expenditures:

(a) Depreciation for capital outlay, capital improvements, and capital construction will be documented in a depreciation schedule. The depreciation schedule at a minimum will include a description of the asset, date of acquisition, cost basis, depreciation method, estimated useful life, annual depreciation expense and accumulated depreciation.

(b) Any capital expenditures purchased by a service provider using OYA funds will be listed on an inventory system showing location of item and reference to purchase invoice and payment receipt location. The inventory will be checked annually and verification of the inventory list signed by the inventory control person. All capital items purchased with OYA funds must be used in an OYA approved program.

(4) Reasonable procedures will be established to ensure the security of cash, blank checks, purchase orders, check protector machines, and signature stamps.

(5) A service provider must expend funds consistent with an agreement or direct contract, these rules, the required program or licensing rule, and federal and state requirements. For services contracted with a predetermined rate, OYA funds not used in delivering the service of the required quantity and quality will be classified as carryover. Carryover of OYA administered funds will be spent for OYA services. These funds will be kept in restricted accounts in the financial records. Funds spent on unallowed costs will be considered noncompliance and will be returned to OYA.

(6) All travel expenses will be supported by a system of authorized trip reports, receipts, and/or other documentation. Authorization is indicated by approval of the travel expenditure by the Director (or person with delegated authority) of the service provider.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0040

Audit Process and Reports

(1) Any person, organization, or agency, including OYA, may request an audit of a service provider by submitting an audit request in writing to the OYA Director's Office. The request will clearly identify the service provider to be audited, setting forth its name, location, program director, the period for which the audit is requested and the reason for the request.

(2) The OYA Director's Office will review the request and arrange for an audit if considered appropriate.

(3) The OYA Director's Office has discretion to notify the appropriate service provider program director of the scheduled audit in advance. The OYA retains the right to perform an audit without prior notice to the subject service provider.

(4) Upon completion of the audit, the OYA will prepare a report setting forth the findings, recommendations, and auditee responses where applicable. Audit work papers will be available showing the details of the audit findings.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0050

Disposition of Audit Findings

(1) To the extent an audit documents non-allowable expenditures in non-capitated programs, the OYA will recover such funds.

(2) To the extent an audit report evidences non-compliance with applicable program and/or licensing rules, the audit findings may be referred to the Director of the OYA to assess civil penalties, where applicable, or for other corrective action deemed necessary by the OYA.

(3) Notwithstanding any other provisions of these rules, to the extent an audit report reveals non-compliance with Generally Accepted Accounting Principles or these rules, OYA may require corrective action to bring the deficiencies into compliance with state and federal rules and regulations. Non-compliance which results in substantial misrepresentation of financial activities may result in termination of the license and/or contract.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0060

Provider Appeals

(1) A provider may appeal certain decisions affecting the provider by making a written request to the OYA Director's Office. The request must state whether the provider wants an administrative review, and/or a contested case hearing, as outlined in the OMAP General Rules OAR 410-120-1560, Provider Appeals, through 410-120-1840, Provider Hearings-Role of Hearings Officer. If the subject service provider decides to appeal the audit, it will set forth in writing the reasons for its appeal within 30 days of receipt of the report.

(2) When OYA seeks to recover funds under these rules, OYA will negotiate the terms and conditions of repayment with the audited service provider.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0070

Basic Accounting Records

(1) A service provider subject to audit under these rules will maintain a chart of accounts that defines all items included in determining the cost for each program. The chart of accounts will list all revenues and expense accounts.

(2) The organization will have bank deposit records and documentation to verify the source of revenue. Revenue and expense accounts, with related asset, liability, and equity accounts, will account for all expenditures related to delivery of the program.

(3) All basic accounting records will be retained for at least three years following the expiration of the contract or from the finalization of an audit including any appeal, whichever is later.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0080

Internal Controls

Establishing and maintaining an internal control structure is the responsibility of the service provider. Effective internal controls are considered essential to achieving the proper conduct of business with full

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accountability for the resources made available. Internal controls will be implemented and maintained to provide reasonable assurance that:

(1) The provider identifies, assembles, classifies, records, analyzes, and reports its transactions in conformity with Generally Accepted Accounting Principles or appropriate regulatory requirements for preparing financial statements and other required financial reports;

(2) Losses or misappropriations of assets due to errors or irregularities in processing transactions and handling the related assets are prevented or detected;

(3) Noncompliance with applicable federal and state laws and rules and regulations and terms of the contract is prevented or detected;

(4) State and federal funds are reasonably, prudently and economically spent; and

(5) All costs are appropriately allocated among programs, departments, and other benefiting units.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

416-250-0090

Independent Audit Reports

The OYA may, at its discretion, accept an independent audit, in lieu of an OYA audit, if it determines the work papers and procedures of the independent auditor meet Government Auditing Standards (where applicable), Generally Accepted Auditing Standards and other audit standards which may be adopted by the OYA.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010

Hist.: OYA 4-2001, f. & cert. ef. 4-20-01; OYA 1-2005, f. & cert. ef. 1-11-05

Adm. Order No.: OYA 2-2005

Filed with Sec. of State: 1-11-2005

Certified to be Effective: 1-11-05

Notice Publication Date: 12-1-04

Rules Adopted: 416-170-0050

Rules Amended: 416-170-0000, 416-170-0010, 416-170-0020, 416-170-0030

Subject: These rules are adopted and amended to add definitions relevant to these rules and eliminate the Research Review Board and reassign those duties to the OYA Program Office staff.

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-170-0000

Purpose and Scope

(1) The purpose of this rule is to establish a uniform process for review and approval of proposals for research projects to be conducted within the OYA.

(2) These rules apply to all offenders within the legal and/or physical custody of the OYA, including those placed under supervision within the community in contracted residential care programs or youth offender foster homes, and adult offenders in the physical custody of the OYA.

(3) Research projects may be conducted by OYA staff, professional researchers, or by students and others with an interest in juvenile correction services.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C.420 & 420A

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05

416-170-0010

General Standards

(1) No research may be conducted without the expressed consent of the OYA in the manner prescribed in these rules, and related agency policy and procedures, as defined by the OYA Program Office.

(a) In all instances, offender participation will be voluntary and the offender's confidentiality will be protected.

(b) The OYA retains the right to review the compilation of data or completed report describing project outcomes prior to publication, and may require a disclaimer if it believes assumptions about the data are flawed.

(2) The OYA will consider research proposals that benefit the agency or juvenile corrections as a whole, such as:

(a) Studies of the possible causes, effects, and processes of incarceration, and of criminal behavior;

(b) Studies of close custody systems or treatment programs as institutional structures or of youth as incarcerated persons;

(c) Research on conditions particularly affecting adjudicated offenders as a class; and

(d) Research on practices, both innovative and accepted, that have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which such research requires the assignment of offenders to control groups that may not benefit from the research, the research proposal will include discussion regarding the ethical considerations to support the research.

(3) The risk posed to subjects will be no more than minimal and participation in the study will represent no more than an inconvenience.

(4) Treatments, therapies, and procedures used in the project must be generally recognized and accepted as therapeutic.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C.420 & 420A

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05

416-170-0010

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Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C.420 & 420A

Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05

416-170-0020

Project Approval

(1) The OYA's central Program Office will review project proposals prior to implementation. Following such review, the Program Office will submit a recommendation to the agency's Director's Group for approval of the project. The decision of Director's Group is final.

(2) The Program Office may recommend agency approval of research projects only if it finds that:

(a) The research question is relevant and of importance to the agency or juvenile corrections as a whole;

(b) The implementation of such project does not cause undue expense or utilization of agency resources or compromise safety/security, agency mission, or state or federal laws;

(c) The advantages to the offender are not of such a magnitude as to affect the offender's ability to weigh the risks of the research against the value of such advantages in the limited-choice environment within facilities or programs;

(d) The risks involved in the research are commensurate with the risks that would be accepted by non-adjudicated persons;

(e) Procedures for selection of subjects within the facility are fair to all offenders and immune from arbitrary intervention by facility/program personnel or other offenders; unless there is written justification for following some other procedures, control subjects will be selected randomly from the group of available offenders who meet the characteristics needed for the particular research project.

(f) Adequate assurance exists that the offender's participation in the project will not be used to affect the offender's release or the granting of privileges.

(3) During the review process, the Program Office may engage other parties, such as advisory committees, institutional review boards, and rep-

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representatives of other governmental agencies, to provide technical critiques of the proposed project and opinions on its merits.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C, 420 & 420A
Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05

416-170-0030

Research Review Board Duties

The Program Office will:

(1) Develop procedures to ensure that proposals are reviewed in a manner appropriate to the researcher's status (professional, graduate student, or OYA employee). Such procedures may include a separate and/or additional level of criteria for approval;

(2) Represent the agency's facilities, programs, stakeholders, and offenders, and include persons with the technical knowledge and ability to review project methodology and outcomes;

(3) Review all research proposals and submit recommendations for approval/denial of such requests to the Director's Group for final approval;

(4) Provide notification of approved research projects, including a copy of the approved informed consent form, to relevant OYA programs or facilities;

(5) Maintain a complete and current list of all research projects approved by the OYA;

(6) Review the resulting data or project report and recommend to the Director's Group whether a disclaimer is necessary;

(7) Assist in the development of a project summary for distribution to the agency-at-large.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C, 420 & 420A
Hist.: OYA 5-2000, f. & cert. ef. 6-15-00; OYA 2-2005, f. & cert. ef. 1-11-05

416-170-0050

Definitions

Director's Group:

(1) An administrative group that provides oversight to agency operations. Membership includes the Director, Deputy Director, and Assistant Directors, and other persons as requested by the group.

(2) This group makes recommendations to the OYA Director.
Professional Researcher:

(a) Research sponsored by universities, governmental agencies, or by similar organizations engaged in scholarly research. Graduate Student Researcher;

(b) Research sponsored by the researcher's graduate school or university and supervised by a faculty member.

(3) OYA Employee Researcher: Research not conducted as part of assigned responsibilities, but requested by the OYA employee in their capacity as a student or professional researcher with another agency or organization. Research: The systematic collection, analysis, and presentation of data.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C, 420 & 420A
Hist.: OYA 2-2005, f. & cert. ef. 1-11-05

Adm. Order No.: OYA 3-2005

Filed with Sec. of State: 1-11-2005

Certified to be Effective: 1-11-05

Notice Publication Date: 7-1-04

Rules Repealed: 416-400-0000

Subject: This rule is repealed and relevant language has been moved to more appropriate rules.

Rules Coordinator: Kimberly Walker—(503) 378-3864

Adm. Order No.: OYA 4-2005

Filed with Sec. of State: 1-13-2005

Certified to be Effective: 1-13-05

Notice Publication Date:

Rules Renumbered: 416-170-0050 to 416-170-0005

Subject: This rule is being renumbered from OAR 416-170-0050 to OAR 416-170-0005 as it is an agency decision to place "Definitions" as the beginning of an agency division so that it is more easily accessible to those reading Division 170.

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-170-0005

Definitions

(1) Director's Group: An administrative group that provides oversight to agency operations. Membership includes the Director, Deputy Director, and Assistant Directors, and other persons as requested by the group. This group makes recommendations to the OYA Director.

(2) Professional Researcher: Research sponsored by universities, governmental agencies, or by similar organizations engaged in scholarly research.

(3) Graduate Student Researcher: Research sponsored by the researcher's graduate school or university and supervised by a faculty member.

(4) OYA Employee Researcher: Research not conducted as part of assigned responsibilities, but requested by the OYA employee in their capacity as a student or professional researcher with another agency or organization. Research: The systematic collection, analysis, and presentation of data.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C, 420 & 420A
Hist.: OYA 2-2005, f. & cert. ef. 1-11-05; Renumbered from 416-170-0050, OYA 4-2005, f. & cert. ef. 1-13-05

Physical Therapist Licensing Board

Chapter 848

Adm. Order No.: PTLB 1-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-29-04

Notice Publication Date: 10-1-04

Rules Amended: 848-001-0000, 848-001-0005

Rules Renumbered: 848-010-0115 to 848-001-0010

Rules Ren. & Amended: 848-010-0120 to 848-001-0020

Subject: • Moved and renumbered existing Rules 848-010-0115 and 848-010-0120 from Division 10 to Division 1, Procedural Rules where they are better classified and easier to find.

• Rule 848-001-0000, amended the wording to give the Board the ability to make temporary rules.

• Rule 848-001-0020, amended the wording to remove the requirement for the Board to allow a licensee to appear before the Board to present arguments to a Board proposed order, following a contested case hearing.

Rules Coordinator: James Heider—(503) 731-4047, ext. 222

848-001-0000

Notice to Interested Persons on Any Proposal to Adopt, Amend, or Repeal Any Rule

Prior to the adoption, amendment, or repeal of any permanent rule, the Physical Therapist Licensing Board 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 fifteen (15) days prior to the effective date.

(2) By providing a copy of the notice to persons on the Physical Therapist Licensing Board's mailing list established pursuant to ORS 183.335(8).

(3) By providing a copy of the notice to the following persons, organizations, or publications:

(a) Executive Secretary, Oregon Physical Therapy Association;

(b) Oregon Association of Hospitals.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 688.145 & 688.160
Hist.: PT 8, f. & ef. 5-4-76; PTLB 1-2004, f. & cert. ef. 12-29-04

848-001-0005

Attorney General's Model Rules of Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon, in effect January 15, 2004, are adopted by the Board by reference. These rules apply to rulemaking; OAR 137-001-0005 through 137-001-0080.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Physical Therapist Licensing Board.]

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 183 & 688.160
Hist.: PT 1, f. 1-3-74, ef. 2-11-74; PT 9, f. & ef. 5-4-76; PT 1-1978, f. 6-19-78, ef. 6-28-78; PT 1-1982, f. & ef. 2-17-82; PT 2-1984, f. & ef. 11-30-84; PT 1-1986, f. & ef. 10-27-86; PT 1-1988, f. & cert. ef. 6-27-88; PT 1-1992, f. & cert. ef. 3-26-92; PT 6-1997, f. & cert. ef. 12-12-97; PTLB 4-2001, f. & cert. ef. 1-4-01; PTLB 1-2004, f. & cert. ef. 12-29-04

ADMINISTRATIVE RULES

848-001-0010

Time for Requesting a Contested Case Hearing

A request for a contested case hearing must be in writing and must be received by the Board within twenty-one (21) days from the date the contested case notice was served.

Stat. Auth. ORS 688.160
Stats. Implemented: ORS 183 & 688.160
Hist.: PTLB 2-2001, f. & cert. ef. 1-4-01; Reumbered from 848-010-0115, PTLB 1-2004, f. & cert. ef. 12-29-04

848-001-0020

Filing Exceptions to the Board

After a proposed order has been served on a party, the Board shall notify the party when written exceptions must be filed to be considered by the Board. A licensee may request to appear before the Board to discuss the proposed sanction before the Board issues a Final Order.

Stat. Auth. ORS 688.160
Stats. Implemented: ORS 183 & 688.160
Hist.: PTLB 1-2001, f. & cert. ef. 1-4-01; Reumbered from 848-010-0120, PTLB 1-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 2-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-29-04

Notice Publication Date: 10-1-04

Rules Adopted: 848-005-0030

Rules Renumbered: 848-010-0105 to 848-005-0010

Rules Ren. & Amended: 848-010-0110 to 848-005-0020

Subject: • The new Division 5 is designed to house all the Board rules pertaining to administrative processes and policies.

• Moved and renumbered existing Rules 848-010-0105 Board Budget, and 848-010-0110 Board Fees, from Division 10 to new Division 5 where they are better classified and easier to find.

• New Subsections, 005-0020(1)(a) and (1)(b), assesses the cost of an existing national background screening onto the applicant.

• New Subsections, 005-0020(1)(c) and (1)(d), assesses the cost of a newly required Board statewide law enforcement screening onto the licensee.

• Subsection, 005-0020(1)(e), increase in renewal fee for practice without referral.

• Subsection 005-0020(1)(l)(A), reduced the fee for a licensee mailing list.

• New Subsection, 005-0020(2), requires refund of overpayments to the Board be requested in writing.

• New Rule 005-0030, requires licensee to maintain a current name, mailing address, home address, and place of employment and telephone numbers of record on file with the Board.

Rules Coordinator: James Heider—(503) 731-4047

848-005-0010

Board Budget

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2003-2005 Biennium Budget of \$740,765 covering the period from July 1, 2003 through June 30, 2005. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$740,765 for the effective operation of the Board. The Board will not exceed the approved 2003-2005 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 688.210
Stats. Implemented: ORS 688.160(5)(c)
Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp) f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03; Renumbered from 848-010-0105, PTLB 2-2004, f. & cert. ef. 12-29-04

848-005-0020

Board Fees and Refunds

(1) The following fees shall be paid to the Board:

(a) Physical Therapist or Physical Therapist Assistant Examination Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(b) Physical Therapist or Physical Therapist Assistant Endorsement Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(c) Physical Therapist Annual License Renewal Fee of \$75.00, plus the actual cost to the Board of conducting a statewide law enforcement background check.

(d) Physical Therapist Assistant Annual License Renewal Fee of \$50.00, plus the actual cost to the Board of conducting a statewide law enforcement background check.

(e) Physical Therapist Annual Renewal Fee of \$50.00 for Certification to Practice Without Referral.

(f) Lapsed License Renewal Fee of \$50.00 for renewal applications postmarked or received by the Board after March 31st.

(g) Physical Therapist or Physical Therapist Assistant Temporary Permits Fee of \$50.00.

(h) Duplicate License Fee of \$25.00.

(i) Physical Therapist or Physical Therapist Assistant Wall Certificate Fee of \$15.00.

(j) Physical Therapist or Physical Therapist Assistant Verification of Oregon Licensure Letter/Form Fee of \$25.00.

(k) Non-Sufficient Funds (NSF) Check Fee of \$25.00.

(L) Miscellaneous Fees:

(A) Physical Therapist and/or Physical Therapist Assistant electronic mailing list fee of \$150.00.

(B) Photocopying Fee of ten cents (\$0.10) per copy.

(2) Board refunds of overpayments in any amount less than \$25.00 will be held by the Board unless the payor requests a refund in writing.

Stat. Auth.: ORS 182.466(4)
Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110
Hist.: PT 6-1996, f. & cert. ef. 9-5-96; PT 3-1997, f. & cert. ef. 6-9-97; PLTB 1-1998, f. & cert. ef. 2-9-98; PTLB 6-1999, f. 11-23-99, cert. ef. 1-1-00; PTLB 4-2000, f. & cert. ef. 12-21-00; Renumbered from 848-010-0110, PTLB 2-2004, f. & cert. ef. 12-29-04

848-005-0030

Name, Address and Telephone Number of Record

(1) Every applicant, licensee and temporary permit holder shall keep their legal name on file with the Board.

(2) Every applicant, licensee and temporary permit holder shall keep their home address on file with the Board. The home address must be a residential address and may not be a post office box number.

(3) Every applicant, licensee and temporary permit holder shall keep a contact telephone number on file with the Board.

(4) Every applicant, licensee and temporary permit holder shall keep the name, address and telephone number of their employer or place of business on file with the Board.

(5) Every applicant, licensee and temporary permit holder shall keep a current designated mailing address on file with the Board.

(6) Whenever an applicant, licensee or temporary permit holder legally changes their name, they shall notify the Board in writing within 30 days of the name change and provide the Board with legal documentation of the name change.

(7) Whenever an applicant, licensee or temporary permit holder changes their home address, their employer or place of business, their contact telephone number or their mailing address, they shall within 30 days, notify the Board in writing. Written notification may be by regular mail, electronic mail or facsimile.

Stat. Auth.: ORS 182.466(4)
Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110
Hist.: PTLB 2-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 3-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-29-04

Notice Publication Date: 10-1-04

Rules Adopted: 848-015-0010, 848-015-0020, 848-015-0030

Subject: • This is a new Division containing Board Rules relative to Physical Therapist Assistants. The content for Division 15 was transferred from Division 10.

• Although there has not been substantial content change, the entire Rule needed to be rewritten, focusing directly on the Physical Therapy Assistant, adding organization, clarity and definition to the rule.

• New Section 848-015-0010(2), adds definition to the term "supervising physical therapist."

Rules Coordinator: James Heider—(503) 731-4047

ADMINISTRATIVE RULES

848-015-0010

Definitions

(1) Under ORS 688.010(3), a physical therapist assistant is defined as a person who assists a physical therapist in the administration of physical therapy. The physical therapist assistant's function is to assist the physical therapist in patient-related activities and to perform delegated procedures that are commensurate with the physical therapist assistant's education, training, experience, and skill.

(2) "Supervising physical therapist" means either the last physical therapist to see the patient, or the physical therapist designated as in-charge of the clinic, department or facility on the day the patient is being treated.

Stat. Auth. ORS 688.160, 688.055

Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080, 688.090

Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04

848-015-0020

Scope of Practice

(1) A physical therapist assistant shall practice solely under the supervision and direction of a physical therapist.

(2) A physical therapist assistant may provide treatment only when a supervising physical therapist is available. As used in this rule "available" means that at all times a supervising physical therapist is readily accessible for consultation with the assistant, either in person or by means of telecommunications.

(3) A physical therapist assistant may provide treatment only after a physical therapist has performed an initial evaluation and prepared a plan of care.

(4) A physical therapist assistant may prepare a final summary of a patient's physical therapy status upon discharge as provided in OAR 848-040-0165.

(5) A physical therapist assistant shall practice in compliance with the standards set out in division 40 of these rules.

Stat. Auth. ORS 688.160, 688.055

Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080, 688.090

Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04

848-015-0030

Prohibited Acts

(1) A physical therapist assistant shall not:

(a) Perform an initial evaluation.

(b) Perform the required reassessment provided in OAR 848-040-0155. However, a physical therapist assistant may participate with the physical therapist in gathering data to be included in the required reassessment of a patient for whom the assistant has been providing treatment.

(c) Independently make modifications to the plan of care or objective goals. However, an assistant may collaborate with the physical therapist in making modifications or changes to the plan of care or goals based on the assistant's treatment of that patient and the patient's condition, progress or response to the treatment.

(d) Independently make the decision to discharge a patient from therapy. However, a physical therapist assistant may make recommendations regarding discharge to the supervising physical therapist based on the assistant's treatment of the patient.

(2) As provided in ORS 688.130, no person shall practice as a physical therapist assistant unless that person is licensed under ORS 688.090.

Stat. Auth. ORS 688.160, 688.055

Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080, 688.090

Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 4-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-29-04

Notice Publication Date: 10-1-04

Rules Amended: 848-020-0000, 848-020-0010, 848-020-0030, 848-020-0040, 848-020-0050, 848-020-0060

Rules Repealed: 848-020-0020

Subject: • Rule 020-0020 Practice Standards has been repealed as unneeded and confusing.

• Section 020-0000(1), added wording clarifying non-aide related tasks.

• Subsection 020-0000(5)(a), added wording to clarify supervision requirements and criteria for Aides, by PTs and PTAs.

• Section 020-0000(6), added definition of "Authentication."

• Section 020-0010(3), deleted requirement for an Aide to maintain a Healthcare Provider CPR certification.

• New Section 020-0030(3), wording has been added to distinguish the supervision of Aides performing treatment related tasks versus Aides performing non treatment related tasks.

• New Subsection 020-0040(1)(d), allows graduate from a CAPTE program to work as an Aide with minimal training.

• Sections 020-0060(2), (3), (5), (7), and (10) have been changed or rewritten to add clarity, definition and exception criteria to those practices an Aide is prohibited from performing.

Rules Coordinator: James Heider—(503) 731-4047

848-020-0000

Definitions

As used in this Division:

(1) "Physical therapist aide" or "aide" means a person who is not licensed as a physical therapist or physical therapist assistant, who aids a physical therapist or physical therapist assistant by performing treatment-related tasks or by performing non-treatment, patient-related tasks. Persons performing facility maintenance, equipment assembly and maintenance, housekeeping, clerical, or other similar tasks are not considered aides.

(2) "Physical therapist" or "physical therapist assistant" includes a person who holds a temporary permit issued under OAR 848-010-0026.

(3) "Treatment-related task" means a physical therapy service rendered directly to a patient.

(4) "Non-treatment, patient-related task" means a task related to preparation of treatment areas, transport of patients, preparation of patients for treatment and other patient-related tasks.

(5) "Supervise" means to provide the amount of personal direction, assistance, advice and instruction necessary to reasonably assure that the supervisee provides the patient competent physical therapy services, given the supervisor's actual knowledge of the supervisee's ability, training and experiences. Additionally, supervision of:

(a) A treatment-related task requires that the supervising physical therapist or physical therapist assistant be in the same building and within sight or earshot of the aide who is performing the treatment-related task, such that the supervising physical therapist or physical therapist assistant is immediately available at all times to provide in person direction, assistance, advice, or instruction to the aide or the patient. A physical therapist may delegate supervision of an aide to a physical therapist assistant;

(b) A non-treatment, patient-related task requires that the supervising physical therapist or physical therapist assistant be within the building where the aide is performing the task.

(6) "Authentication" means the process by which the licensee reviews and validates the accuracy of the record entry. By authenticating a record entry, the licensee certifies that the services described were performed by the authenticating licensee or performed by a person under that licensee's supervision.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04

848-020-0010

Eligibility Standards

A physical therapist aide shall:

(1) Be at least 18 years of age.

(2) Have received a high school diploma or equivalent.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160 & 688.210

Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04

848-020-0030

Supervision; Delegation of Supervision; Professional Responsibility of Supervisors and Supervisees

(1) The physical therapist shall supervise the physical therapist aide in each treatment task and each non-treatment, patient-related task assigned to the aide. The supervising physical therapist may delegate to a physical therapist assistant supervision of the aide.

(2) A physical therapist aide shall not perform a treatment-related task or a non-treatment, patient-related task except under the supervision of a physical therapist or physical therapist assistant.

(3) A physical therapist may supervise directly and indirectly through a physical therapist assistant a maximum total of two physical therapist aides, when the aides are performing treatment-related tasks. In addition, a physical therapist may supervise directly and indirectly through a physical therapist assistant additional aides who are not performing treatment related tasks.

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(4) Use of an aide to perform tasks as allowed by this rule shall not constitute a violation of OAR 848-045-0020(2)(t).

(5) A physical therapist or physical therapist assistant is responsible for the competent performance of tasks assigned to an aide whom the physical therapist or physical therapist assistant is supervising as provided in OAR 848-020-0000(5).

(6) A physical therapist assistant is always also professionally responsible for all acts and omissions of each aide under the physical therapist assistant's supervision.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04

848-020-0040

Training

(1) Prior to allowing a physical therapist aide to perform any treatment-related task, the supervising physical therapist shall assure that the aide has undertaken 40 hours of on-the-job training as follows:

(a) A minimum of 10 hours of instruction on professional/ medical ethics, patient confidentiality, universal precautions, body mechanics, physical medicine terminology and safety procedures;

(b) A minimum of 30 hours of instruction in the facility in areas appropriate to that particular physical therapy facility, including but not limited to precautions and contraindications for physical therapy treatments routinely provided at the facility, and supervised practical applications of appropriate treatment protocols and techniques. Changes in employment shall require another 30 hours of instruction appropriate to that facility;

(c) However, physical therapist or physical therapist assistant students, upon successful completion of the first year of study, may be employed as an aide with a minimum of 8 hours of instruction appropriate to that facility;

(d) A person who has successfully completed a CAPTE accredited physical therapist or physical therapist assistant program, may be employed as an aide with a minimum of 8 hours of instruction appropriate to that facility.

(2) The supervising physical therapist shall be responsible for documentation of the training for each aide, and shall maintain this documentation at the facility for a minimum of 5 years after termination of employment and make it available to the Board upon request. The supervising physical therapist also shall respond to any inquiry by the Board concerning the training provided to an aide. The aide training record shall include but not be limited to:

(a) Aide position description;

(b) Policies and procedures clearly stating the aide's duties, as set forth in OAR 848-020-0060;

(c) Training schedule, which includes but is not limited to:

(A) Start date for the training;

(B) Activity/description of training;

(C) Amount of time spent on training for each activity;

(D) Date training is complete;

(E) Names of instructors and aide, including signature of each instructor and aide;

(F) If applicable, documentation of training received outside of the facility in the form of a letter or copies of the previous training record. Documentation must include the level of responsibility of the aide.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PT 5-1997, f. & cert. ef. 8-5-97; PTLB 4-2004, f. & cert. ef. 12-29-04

848-020-0050

Assignment of Tasks to Aides

(1) A supervising physical therapist or physical therapist assistant may assign treatment-related tasks and non-treatment, patient-related tasks to an aide.

(2) Prior to allowing an aide to perform any treatment-related task:

(a) The physical therapist must provide an initial evaluation of the patient and develop a plan of care;

(b) The physical therapist or physical therapist assistant shall assess the competence of the aide to perform an assigned treatment-related task for that patient in a safe and effective manner;

(c) The physical therapist or physical therapist assistant must assign only those tasks which are appropriate for the aide to perform for that patient based on the aide's training, experience and ability.

(3) When a treatment-related task is performed by an aide, the supervising physical therapist or physical therapist assistant shall, at some point

during each treatment, provide direct service to the patient to assess and monitor the patient's progress, and so document in the patient's record.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04

848-020-0060

Prohibited Treatment-Related Tasks

A physical therapist or physical therapist assistant shall not permit an aide to perform any of the following treatment-related tasks:

(1) Administer iontophoresis or phonophoresis.

(2) Administer electrotherapy. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the electrode placements, treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(3) Administer ultrasound. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(4) Administer mechanized or manual traction.

(5) Perform manual stretching with the goal of increasing range of motion, neuro-facilitation, cardiac therapeutic exercise, soft tissue mobilization or massage (other than effleurage and petrissage). This prohibition shall not apply to an aide who is separately licensed or registered under another Oregon statute to perform these tasks when the tasks are performed under the direction and on-site supervision specified in OAR 848-020-0000(5)(a).

(6) Wound debridement.

(7) Administer tilt table or standing frame. However an aide may perform these tasks if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(8) Joint mobilization.

(9) Determine or modify a plan of care, or initiate or administer a procedure or modality the first time that procedure or modality is administered to a patient.

(10) Independently make entries in a patient record, except for objective information about the treatment provided by the aide. The aide shall authenticate the record entry as provided in OAR 848-040-0150(2). A physical therapist or physical therapist assistant may also dictate information to an aide for entry into a patient medical record, so long as the physical therapist or physical therapist assistant authenticates such entries.

(11) Instruct a patient or a patient's caregiver in the application of any treatment.

(12) Except as required to respond to an inquiry by the Board or other person authorized to receive the information, answer or discuss any questions regarding a patient's status or treatment with anyone other than the physical therapist or physical therapist assistant.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 5-2004

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Rules Amended: 848-030-0000, 848-030-0010

Subject: No substantial changes to note. Housekeeping, grammatical and reference errors to correct and update.

Rules Coordinator: James Heider—(503) 731-4047

848-030-0000

Practice Without Referral

Prior to administering physical therapy to a person without prior referral as allowed by ORS 688.130(1), a licensed physical therapist shall meet the following additional requirements:

(1) Hold a CPR card, Healthcare Provider level, issued by the American Heart Association, or equivalent, which shall be kept current.

(2) Be a graduate of a school of physical therapy accredited by the Council on Accreditation of Physical Therapy Education (CAPTE) on or after January 1, 1998 or complete a medical screening course which provides at least 12 hours of instruction designed to enable the physical therapist to identify signs and symptoms of systemic disease, particularly those

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that can mimic neurological or musculoskeletal disorders, and to recognize conditions which require timely referral to a licensed physician or osteopathic physician or podiatric physician and surgeon, physician assistant, dentist, chiropractic physician, naturopathic physician or nurse practitioner. The course provider and course criteria shall be approved by the Board. The content of the course shall include, but not be limited to:

- (a) Subjective and objective evaluation, including interview techniques and screening examination;
- (b) An overview of systemic symptoms;
- (c) An overview of pain;
- (d) A regional/systemic review (e.g., the cardiopulmonary system, spine, etc);
- (e) Pharmacology, including drug precautions, interactions and side effects;

- (f) Overview of diagnostic imaging techniques;
- (g) Significant conditions associated with chronic pain, acute athletic injuries, geriatric patients and cancer;
- (h) Case studies.

(3) Within the three years immediately following the completion of the requirements in section (2) of this rule, a physical therapist who is administering physical therapy without prior referral shall complete at least an additional 38 hours of continuing education. Thereafter, such physical therapist must complete at least 50 hours of continuing education every three years. Six of these 50 hours must be completed six months prior to or in the first year of this three-year period as a medical screening refresher course and must cover the criteria set out in section (2) of this rule. All 6-hour medical screening refresher courses must comply with the following:

- (a) Course providers must be approved by the Board;
- (b) Course criteria must be approved by the Board;
- (c) Approval of a 6-hour medical screening refresher course is independent from approval of the initial 12-hour medical screening course; and
- (d) Course providers may offer approved medical screening refresher courses without having presented the medical screening course.

(4) The content of courses taken to satisfy the continuing education requirement specified in section (3) of this rule must relate to the delivery of clinical physical therapy services. Courses which may be taken include:

- (a) Courses, seminars, and workshops sponsored or approved by an established and recognized medical or dental health-related organization or professional association recognized by the Board;
- (b) Courses approved for continuing education by other states which require continuing education for physical therapists;
- (c) Courses certified for continuing education units (CEU) by a recognized physical therapy professional association;
- (d) Courses provided by an accredited institution of higher education;
- (e) Individual study courses requiring an examination and recognized by an accredited institution or recognized health-related organization or professional association recognized by the Board;
- (f) Courses approved by the Board by special request.

(5) Activities which will not satisfy the continuing education requirement include:

- (a) Orientation and in service programs;
- (b) Professional association meetings for purposes of business or policy decision making;
- (c) Entertainment or recreational meetings;
- (d) Attending meetings, holding office, or representing a professional association as a lobbyist or delegate;
- (e) Publishing or presenting lectures.

(6) The Board shall require all or any percentage of physical therapists who are administering physical therapy without prior referral to provide documentation in a format approved by the Board that the physical therapist has met or is meeting the requirements of sections (1), (2) and (3) of this rule.

(7) The requirements of this rule shall not apply to licensed physical therapists who are administering physical therapy to individuals described in ORS 688.132(1)(b) where no prior referral is required.

(8) The Board shall include on the yearly license a notation that a physical therapist has met the requirements for practice without referral.

(9) Course provider shall furnish licensee and the Board written documentation when licensee passes the 12-hour medical screening course exam. Licensee may implement practice without referral upon receipt of documentation and license certification sticker from the Board stating that licensee passed the course exam. Licensee must also hold a current CPR card, Healthcare Provider level, from the American Heart Association, or equivalent, prior to implementing practice without referral. Upon receipt of written documentation from course provider, the Board shall furnish licens-

ee information regarding certification for practice without referral. Continuing education requirements and 6-hour medical screening refresher course requirements are based on the date licensee took the initial 12-hour medical screening course. Continuing education requirements and 6-hour medical screening refresher course requirements for licensees who graduated from a CAPTE accredited physical therapy program on or after January 1, 1998, are based on the date of initial practice without referral certification.

(10) Any licensee who fails to pass the 12-hour medical screening course examination with a score of 80 percent or higher must re-take the course and the exam. Any licensee who fails to pass the 6-hour medical screening refresher course examination with a score of 80 percent or higher must re-take the course and the exam.

(11) Any licensee who fails to complete the 6-hour medical screening refresher course or the 38 hours or 44 hours of required continuing education within the timeframes specified in section (3) of this rule, shall be required to start the entire practice without referral process over. The licensee is required to notify the Board if any of the above requirements are not met.

(12) The licensee's privileges to practice without referral shall cease at the end of the day when either the medical screening refresher course requirement or the continuing education deadline is due, whichever comes first. The cessation of privileges shall last until the licensee attends a subsequent 12-hour medical screening course offered and the course provider has provided the Board with written documentation that the licensee passed the course examination with a score of 80 percent or higher. Subsequent continuing education deadlines and 6-hour medical screening refresher class requirements shall be calculated based on the date the licensee completes the subsequent 12-hour medical screening course.

(13) A licensee whose privileges to practice without referral have ceased under the provisions of sections (11) and (12) of this rule or pursuant to disciplinary action of the Board, or who elects voluntarily to terminate practice without referral privileges, shall return the current license to the Board along with a written request for a duplicate license and payment of a processing fee. Upon receipt, the Board shall issue licensee a license without the statement "Certified for Practice Without Referral."

(14) Violation of this rule shall subject licensee to disciplinary action set forth in ORS 688.140 and OAR 848-045-0010.

Stat. Auth.: ORS 688.160

Stat. Implemented: ORS 688.134

Hist.: PT 4-1994, f. & cert. ef. 7-29-94; PT 2-1997, f. & cert. ef. 2-4-97; PT 7-1997, f. & cert. ef. 12-12-97; PTLB 2-1998, f. & cert. ef. 8-31-98; PTLB 1-1999, f. & cert. ef. 9-3-99; Administrative correction 11-3-99; PTLB 1-2003, f. & cert. ef. 2-6-03; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 5-2004, f. & cert. ef. 12-29-04

848-030-0010

Scope of Practice

(1) A physical therapist is authorized to administer physical therapy only if:

- (a) The physical therapist has received a diagnosis or referral from a professional identified in ORS 688.130(1)(b) or (c); or
- (b) The physical therapist is qualified under OAR 848-030-0000 to administer physical therapy without prior diagnosis or referral.

(2) A physical therapist who is qualified under OAR 848-030-0000 to administer physical therapy without prior diagnosis or referral shall immediately cease administering physical therapy to the patient and refer the patient to a medical doctor, osteopathic physician, chiropractic physician, podiatric physician and surgeon, dentist, physician assistant or nurse practitioner if:

- (a) Signs and symptoms are present that require treatment or diagnosis by such providers, or for which physical therapy is contraindicated, or for which treatment is outside the knowledge of the physical therapist or scope of practice of physical therapy; or
- (b) The physical therapist continues therapy and 30 days have passed since the initial physical therapy treatment has been administered, unless:

(A) The patient is a child or a student eligible for special education, as defined by state or federal law, and is being seen pursuant to the child's or the student's individual education plan or individual family service plan;

(B) The patient is a student athlete at a public or private school, college, or university and is seeking treatment in that role as athlete; or

(C) The patient is a resident of a long-term care facility as defined in ORS 442.015, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an intermediate care facility for mental retardation pursuant to federal regulations. Failure to comply with this section (3) constitutes unauthorized practice, and unethical or unprofessional conduct.

Stat. Auth.: ORS 688.160

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Stats. Implemented: ORS 688.132 & 688.210
Hist.: PT 4-1994, f. & cert. ef. 7-29-94; PTLB 5-2004, f. & cert. ef. 12-29-04

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Rules Adopted: 848-040-0100, 848-040-0105, 848-040-0110, 848-040-0115, 848-040-0120, 848-040-0125, 848-040-0130, 848-040-0135, 848-040-0140, 848-040-0145, 848-040-0150, 848-040-0155, 848-040-0160, 848-040-0165, 848-040-0170

Rules Repealed: 848-040-0000, 848-040-0010, 848-040-0020, 848-040-0030, 848-040-0040, 848-040-0050

Subject: • The entire Rule was rewritten, adding organization, clarity and definition to the rule.

- New Section 040-0100(2), adds definition of “Authentication.”
- New Section 040-0110(3), clarifies requirement that patient record shall be prepared on the date of service.
- New Section 040-0110(5), eliminates the use of initials and rubber stamp for authentication.
- New Section 040-0110(6), adds rule defining criteria to use non-licensees and aides for preparation of treatment-related entries in a patient record.
- New Section 040-0110(7), defines requirement for accessibility of treatment related records to licensees providing subsequent treatment.
- New Section 040-0110(9), clarifies use of abbreviations.
- New Sections 040-0110(14)(15), clarifies record authentication requirements for temporary permit holders and supervisors.
- New Section 040-0110(16), defines Board rule on retention of patient records.
- New Subsections 040-0115(3)(a) through(e), clarifies parameters of a referral.
- New Section 040-0120(3), requires an oral referral be confirmed in writing by referring source.
- New Rule 040-0165, defines the standards for discharging a patient from therapy.

Rules Coordinator: James Heider—(503) 731-4047

848-040-0100

Definitions

As used in this Division:

- (1) “Licensee” means a physical therapist or a physical therapist assistant and includes a temporary permit holder.
- (2) “Authentication” means the process by which the licensee reviews and validates the accuracy of the record entry. By authenticating a record entry, the licensee certifies that the services described were performed by the authenticating licensee or performed by a person under that licensee’s supervision.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0105

General Standards for Practice

- (1) Licensees shall practice competently. A licensee practices competently when the licensee uses that degree of care, skill and diligence that would be used by a reasonable, careful and prudent licensee under the same or similar circumstances.
- (2) A licensee shall not delegate to another person any task that the person is not legally authorized to perform or is not qualified by training and experience to perform.
- (3) A licensee shall not provide physical therapy services under circumstances where there is no benefit to be obtained by the patient from such services.
- (4) A licensee shall respect the privacy and dignity of the patient in all aspects of practice.
- (5) A licensee shall comply with the laws and rules governing the use and disclosure of a patient’s protected health information as provided in ORS 192.518 to 192.523.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0110

General Standards for Record Keeping

- (1) The licensee who performs the physical therapy service shall prepare a complete and accurate record for every patient, regardless of whether compensation is given or received for the therapy services.
- (2) The record shall contain information for every physical therapy service provided, the date the service was provided and the date the entry was made in the record.
- (3) The record shall be prepared on the date of service.
- (4) The record shall be maintained in a readily accessible form.
- (5) The licensee who performs the physical therapy service shall authenticate the record of the service that was performed. Authentication may be made by written signature or by computer. If authentication is by computer, the licensee shall not permit another person to use the licensee’s password to authenticate the entry. Authentication may not be accomplished by the use of initials, except when a record entry identifying an error is authenticated. A rubber stamp may not be used to authenticate any entry in a patient record.
- (6) Non-licensees, including aides, may prepare treatment-related entries for the patient record for authentication by the treating licensee. The requirement for authentication shall not apply to records not related to treatment.
- (7) Either the permanent record or the record prepared on the date of service shall be readily accessible to a licensee prior to when that licensee provides subsequent treatment to the patient.
- (8) All entries shall be legible and handwritten records shall be in ink.
- (9) Abbreviations may be used if they are recognized standard physical therapy abbreviations or are approved for use in the specific practice setting.

(10) When an error in a record is discovered, the error shall be identified and corrected. The erroneous entry shall be crossed out, dated and initialed or otherwise identified as an error in an equivalent written manner by the author of the erroneous entry.

(11) Late entries or additions to entries shall be documented when the omission is discovered with the following written at the beginning of the entry: “late entry for (date)” or “addendum for (date)” and authenticated;

(12) Documentation by a student physical therapist (SPT) shall be authenticated by the student and by a supervising physical therapist.

(13) Documentation by a student physical therapist assistant (SPTA) shall be authenticated by the student and by a supervising physical therapist or supervising physical therapist assistant.

(14) Documentation by a person who holds a physical therapist temporary permit issued under OAR 848-010-0026(1)(a) or (1)(c) shall be authenticated by the permit holder and by a supervising physical therapist.

(15) Documentation by a person who holds a physical therapist assistant temporary permit issued under OAR 848-010-0026(1)(a) shall be authenticated by the permit holder and by a supervising physical therapist or supervising physical therapist assistant.

(16) For purposes of the Board’s enforcement of these rules, patient records shall be kept for a minimum of seven years measured from the date of the most recent entry.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0115

Standards For Authorization To Provide Physical Therapy

- (1) A physical therapist who has met the qualifications under ORS 688.134 and OAR 848-030-0000 and who has been certified for practice without referral, may initiate physical therapy without prior diagnosis or referral from a professional identified in ORS 688.130(1)(b) or (c).
- (2) A physical therapist who has not met the qualifications under ORS 688.134 and OAR 848-030-0000 may initiate physical therapy only after receiving either a written or oral referral from a professional identified in ORS 688.130(1)(b) or (c). However, a referral is not necessary prior to initiating treatment if the patient meets one of the following criteria:
 - (a) The individual is a child or a student eligible for special education, as defined by state or federal law, and is being seen pursuant to the child’s or the student’s individual education plan or individual family service plan;
 - (b) The individual is a student athlete at a public or private school, college or university and is seeking treatment in that role as athlete; or
 - (c) The individual is a resident of a long term care facility as defined in ORS 442.015, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an intermediate care facility for mental retardation pursuant to federal regulations.

ADMINISTRATIVE RULES

(3)(a) Physical therapy services provided pursuant to a written or oral referral in which the referring provider specifies the treatment program, shall not be extended beyond that treatment program.

(b) If the referral specifies the duration, frequency, diagnosis or condition to be treated or physical therapy interventions, physical therapy shall not be provided beyond the specifications identified in the referral. However, if the referral specifies the duration of treatment, treatment may be extended for a reasonable period of time so that the patient can receive all treatments authorized.

(c) If the referral specifies the number of authorized treatments, additional treatments shall not be provided without further authorization.

(d) If the referral specifies a diagnosis or condition to be treated, treatment may not be provided for an unrelated diagnosis or condition without further authorization.

(e) If the referral identifies specific physical therapy interventions, treatment may not include physical therapy interventions not specified in the referral without further authorization.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0120

Standards For Record Of Authorization

(1) A written referral received from a provider identified in ORS 688.130(1)(b) or (c) shall be included in the patient record. In order to qualify as an authorization, a written referral must include, at a minimum, the name of the patient, the name of the provider, authentication by the provider and the date of the referral.

(2) An oral referral received from a provider identified in ORS 688.130(1)(b) or (c) shall be documented in the patient record. Documentation shall include the name of the provider; the name of the person communicating the referral, if not the provider; the date the referral was received; the name of the person to whom the oral referral was communicated; the name of the patient; and a description of the referral, including diagnosis, frequency and duration, if specified.

(3) An oral referral must be followed-up with a written referral from the provider.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0125

Standards For Initiation Of Physical Therapy

(1) Prior to initiating the first physical therapy treatment, a physical therapist shall perform an initial evaluation of each patient and determine a plan of care as provided in OAR 848-040-0135.

(2) In the course of performing an initial evaluation the physical therapist shall examine the patient, obtain a history, perform relevant system reviews, assess the patient's functional status, select and administer specific tests and measurements and formulate clinical judgments regarding the patient.

(3) Only a physical therapist may perform an initial evaluation. A physical therapist shall not delegate the performance of an initial evaluation to a physical therapist assistant or to an aide.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0130

Standards For The Record Of An Initial Evaluation

The record of the initial evaluation shall include:

(1) Patient's full name, age and sex;

(2) Identification number, if appropriate;

(3) Referral source, including patient self-referral;

(4) Pertinent medical diagnoses, medications if not otherwise accessible in another part of the patient's medical record, history of presenting problem and current complaints and symptoms, including onset date;

(5) Prior or concurrent services related to the present episode of physical therapy care;

(6) Any co-existing condition that affects either the goals or the plan of care;

(7) Precautions, special problems and contraindications;

(8) Subjective information (patient's knowledge of problem);

(9) Patient's goals (with family input, if appropriate);

(10) Appropriate objective testing results, including but not limited to:

(a) Critical behavior/cognitive status;

(b) Physical status (e.g., pain, neurological, musculoskeletal, cardiovascular, pulmonary);

(c) Functional status (for activities of daily living, work, school, home or sport performance); and

(d) Interpretation of evaluation results.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0135

Standards For The Plan Of Care

(1) Prior to initiation of treatment, the physical therapist who performed the initial evaluation shall determine a plan of care for the patient.

(2) Only a physical therapist may develop a plan of care. A physical therapist shall not delegate the development of the plan of care to a physical therapist assistant or to an aide.

(3) The physical therapist shall identify appropriate treatment tasks to be delegated to a physical therapist assistant or aide.

(4) Only a physical therapist may modify a plan of care. However, a physical therapist assistant may make recommendations to the physical therapist in regards to revision of the plan of care for a patient for whom the physical therapist assistant has been providing treatment.

(5) The physical therapist shall make modifications to the plan of care any time there are significant changes in the patient's condition or status that would affect the physical therapy goals.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0140

Standards For The Record Of The Plan Of Care

(1) The record of the plan of care shall include:

(a) Objectively measurable treatment goals that incorporate the patient's goals;

(b) Proposed treatment to accomplish the goals; and

(c) Proposed frequency and duration of treatment or number of visits.

(2) The record of the plan of care shall be authenticated and dated by the physical therapist who developed the plan.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0145

Standards For Providing Treatment

(1) A licensee shall not permit an aide to administer a procedure or modality to a patient, unless a licensee has previously administered that procedure or modality to the patient. A licensee shall assign tasks to an aide in compliance with Division 20 of these rules.

(2) A physical therapist or physical therapist assistant shall perform, or attempt to perform techniques or procedures only with qualified education and experience.

(3) A physical therapist or physical therapist assistant shall not continue to provide treatment to a patient unless a reassessment has been performed when required by OAR 848-040-0155.

(4) A physical therapist or physical therapist assistant shall provide treatment in accordance with the provisions of OAR 848-040-0105.

(5) At all times there shall be a physical therapist supervising the treatment provided by a physical therapist assistant as provided in OAR 848-015-0020(2) or an aide as provided in OAR 848-020-0000(5). "Supervising physical therapist" means either the last physical therapist to see the patient, or the physical therapist designated as in-charge of the clinic, department or facility on the day the patient is being treated.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160, 688.010, 688.210

Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0150

Standards For The Record Of Treatment Provided

(1) The record of treatment for each patient visit shall include at a minimum:

(a) Subjective status of patient;

(b) Specific treatments and education provided;

(c) Objective data from tests and measurements conducted;

(d) Assessment of the patient's response to treatment, including but not limited to:

(A) Patient status, progression or regression;

(B) Changes in objective and measurable findings as they relate to existing goals;

(C) Adverse reactions to treatment; and

(e) Changes in the plan of care.

ADMINISTRATIVE RULES

(2) When treatment is provided by an aide, the aide may only document in the patient record objective information about the treatment provided by the aide. The aide shall authenticate the record entry. Authentication shall include the aide's full name and designation "aide". The aide shall not use the designations "physical therapist aide," "physical therapy aide" or "PT aide".

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0155 Standards For The Required Reassessment

(1) The physical therapist shall perform a reassessment for each patient:

(a) At least every 30 days, or at every visit if the patient is seen less frequently;

(b) At least every 60 days if the patient is being treated in an educational setting; or

(c) Anytime there are significant changes in the patient's condition or status that would result in a change in the goals or the plan of care.

(2) In the course of performing the required reassessment, the physical therapist shall examine the patient, assess the patient's functional status, select and administer specific tests and measurements, and formulate clinical judgments regarding the patient.

(3) Only a physical therapist may perform the required reassessment. A physical therapist shall not delegate the performance of a required reassessment to a physical therapist assistant or to an aide.

(4) A physical therapist assistant may participate in the gathering of data for a reassessment as provided in OAR 848-015-0030(1)(b).

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0160 Standards For The Record Of The Required Reassessment

The record of each reassessment shall include at a minimum:

- (1) Subjective status of patient;
- (2) Objective data from tests and measurements conducted;
- (3) Functional status of patient;
- (4) Interpretation of above data;
- (5) Any change in the plan of care; and
- (6) Any change in physical therapy goals (including patient goals).

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0165 Standards For Discharging A Patient From Therapy

(1) A physical therapist shall discharge a patient from physical therapy treatment when:

(a) The patient has reached all physical therapy goals and additional goals are not identified;

(b) The patient will not further benefit from physical therapy due to a lack of progress or a plateau in progress;

(c) The patient declines to continue treatment or self-discharges;

(d) Physical therapy is no longer appropriate for the patient or is contraindicated secondary to medical or psychosocial reasons;

(e) The referring provider directs or instructs that the patient be discharged.

(2) Only a physical therapist may make the decision to discharge a patient from therapy. A physical therapist shall not delegate the decision to discharge a patient to a physical therapist assistant or to an aide.

(3) A physical therapist assistant shall not independently make the decision to discharge a patient from therapy. However, a physical therapist assistant may make recommendations regarding discharge to the supervising physical therapist based on the physical therapist assistant's treatment of the patient.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

848-040-0170 Standards For Discharge Records

(1) Within 30 days following the patient's last scheduled visit or last contact, the physical therapist or physical therapist assistant shall document a final summary of the patient's physical therapy status upon discharge.

(2) The discharge summary shall include, but is not limited to:

(a) Date and reason for discharge, or self discharge, if known;

(b) Degree of goal achievement or reasons for goals not being achieved;

(c) Summary of the patient's status at the time of discharge; and

(d) Recommendations for follow-up care, if any.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 7-2004
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Notice Publication Date: 10-1-04

Rules Adopted: 848-045-0010, 848-045-0020

Subject: • This topic was important enough to stand alone in its own division. The majority of the content for Division 45 was transferred from Division 10. Although there has not been substantial content change, the entire Rule needed to be rewritten, to add clarity and definition to the rules.

• Sections 045-0010(1) and (2) have been redefined to clarify the Board's authority to sanction licensees.

• New Section 045-0010(3), added to allow the Board, in lieu of discipline, to divert a substance impaired licensee to treatment.

• New Section 045-0010(4), added to allow the Board to take action against a license holder who may no longer be able to practice safely because of mental, emotional or physical impairment.

• New Subsections 045-0020(2)(k) and (l), rules added that further protect patient privacy and dignity with regard to unnecessary body exposure and personally intrusive conversation.

• Subsections 045-0020(2)(m) and (n), condensed from original rule to omit specific and explicit sexual wording. These subsections have been worded to encompass all previously listed offenses, defines the term "patient."

• New Subsections 045-0020(2)(p)(A), (B), (C) and (D), this entire subsection is new, adding authority to Board to take action against a licensee who, by definition, is exploiting a patient.

• Subsection 045-0020(2)(q), wording changed from "inaccurately" to "knowingly" makes...

• New Subsection 045-0020(2)(r)(D), wording added to clarify the use of the term "doctor" as associated with the PT designation.

• New Subsections 045-0020(2)(u), adds wording that requires licensee who has practiced without a valid license to self report to employer and show evidence of self reporting to the Board.

• New Subsections 045-0020(2)(v)(A) through (E) have been added to detail the definition of failure to cooperate with the Board.

• New Subsection 045-0020(2)(z), this is a new subsection allowing Board to discipline a licensee who fails to maintain current addresses and phone numbers on file with the Board.

Rules Coordinator: James Heider—(503) 731-4047

848-045-0010

Authority and Sanctions

(1) If a licensee practices in a manner detrimental to the public health and safety or engages in illegal, unethical or unprofessional conduct as defined by the statutes and OAR 848-045-0020(2), the Board, after notice and opportunity for hearing as provided in ORS 688.145, may:

(a) Suspend or revoke a license.

(b) Impose a civil penalty as provided in ORS 688.140(1).

(c) Impose probation with conditions.

(d) Impose conditions, restrictions or limitation on practice.

(e) Reprimand the licensee.

(2) A disciplinary sanction imposed against a licensee shall be generally consistent with sanctions imposed by the Board against other licensees in substantially similar cases.

(3) In lieu of initiating a disciplinary action under section (1) of this rule against a licensee who has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board may enter into a confidential agreement with the licensee for diversion to a treatment program under division 50 of these rules.

ADMINISTRATIVE RULES

(4) If a licensee has a mental, emotional or physical condition which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board, after notice and opportunity for hearing as provided in ORS 688.145, may suspend or revoke the license or temporary permit, impose probation with conditions, or impose conditions, restrictions or limitations on practice.

(5) As used in this rule, "licensee" includes a temporary permit holder.

Stat. Auth.: ORS 688.140, 688.160, 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220, 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04

848-045-0020

Grounds for Discipline of a Licensee

(1) The Board may impose a sanction as provided in 848-045-0010(1) on a licensee for illegal, unethical or unprofessional conduct. As used in this rule, "licensee" includes a temporary permit holder.

(2) A licensee commits or engages in illegal, unethical or unprofessional conduct if the licensee:

(a) Fails to disclose requested information, conceals material facts or provides false or materially misleading information on an application or during the application process for a temporary permit, license or renewal, or willfully makes a false oath or affirmation on an application;

(b) Is disciplined by another Oregon state licensing board or out-of-state licensing board for conduct which if committed in Oregon would be grounds for discipline under this rule;

(c) Is convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2);

(d) Is convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2);

(e) Commits gross negligence or multiple acts of negligence in practice. The Board may take into account relevant factors and practices, including but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice physical therapy in this state, the current teachings at accredited physical therapy schools and relevant technical reports published in recognized physical therapy journals in determining the definition of gross negligence;

(f) Practices physical therapy while under the influence of intoxicating liquors or under the influence of a controlled substance;

(g) Has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(h) Violates the provisions of ORS 688.010 to 688.235 or the provisions of division 15 (Physical Therapist Assistants), Division 20 (Physical Therapist Aides), division 30 (Practice Without Referral) or division 40 (Minimum Standards for Physical Therapy Practice and Records) of these administrative rules;

(i) Violates or fails to comply with the terms of an order of the Board;

(j) Engages in any act involving moral turpitude, including, but not limited to fraud, deceit, dishonesty, violence, or illegal activity undertaken for personal gain, subject to the provisions of ORS 670.280(3);

(k) Unnecessarily exposes a patient's body to the view of the therapist or other persons;

(L) Engages in a conversation with a patient that is not necessary for the provision of treatment and that is personally intrusive or otherwise inappropriate;

(m) Commits or engages in any act of sexual misconduct involving a patient, including but not limited to any acts or statements of a sexual nature that do not contribute to appropriate physical therapy treatment;

(n) Engages in any sexual conduct, including dating, with a patient, whether initiated by the patient or the licensee. For purposes of this subsection, "patient" includes any person who has not been discharged from that therapist's care;

(o) Obtains or attempts to obtain any fee by fraud or misrepresentation, or makes a false or fraudulent claim for health care payment as provided in ORS 165.690 to 165.694;

(p) Engages in exploitation of a patient, which includes but is not limited to the following:

(A) Failure to maintain an appropriate patient/therapist relationship;

(B) Obtaining or attempting to obtain compensation for physical therapy services that were not provided to the patient;

(C) Accepting, soliciting or borrowing anything of more than nominal value from a patient or a member of the patient's family except for reasonable compensation for physical therapy services provided to the patient.

Nominal value shall be determined in the context of the particular relationship and circumstances; or

(D) Influencing a patient or the patient's family to utilize, purchase or rent any equipment based on the direct or indirect financial interests of the licensee rather than on the therapeutic value to the patient. A licensee who owns or has a direct financial interest in an equipment or supply company must disclose the interest if the licensee sells or rents the equipment or recommends the purchase or rental of the equipment to the patient.

(q) Knowingly makes a false entry or false alteration in a patient record;

(r) Engages in deceptive consumer practices, including but not limited to:

(A) Using, disseminating or publishing any advertising matter, promotional literature, testimonial, claim or guarantee that is false, misleading or deceptive;

(B) Practicing under a false, misleading or deceptive name or impersonating another licensee; or

(C) Making a representation as to the licensee's skill or the efficacy or value of a treatment that the licensee knows or should know is false or misleading.

(D) Using the title "Doctor" or "Dr." with patients in a practice setting or on business cards, letterhead or professional advertisement or signage without the addition of the words "doctorate in physical therapy" or "doctor of physical therapy". A physical therapist who holds a doctoral degree in physical therapy may use the initials "DPT" after the physical therapist's name but may only be professionally identified or referred to as "(name of therapist), doctor of physical therapy".

(s) Practices physical therapy with a lapsed license;

(t) Knowingly or with reason to know, employs, aids, abets or permits any unlicensed person or person with a lapsed license to practice physical therapy;

(u) Fails to report in writing to employer that licensee provided physical therapy services while unlicensed or with a lapsed license or fails to provide a copy to the Board of such report;

(v) Fails to cooperate with the Board, which includes but is not limited to the following:

(A) Failure to respond fully and truthfully to a question or request for information from the Board;

(B) Failure to provide information or documents to the Board within the time specified by the Board;

(C) Failure to appear and provide information at an interview requested by the Board;

(D) Failure to timely produce and temporarily surrender custody of an original patient record requested by the Board and which is in the possession or under the control of the licensee, or failure to produce all portions of the patient record requested; or

(E) Deceiving or attempting to deceive the Board regarding any matter, including by altering or destroying any record or document;

(w) Interferes with or uses threats or harassment to delay or obstruct any person in providing information or evidence to the Board in any matter, investigation, contested case proceeding or other legal action instituted by the Board;

(x) Discharges an employee based primarily on the employee's attempt to comply or aid in the compliance with Board rules;

(y) Fails to notify the Board of any conduct by another licensee which reasonably appears to be illegal, unethical, unprofessional under the licensing statutes or these administrative rules; or

(z) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 848-005-0030.

Stat. Auth.: ORS 688.140, 688.160, 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220, 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04

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Rules Repealed: 848-050-0000, 848-050-0010, 848-050-0020, 848-050-0030

ADMINISTRATIVE RULES

Subject: Although there has not been substantial content change, the entire Rule has been rewritten and streamlined from its original version. The focus was on organization, clarity and definition.

Rules Coordinator: James Heider—(503) 731-4047

848-050-0100

Policy Governing Substance Abuse Diversion and Treatment

The Board recognizes the value of early recognition and treatment options for licensees whose competency is impaired due to the abuse of drugs or alcohol. The Board prefers that such licensees be treated and their treatment monitored in order that they can return to or continue to practice physical therapy in a manner which safeguards the public. To accomplish this, the Board may approve a licensee's voluntary participation in a substance abuse treatment and monitoring program approved by the Board as an alternative to instituting disciplinary proceedings under OAR 848-045-0010.

Stat. Auth.: ORS 688.160, 688.201
Stats. Implemented: ORS 688.140
Hist.: PTLB 8-2004, f. & cert. ef. 12-29-04

848-050-0110

Definitions

As used in Division 50:

(1) "Approved Treatment Program" means an organized program that meets the Board's standards, in an inpatient, outpatient, or residential setting whose primary function is the evaluation and treatment of clients with substance dependence or abuse. The treatment program shall meet the following criteria:

(a) Employ staff qualified by education and experience to treat the client's disorder;

(b) Have a formalized plan of care which includes:

(A) Assessment and diagnosis;

(B) Treatment goals including establishing and evaluating treatment outcomes;

(C) Discharge criteria;

(D) Guidelines for continuing recovery; and

(e) Provide a written report addressing all parts of the plan of care.

(2) "Body Fluid Testing" means the collection of blood, urine, or other bodily substances or emissions for the purpose of evaluating the presence of prescription or non-prescription drugs and alcohol. The collection and testing shall be performed by a pre-approved laboratory in a manner which preserves the integrity of the specimen.

(3) "Licensee" means a physical therapist, physical therapist assistant or temporary permit holder.

(4) "Substance" means alcohol and other depressants, cannabis, cocaine and other stimulants, opiates, hallucinogens, inhalants and abusable gases, and over-the-counter drugs with a potential for abuse.

(5) "Substance abuse" means a pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following within a 12-month period:

(a) Recurrent substance use resulting in failure to fulfill obligations at work, school or home;

(b) Recurrent substance use when such use is physically hazardous;

(c) Recurrent substance-related legal problems; or

(d) Continued substance use despite recurrent consequences socially or interpersonally. Substance abuse, if left untreated, may progress to substance dependence.

(6) "Substance dependence" means a pattern of substance use leading to clinically significant impairment or distress as manifested by three or more of the following, occurring at any time in the same 12-month period:

(a) Increased tolerance to the substance;

(b) Withdrawal symptoms when not using the substance;

(c) Increased use of the substance;

(d) Unsuccessful efforts to decrease or eliminate use;

(e) Increased time spent either obtaining the substance or recovering from its' effects;

(f) Decreased social, occupational or recreational activities because of substance use; or

(g) Continued use of the substance despite evidence of physical or psychological harm or consequences.

Stat. Auth.: ORS 688.160, 688.201
Stats. Implemented: ORS 688.140
Hist.: PTLB 8-2004, f. & cert. ef. 12-29-04

848-050-0120

Participation in Approved Substance Abuse Treatment Program

(1) As an alternative to initiating disciplinary action, the licensee and the Board may enter into a confidential agreement under which the licensee agrees to the following:

(a) Undergo evaluation for substance abuse or dependence by a qualified health care professional with specialized education and expertise in the evaluation and treatment of chemical abuse or dependency who will not be the provider of the recommended treatment;

(b) Undergo treatment in an approved treatment program and comply with all requirements of the program;

(c) Abstain from the use of all mind-altering or potentially addictive substances, including alcohol, over-the-counter or prescription drugs, except as prescribed by an authorized prescriber;

(d) Authorize the evaluation and treatment providers or counselors to provide periodic reports to the Board regarding the licensee's evaluation, treatment, prognosis, goals, progress and compliance with treatment program requirements;

(e) Submit to random testing of body fluid to screen for the presence of drugs or alcohol as specified by the treatment program;

(f) Fulfill the requirements of the prescribed aftercare program, which may include individual or group counseling; and

(g) Comply with specified employment conditions and restrictions, including disclosure as appropriate to an employer, as set out in the agreement with the Board.

(2) The licensee is responsible for paying the costs of the evaluation, treatment program, random drug or alcohol screening and aftercare.

(3) The Board may disclose general information regarding the licensee's participation in treatment only to those in the practice setting who are in a position of direct or general supervision of the licensee and have a need to know to ensure adequate monitoring. Information regarding the licensee's participation in treatment may be disclosed to others only with the licensee's written consent. Persons who receive information under this section about the licensee's participation in a treatment program shall keep it confidential and shall not disclose it to persons who do not have a need to know the information.

(4) If the licensee fails to complete the treatment program, fails to comply with the terms of the agreement, relapses or fails to correct deficiencies in the aftercare or recovery program, or violates the practice conditions or restrictions, the Board may initiate disciplinary proceedings for the original and any subsequent violation of the provisions of OAR 848-045-0020.

(5) Pursuant to ORS 192.502 and 676.175 to 676.180, the records of licensee's evaluation, treatment and follow-up and reports to the Board shall be confidential and shall not be disclosed to the public and shall not be admissible in evidence except as they may be relevant to any disciplinary proceeding brought by the Board as provided in section (4) of this rule.

Stat. Auth.: ORS 688.160, 688.201
Stats. Implemented: ORS 688.140
Hist.: PTLB 8-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PTLB 9-2004

Filed with Sec. of State: 12-29-2004

Certified to be Effective: 12-29-04

Notice Publication Date: 10-1-04

Rules Adopted: 848-010-0033, 848-010-0044

Rules Amended: 848-010-0010, 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0035

Rules Repealed: 848-010-0045, 848-010-0050, 848-010-0060, 848-010-0070, 848-010-0080, 848-010-0090, 848-010-0125

Subject: • Division 10 was renamed, Licensing of Physical Therapists, Physical Therapist Assistants and Temporary Permit Holders.

- It was reorganized so it contains rules relative to licensing only.
- Moved from Division 10 to new, or existing divisions are the following Rules; 010-0045 Physical Therapist Assistants (now in Div. 15); 010-0050 Grounds for Refusal, Suspension, or Revocation of License or Permit (now in Div. 45); 010-0105 Board Budget; 010-0110 Board Fees (now in Div. 5); 010-0115 Time of Requesting a

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Contested Case Hearing; 010-0120 Filing Exceptions and Arguments to the Board (now in Div. 1).

- Added to Division 10 is a new Rule 010-0044 Grounds for Refusal of a License.
- Section 010-0015(1), changed maximum number of times allowed to take the national exam.
- Subsections 010-0015(3)(a)(A) and (B), foreign educated physical therapist criteria have been updated.
- Subsection 010-0015(3)(a)(B)(ii), wording changed to allow the Board to approve an internship.
- Rule 010-0026 has been completely rewritten to clarify the terms for applying for a temporary permit, the supervision of a temporary permit holder, and the revocation of a temporary permit.
- New Rule 010-0033, added to address Board policy and procedures for annual license renewal.
- New Rule 010-0044, added to further clarify the Board's authority and the conditions in which the Board may refuse initial licensure to an applicant.
- Repealed as unnecessary 848-010-0060 through 848-010-0090 Board policy on selection of personal service contractors.

Rules Coordinator: James Heider—(503) 731-4047

848-010-0010

Approval of Schools of Physical Therapy

All schools for physical therapists and physical therapist assistants that are accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE), are considered approved schools of physical therapy. A school shall be considered to be an approved school of physical therapy within the meaning of this section if the school was accredited as above at the time the licensure applicant graduated. In its sole discretion, and on a case-by-case basis, the Board may grant licensure to an applicant who has graduated from a school of physical therapy if, at the time of his/her graduation, the school is a candidate for accreditation and subsequently is granted the accreditation.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.050, 688.055, 688.070 & 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 4-1997, f. & cert. ef. 8-5-97; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0015

Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the examination a maximum of three times within a 12-month period, measured from the date of the first examination. Prior to a fourth attempt, the applicant must take and complete a refresher course approved by the Board. Applicant may test two times following completion of the refresher course. If applicant fails to pass the examination within two attempts following completion of the refresher course, applicant may not be licensed in Oregon.

(2) All completed applications for examination, the non-refundable examination fee and other necessary forms must be approved by the Board prior to the scheduling of each examination in Oregon. For applicants taking the examination in another state or territory of the United States, or other Board approved location, and applying to Oregon for licensure by examination, all completed applications, the non-refundable fee and other necessary forms must be approved by the Board prior to licensure.

(3) All foreign educated physical therapists must submit directly to the Board, prior to obtaining an application:

(a) A Credential Evaluation Statement of professional training prepared by a Board-approved credential evaluation agency. It is the applicant's responsibility to pay the expenses associated with the credential evaluation. The minimum number of semester hour credits required is 120. The evaluation must include:

(A) General Education — A minimum of 54 semester credit hours shall be required in general education in the areas of humanities, physical science, biological science, social science, behavioral science, and mathematics. A minimum of a one-semester course must be successfully completed in each area of general education unless otherwise noted, or approved by the Board:

(i) Humanities — (English, English Composition, Speech or Oral Communication, Foreign Language (other than native language), Literature, Art, Music);

(ii) Physical Science — Chemistry with laboratory (two semester courses required), Physics with laboratory (two semester courses required);

(iii) Biological Science — (Biology, Anatomy, Physiology, Zoology, Kinesiology, Neuroscience, Genetics);

(iv) Social Science — (History, Geography, Sociology, Economics, Political Science);

(v) Behavioral Science (Psychology, Anthropology, Philosophy, Ethics);

(vi) Mathematics (Statistics, Algebra, Pre-Calculus, Calculus, Trigonometry and Geometry).

(B) Professional Education:

(i) A minimum of 69 semester credit hours encompassing Human Anatomy (specific to physical therapy), Human Physiology (specific to physical therapy), Neuroscience, Kinesiology or Functional Anatomy, Pathology, Neurology, Orthopedics, Pediatrics, Geriatrics, Cardiopulmonary, Pharmacology, Integumentary System Assessment and Interventions, Musculoskeletal System Assessment and Interventions, Neuromuscular System Assessment and Interventions, Cardiopulmonary System Assessment and Interventions. Additionally, course content is required in the following seven areas: Administration, Community Health, Research and Clinical Decision Making, Educational Techniques, Communication (related to client/patient care), Legal and Ethical Aspects of Physical Therapy Practice and Psychosocial Aspects in Physical Therapy Practice.

(ii) A minimum of two clinical affiliations of no less than 800 hours total, which may include hours obtained by completion of a Board approved clinical internship.

(b) English Language Proficiency:

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE).

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant's examination scores must be submitted to a Board approved credentialing agency directly from the Board-approved examination service.

(d) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be "as of" the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) No person shall be allowed to take the physical therapist examination or physical therapist assistant examination for licensure in Oregon until all academic requirements are completed.

(6) The examination will be administered at a location approved by the Board. Applicants taking the examination in Oregon must sit for the examination within 60 days from the date of the letter of authorization from the Board-approved examination service.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period shall be required to complete a refresher course approved by the Board and to pass an examination approved by the Board as provided in this rule.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070 & 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0020

Endorsement of Out-of-State Physical Therapists and Physical Therapist Assistants

Physical therapists and physical therapist assistants not licensed in the State of Oregon may be licensed by endorsement if they comply with all of the following:

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(1) File a completed application form and pay a non-refundable endorsement application fee.

(2) Are at least 18 years of age.

(3) Are graduates of an approved school for physical therapists or physical therapist assistants as provided in OAR 848-010-0010 and 848-010-0015(3).

(4) Are currently licensed in any other state or territory of the United States.

(5) Are in good standing in every state where currently licensed and were in good standing at the time of lapse in every state where licensure has lapsed for any reason.

(6) The following shall be considered the minimum passing score on the physical therapist or the physical therapist assistant examination provided by a Board-approved examination service:

(a) For applicants examined February 1, 1996 and there after, the minimum overall passing score shall be based on a formula using the criterion-referenced scoring system verified by a Board-approved examination service;

(b) For applicants examined from January 5, 1983 through January 31, 1996, the minimum overall passing score shall be based on a formula using the national average raw score minus two standard errors of measurement verified by a Board-approved examination service;

(c) For applicants examined from January 1, 1976 through January 4, 1983, the minimum overall passing score shall be 1.5 standard deviation below the national average raw score verified by a Board-approved examination service;

(d) For applicants examined from January 1, 1961 through December 31, 1975, the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination given by a Board-approved examination service;

(e) For applicants examined prior to January 1, 1961, the passing of an examination of the American Registry of Physical Therapists, or the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination of the American Registry of Physical Therapists.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.080

Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 5, f. 12-20-74, ef. 1-11-75; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990(Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 3-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0026

Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant for a period of three (3) months to an applicant who meets the requirements of this rule.

(a) A person who has completed a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination in Oregon shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(b) A person who holds a valid current license to practice in another state or territory of the United States shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee; and

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(c) A person who is a foreign educated physical therapist who has graduated from a CAPTE accredited physical therapist program shall:

(A) Submit a completed application for license by examination or endorsement and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee;

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist program; and

(D) Submit proof of passing scores on the TOEFL, TSE and TWE tests. However, this requirement does not apply if the physical therapist program was taught in English and English is the national language of the country where the physical therapist program was taught.

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) or (1)(c) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means a physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means a physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the three month period by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination for Oregon is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one three month extension to a person who holds a temporary permit issued under (1)(b) of this rule.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110

Stats. Implemented: ORS 688.110

Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0033

Yearly Renewal Of License Required

(1) All physical therapist and physical therapist assistant licenses expire on March 31 of each calendar year, regardless of the initial issue date. Physical therapists and physical therapist assistants must annually renew their licenses to practice effective April 1 of each year. A license is considered lapsed if a completed renewal application is postmarked or received after March 31. A person whose license has lapsed must immediately stop practicing as a physical therapist or a physical therapist assistant and shall not practice until the license is renewed.

(2) During the first week in January of each year the Board mails a renewal application to each currently licensed physical therapist and phys-

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Public Utility Commission Chapter 860

ical therapist assistant at the licensee's mailing address on file with the Board.

(3) If the completed license renewal application is postmarked or actually received by the Board after March 31st, the licensee is subject to a lapsed license renewal fee as provided in OAR 848-005-0020(1)(f) in addition to the annual license renewal fee.

(4) A licensed physical therapist must complete the renewal application form furnished by the Board and pay the annual renewal fee provided in OAR 848-005-0020(1)(c).

(5) A licensed physical therapist certified to practice without referral must also complete the practice without referral certification renewal application form furnished by the Board and pay the annual practice without referral renewal fee provided in OAR 848-005-0020(1)(e).

(6) A licensed physical therapist assistant must complete the renewal application form furnished by the Board and pay the annual renewal fee provided in OAR 848-005-0020(1)(d).

Stat. Auth.: ORS 688.110
Stats. Implemented: ORS 688.110
Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0035

Renewal of Lapsed Licenses

Any license that is not renewed before April 1 of each year shall automatically lapse. No person whose license has lapsed shall practice until the license is renewed. Failure to receive a renewal notice shall not excuse any licensee from the requirements of renewal. The Board may renew any lapsed license upon payment of all past unpaid renewal and delinquent fees. In the event that an applicant's license has lapsed for five or more consecutive years, the Board shall require the applicant to satisfactorily complete a refresher course approved by the Board and to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015. If the applicant holds a current physical therapist or physical therapist assistant license which is in good standing in another state and the applicant's Oregon license has lapsed for five or more consecutive years, the applicant may apply for a license by endorsement as provided in OAR 848-010-0020.

Stat. Auth: ORS 688.160
Stats. Implemented: ORS 688.100
Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 10, f. & ef. 10-21-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 5-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04

848-010-0044

Grounds for Refusal to License an Applicant

After notice and opportunity for hearing as provided in ORS 688.145, the Board may refuse to license, or may limit or restrict the license of an applicant who:

(1) Is not a person of good moral character as provided in OAR 848-045-0020(2)(j);

(2) Willfully made a false oath or affirmation on the application;

(3) Failed to disclose requested information or provided false or materially misleading information on the application or during the process of applying for a license or temporary permit;

(4) Has practiced physical therapy without a license or has purported to be a therapist in violation of ORS 688.020;

(5) Has a mental, emotional or physical condition which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(6) Has an addiction to or a dependency on alcohol, legend drugs or controlled substances which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(7) Has been disciplined by another Oregon state licensing board or out-of-state licensing board for an act which if committed in Oregon would be grounds for discipline under ORS 688.140 or OAR 848-045-0020;

(8) Has been convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2); or

(9) Has been convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2).

Stat. Auth: ORS 688.160
Stats. Implemented: ORS 688.100
Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04

Adm. Order No.: PUC 17-2004

Filed with Sec. of State: 12-28-2004

Certified to be Effective: 12-28-04

Notice Publication Date: 11-1-04

Rules Amended: 860-012-0015

Subject: This amended rule clarifies scope and application of rules governing ex parte communications in Commission proceedings.

Rules Coordinator: Diane Davis—(503) 378-4372

860-012-0015

Ex Parte Communications

(1) Ex parte communications are discouraged and, if made, must be disclosed to ensure an open and impartial decision-making process.

(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:

(a) Is made by any person directly to a Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of any or all parties of record in a contested case proceeding, as defined in ORS 183.310(2), without notice to, or opportunity for rebuttal by, all such parties; and

(b) Relates to the merits of an issue in the pending contested case proceeding.

(3) For purposes of this rule, a contested case proceeding is pending:

(a) When any filing is made that initiates a proceeding between identified parties or a "major proceeding" as defined in OAR 860-014-0023; or

(b) After the Commission initiates a process similar to that described in OAR chapter 860, division 014, including but not limited to, an order suspending a tariff for investigation or the holding of a prehearing conference.

(4) A person who has an ex parte communication with a Commissioner must promptly notify the presiding ALJ that such communication has occurred.

(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ shall promptly notify the parties of record of the communication and place in the record:

(a) The name of each person who made the communication and that person's relationship, if any, to a party in the case;

(b) The date and time of the communication;

(c) The circumstances under which the communication was made;

(d) A summary of the matters discussed;

(e) A copy of any written communication; and

(f) Any other relevant information concerning the communication.

(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.

(7) Within 10 days of receiving notice, a party may file a written rebuttal of any facts or contentions contained in the ex parte communication, with service on the parties of record in the proceeding.

(8) The provisions of this rule do not apply to communications that:

(a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;

(b) Are made to a Commissioner or presiding ALJ by a member of the Commission staff who is not a witness in the proceeding;

(c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing the Commission staff in the proceeding;

(d) Are made in a rulemaking proceeding conducted pursuant to ORS 183.325 through 183.410; or

(e) The presiding ALJ determines should not be subject to this rule, including but not limited to communications from members of the public that are made part of the administrative file or communications that are the subject of in camera proceedings.

(3) For the purposes of this rule, staff is not a party.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 183.462, 756.040 & 756.500 - 756.575
Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 17-2004, f. & cert. ef. 12-28-04

Adm. Order No.: PUC 18-2004

Filed with Sec. of State: 12-30-2004

Certified to be Effective: 12-30-04

ADMINISTRATIVE RULES

Notice Publication Date: 10-1-04

Rules Adopted: 860-011-0011, 860-011-0012, 860-013-0036, 860-013-0037

Rules Amended: 860-011-0001, 860-011-0010, 860-011-0015, 860-011-0035, 860-011-0080, 860-013-0060, 860-013-0065, 860-013-0070, 860-013-0071, 860-013-0075, 860-014-0005, 860-014-0010, 860-014-0023, 860-014-0060, 860-014-0065, 860-014-0070, 860-014-0090, 860-014-0092, 860-021-0034, 860-021-0036, 860-021-0037, 860-022-0005, 860-022-0015, 860-022-0020, 860-022-0038, 860-032-0095, 860-032-0097, 860-032-0610, 860-033-0006, 860-034-0095, 860-034-0097, 860-034-0300, 860-034-0320, 860-034-0440, 860-034-0600, 860-036-0095, 860-036-0097, 860-036-0605, 860-036-0615, 860-036-0625, 860-036-0645, 860-037-0095, 860-037-0097, 860-037-0410, 860-037-0420, 860-037-0430, 860-037-0450

Rules Repealed: 860-011-0020, 860-011-0023, 860-011-0024, 860-011-0025, 860-011-0030, 860-013-0040

Rules Ren. & Amended: 860-011-0022 to 860-021-0033, 860-013-0021 to 860-012-0001

Subject: This rulemaking will allow the electronic filing and retrieval of most documents filed in Commission proceedings. The rulemaking adopts new rules and makes numerous changes to existing procedural rules to require parties to supplement paper filings with exact electronic copies via e-mail or computer disk. These electronic copies will be placed on the Commission's website and can be accessed via eDockets on the agency's Internet website.

Rules Coordinator: Diane Davis—(503) 378-4372

860-011-0001

Notice to Interested Persons

(1) The Commission maintains mailing lists of persons interested in receiving notices of:

- (a) Commission public meetings;
- (b) Rulemaking proceedings that involve electric, natural gas, telecommunications, water, wastewater or procedural matters; and
- (c) Contested case proceedings that concern particular regulated industries.

(2) The Commission will send advance notice of these events, by mail or electronic mail, to persons on these lists. Any person may request in writing to be included on the relevant list(s) for the person's particular area of interest.

(3) The Commission will not delete the names of persons from a notice list without prior notification.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500-756.575
Hist.: PUC 169, f. & ef. 11-10-75 (Order No. 75-936); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-2004, f. & cert. ef. 4-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0010

Filing Information: Physical Address and Electronic Mail

(1) The Commission's contact information, including physical and electronic mail address, is available on the Commission's website or by calling the Commission.

(2) All documents related to Commission proceedings must be filed at the addresses in section (1) of this rule. Inquiries regarding docketed proceedings pending before the Commission should be directed to the Administrative Hearings Division, Support Unit.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-011-0005; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 11-2003, f. & cert. ef. 7-3-03; PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0011

Format and Content Requirements

(1) All text documents related to Commission proceedings must be prepared using a readable font that, when printed, will fit on an 8-1/2 by 11 inch page. Footnotes or quotations may be single spaced and indented. The first page of a pleading, exhibit, appendix, or other document must bear the

docket number of the proceeding in which the document is filed, unless no docket number has been assigned.

(2) All persons who communicate with the Commission must provide their name, physical and electronic mail addresses, and telephone number to assist the Commission in responding. Persons who file on behalf of a business, organization, or other entity must also state their names and titles or positions, and the name of the entity on whose behalf the communication is sent.

(3) The original document and all copies required by the Commission rules must be filed in the same envelope or container to the extent practicable. A party making simultaneous filings in more than one docket must enclose the documents for each docket in a separate envelope or container.

(4) With the exception of tariff sheets, the Commission prefers to receive copies of text documents printed on both sides. The Commission encourages the use of recyclable paper.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0012

Electronic File Format Requirements

(1) Electronic filings required by rule may be provided as an electronic mail file attachment addressed to the Commission's electronic mail address provided in OAR 860-011-0010(1), submitted on a 3-1/2 inch formatted high-density disk, compact disk (CD) or DVD, or uploaded via the Commission's website. The filing must be labeled with any applicable docket number of the proceeding, the name of the party submitting the document, a description of the contents, and the date filed. Any filing submitted as an electronic mail attachment must be less than 20 megabytes in size and include the docket number and name of the file in the subject line of the electronic mail message.

(2) The Commission prefers to receive electronic copies of text documents in text-searchable Portable Document Format (i.e., .pdf). Filers that cannot create text-searchable .pdf files are requested to provide a copy of the document converted to .pdf via scanning or other technology, and supplement the filing with a copy in Microsoft Word file format.

(3) Electronic files must be named in a way that accurately describes the file contents. Filers must use a format that identifies the docket type or, if assigned, docket number, the nature of the document, and the person submitting it. For example, an electronic file containing a motion in a docketed proceeding should be identified as follows: UT 123, Motion to Amend Schedule (name of party) (date). Similarly, an electronic file containing an application for the approval of an affiliated interest contract should be identified as follows: UI Affiliated Interest Application (name of applicant) (date).

(4) Electronic filings containing numerous documents must be separated into multiple attachments or indexed and organized to allow the reader the ability to locate and view individual files. For example, a filing containing testimony from multiple witnesses should be divided into folders and subfolders and indexed accordingly as follows: Folder Name: UE 123 Direct Testimony (name of party) (date) Subfolders: Party/Exhibit 100 Witness Smith Party/Exhibit 101 Witness Smith Party/Exhibit 200 Witness Jones

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0015

Fees and Charges for Filings

A filing will not be accepted by the Commission until all fees and charges required by law are paid.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0035

Definitions

(1) "Applicant" means any person requesting or applying for any right, privilege, power, or other authority or seeking permission to exercise any right or privilege under a statute requiring the filing of an application.

(2) "Complainant" means any person, including the Commission, who files a complaint under any statute providing for the filing of complaints before the Commission.

(3) "Copy" means paper copy, unless otherwise specified.

ADMINISTRATIVE RULES

(4) "Defendant" means a person against whom a complaint is filed under ORS 756.500.

(5) "Interested person," except as provided in ORS 756.450, means any person who is not a party or staff and who asks to be listed as an interested person in any docketed Commission proceeding. Interested persons must be served with copies of any orders, rulings, notices, or other documents issued by the Commission or Administrative Law Judge (ALJ) in the Commission proceeding for which they are listed. Unless permitted by the Commission or ALJ, interested persons are not entitled to service of documents from staff or parties; to present evidence for the record; to conduct cross-examination of witnesses; to file pleadings, testimony, exhibits, or briefs; or otherwise exercise the rights of a party.

(6) "Intervenor" means a person named by the Commission to be a party to a proceeding.

(7) "Party" means any person entitled as a matter of right to a hearing before the Commission, or named as a party.

(8) "Person" means individuals; joint ventures; partnerships; limited liability companies; corporations and associations; governmental entities; or their officers, employees, agents, lessees, assignees, trustees, or receivers.

(9) "Petitioner" means any person applying for permission to exercise any right or privilege or power under a statute requiring the filing of a petition, any person requesting a declaratory ruling under ORS 756.450, or any person applying for other relief for which no specific pleading is designated by statute.

(10) "Protestant" means any person opposing an application under ORS 759.020.

(11) "Respondent" means any person designated as such in any matter over which the Commission has jurisdiction.

(12) "Staff" means any employee of the Commission except ALJs.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former OAR 860-11-035 was Renumbered to 860-011-0000 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-011-0080

Charges for Copies and Services

Unless otherwise provided, the Commission will impose the following fees and charges:

(1) Photocopies:

(a) No charge for 20 pages or less, in excess of 20 pages, per page: 25 cents (for example, if 21 pages requested, charge would be \$5 minimum plus 25 cents, for a total of \$5.25).

(b) Other government agencies, per page from first page: 05 cents.

(2) Certification of true copies of public documents (per document certification): \$10.

(3) Maps of specific area boundaries: \$15.

(4) Hearing transcripts: At cost. A copy of a public hearing transcript shall be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521. Such a request shall be filed on a form supplied by the Commission and contain information for the Commission to use to determine the eligibility of the requesting party.

(5) Statistical reports (second and subsequent copies): \$15.

(6) Facsimile transmission (FAX) charges: No charge for first 15 pages transmitted; additional pages, per page: \$1.

(7) Audio recordings: \$5 per package.

(8) Staff research time: At cost.

(9) Annual subscription to all Commission orders or notices of specific hearings will be provided under the following schedule. Subscribers will be notified of renewal requirements on a yearly basis. Orders: \$100; Hearing Notices: \$50. Administrative Rules update service: \$75.

(10) Computer service: At cost.

(11) Billing: The Commission may require cash payment before honoring any request. Billings for unpaid balances may accompany mailed copies.

(12) Waiver of fees: No fee shall be charged or collected for copies of published documents furnished to or provided for routine requests for one copy of a Commission order, administrative rules, and general publications. Requests for additional copies will be subject to applicable charges.

(13) Late Fees and Penalties:

(a) Check Returned for Non-Sufficient Funds: \$25.

(b) Costs Incurred by the Commission to Collect Past-Due Amounts: At Cost.

(14) Late Payments:

(a) Interest on Annual Fees: None.

(b) Interest on Residential Service Protection Fund (RSPF): 9 percent per Annum.

(c) Penalty on Annual Fees: 2 Percent per Month.

(d) Penalty on RSPF: 9 percent of Unpaid Fee, up to \$500 maximum per reporting period.

(15) Late Statements and Reports:

(a) Electric Utility Annual Fee Statement: \$100.

(b) Gas Utility Annual Fee Statement: \$100.

(c) Telecommunications Providers Annual Fee Statement: \$100.

(d) Water Utility Annual Fee Statement: \$25.

(e) RSPF Report: \$100.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 13-1985, f. & ef. 9-26-85 (Order No. 85-886); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-015-0005; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & cert. ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 16-1998, f. & cert. ef. 10-12-98; PUC 18-2004, f. & cert. ef. 12-30-04

860-012-0001

Petitions to Intervene

(1) Any person may petition to intervene in any proceeding before the Commission. The petition to intervene must contain the following information:

(a) The name and address of the petitioner;

(b) The name and address of the attorney or authorized representative of the petitioner;

(c) If the petitioner is an organization, the number of members in and the purposes of the organization;

(d) The nature and extent of the petitioner's interest in the proceeding;

(e) The issues petitioner intends to raise at the proceeding; and

(f) Any special knowledge or expertise of the petitioner that would assist the Commission in resolving the issues in the proceeding.

(2) If the Commission or Administrative Law Judge (ALJ) finds the petitioner has sufficient interest in the proceeding and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding, the Commission or ALJ will grant the petition. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceeding.

(3) Notwithstanding section (2) of this rule, the Citizens' Utility Board may intervene in Commission proceedings as of right, pursuant to ORS 774.180, by filing a notice of intervention containing the information required by sections (1)(a) and (b) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-011-0065; PUC 12-1999, f. & cert. ef. 11-18-99; Renumbered from 860-013-0021, PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0036

Acceptable Filings of Pleadings and Other Documents

(1) Persons must file one original, signed document and any copies required by OAR 860-013-0060.

(2) Except as otherwise provided by rule, persons must supplement any filing by submitting an exact copy of the document in electronic form, as specified in OAR 860-011-0012. This requirement does not apply to:

(a) Any party excused from the obligation by the Commission or Administrative Law Judge (ALJ);

(b) Any filing containing information designated as confidential under a protective order; or

(c) Miscellaneous utility filings, reports, and other documents that do not directly relate to Commission proceedings. A list of these documents is posted on the Commission's website or is available by calling the Commission.

(3) Filings received by the Commission that are incomplete or not in substantial compliance with these rules, the Commission's orders, rulings or memoranda of an ALJ, or statutes will not be accepted for official filing.

(4) Documents required to be filed with the Commission within a specified time but which fail to substantially comply with these rules, the Commission's orders, or statutes may be accepted as conditionally received to satisfy the filing date.

(5) The Commission or ALJ may require the filing of additional information to clarify or explain a filing at any stage of a proceeding, or in ex parte matters. If such information broadens or changes the scope or intent of the filing, the Commission or ALJ will require notice be given to persons affected.

ADMINISTRATIVE RULES

(6) Parties are encouraged, but not required, to provide an electronic copy of all filings in dockets containing the following case designation:

- (a) ADR — Alternative Dispute Resolution;
- (b) AP — Oregon Telephone Assistance Program (OTAP) Denial of Benefits;

- (c) NC — Utility Notification Center Complaints;
- (d) TT — Telecommunication Devices Assistance Program (TDAP)

Equipment Abuse;

- (e) UNC — Utility Notification Rulemaking;
- (f) UCR — Customer Complaint — Residential;
- (g) UCB — Customer Complaint — Business;
- (h) UW — Water;
- (i) WA — Water Territory Allocation.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0037

Filing Dates for Pleadings or Other Documents

(1) Pleadings or other documents shall be filed by mail, personal delivery, or any other reasonable means of delivery at the address listed in OAR 860-011-0010(1). Except as modified by statute or by these rules, a document is filed on the date received by the Commission at Salem, Oregon, between the hours of 8 a.m. and 5 p.m. Pacific Time.

(2) If the prescribed filing date falls on a Saturday, Sunday, legal holiday, as defined in ORS 187.010, or when the Commission's office is closed pursuant to a Department of Administrative Services directive, the next business day following is the date of filing.

(3) A telephonic facsimile or electronic copy of a document will be accepted for filing if the original signed document is deposited in the mail and addressed to the Commission, with proof of service as required by OAR 860-013-0070 on the date the facsimile or electronic copy is received. The complete facsimile or electronic copy must be received by the Commission by 5 p.m. Pacific Time on the filing deadline.

(4) Conditionally received filings may not be officially filed until approved as being in substantial compliance with these rules, the Commission's orders, and statutes. Conditionally received filings will be rejected unless brought into compliance within the time granted by the Commission.

(5) The Commission must provide the filer the reason for rejecting or conditionally accepting a filing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0060

Copies of Filings Required

(1) In addition to supplemental electronic copies required by rule, the following pleadings and other documents must be filed with the specified number of paper copies.

(2) General rate revisions filed pursuant to OAR 860-013-0075:

- (a) Utility initial filing: 20 copies;
- (b) Work papers: 3 copies;
- (c) Testimony filed pursuant to OAR 860-014-0060: 5 copies;
- (d) Briefs filed pursuant to OAR 860-014-0090: 5 copies;
- (e) Applications for Allocation of Territory filed pursuant to OAR 860-025-0000 to 860-025-0050, 860-034-0440 to 860-034-0495; or 860-036-0900 to 860-036-0925: 3 copies;

(f) Financing applications filed pursuant to OAR 860-027-0020 to 860-027-0035, 860-036-0715 to 860-036-0725, or 860-037-0515 to 860-037-0525: 3 copies; and

(g) Affiliated interest applications filed pursuant to OAR 860-027-0040 to 860-027-0044, 860-036-0730 to 860-036-0738, or 860-037-0530 to 860-037-0545: 3 copies.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0065

Signature Required

(1) Every pleading must be signed by the filer, the filer's attorney, or authorized representative.

(2) By signing the pleading, the signatory makes the certification set forth in ORCP 17C.

(3) For electronic filings, a filer may use any identifier that is executed or adopted by the person using it with the intent to authenticate a writing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Former rule 860-013-0065 Renumbered to 860-013-0070; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075) Renumbered from 860-013-0070; PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0070

Service by Parties

(1) Parties must serve copies of all filed documents, including correspondence with the Commission or Administrative Law Judge (ALJ), pleadings, testimony, exhibits, memoranda of law, and briefs on all persons designated on the official service list. The official service list for each proceeding is posted on the Commission's website or is available by calling the Commission. Unless a party waives other forms of service under section (4) of this rule, a party is limited to two persons on the service list.

(2) Unless waived pursuant to section (4) of this rule, parties must serve those documents in person, by mail, or by any other reasonable means of delivery. Service is complete when the documents are delivered in person, deposited in the mail, or as otherwise allowed by the Commission or ALJ. Unless otherwise specified by the Commission or ALJ, required filing dates are in-hand dates. A telephonic facsimile or electronic copy of a document will satisfy an in-hand filing date if paper copies are deposited in the mail and addressed to the other parties on the date the facsimile or electronic copy is sent.

(3) When a party has appeared by attorney or other duly authorized representative, service upon the attorney or representative is valid service upon the party.

(4) A party may serve documents by electronic mail on parties that have waived other forms of service. The filing of a written waiver excuses the other parties and the Commission from the obligation to use methods of service specified in section (1) of this rule or in statute. Service by electronic mail is complete when the electronic message leaves the sender's electronic mail server. Parties effecting service by electronic mail are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(5) The original of all filed documents, including those listed in section (1) of this rule, must include an acknowledgement of service or a certificate in substantially the form shown as follows: [Form not included. See ED. NOTE.]

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

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted by order entered & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55 ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); Former rule 860-13-070 was Renumbered to 860-013-0065 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-130-0065; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-013-0071

Service of Complaints, Orders, and Rulings by the Commission

The Commission must serve upon all parties all complaints in which the Commission is the complainant, all formal consumer complaints filed pursuant to OAR 860-021-0015(5), all proposed orders, final orders, Administrative Law Judges' rulings and memoranda, and all other documents issued by the Commission or Administrative Law Judge in a docketed proceeding. Service must be made by mail or any other reasonable means of delivery to the addresses appearing in the Commission's records.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55 ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0065; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-013-0070(1); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

ADMINISTRATIVE RULES

860-013-0075

General Rate Revisions

(1) Unless waived by the Commission or Administrative Law Judge (ALJ) for good cause, any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and trial briefs. A general rate revision is a filing by a utility that affects all or most of the utility's rate schedules. The term "general rate revision" does not include rate changes set forth in OAR 860-022-0017(1).

(a) As used in this rule, work papers consist of those documents that show the source, calculations, and details supporting the testimony and other exhibits submitted. When, subsequent to the initial filing made by the utility, a party files testimony and exhibits, it must at the same time provide a copy of its work papers to any other party that has requested a copy. Both the utility and any party must provide electronic copies of workpapers, if available.

(b) The trial brief must contain an exhibit showing in summary form the following information:

(A) The dollar amount of total revenues that would be collected under the proposed rates;

(B) The dollar amount of revenue change requested, total revenues, and revenues net of any credits from federal agencies;

(C) The percentage change in revenues requested, total revenues, and revenues net of any credits from federal agencies;

(D) The test period;

(E) The requested return on capital and return on equity;

(F) The rate base proposed in the filing;

(G) The results of operations before and after the proposed rate change; and

(H) The proposed effect of the rate change on each class of customers.

(2) The Commission or ALJ may require participants appearing in any proceeding to file testimony or other documents by a specific time.

(3) Telecommunications utilities partially exempt from regulation under ORS 759.040 must file tariffs in the manner specified in OAR 860-034-0300.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 3-2002, f. & cert. ef. 2-5-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0005

Notice

The Commission or Administrative Law Judge must set the time and place for hearings. Notice of a hearing must be served on all parties at least ten days before the hearing date. For good cause, the Commission may require a hearing to be held on less than ten days' notice.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0010

Postponements and Continuances of Hearings

(1) Any party may request a postponement of a hearing. The party must provide the reasons why the postponement is necessary. The Commission or Administrative Law Judge (ALJ) may require oral requests for postponement of a hearing to be confirmed in writing.

(2) The Commission or ALJ may grant a postponement of a hearing and may, at any time, order a postponement on his/her own motion.

(3) The Commission or ALJ may continue a hearing or conference to receive additional evidence or argument. Additional notice of a continued hearing including the same issue need only be provided to parties attending the initial hearing and other parties who have requested continuing notice.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0023

Major Proceeding

(1) For purposes of ORS 756.518(2), a "major proceeding" is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or

(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

(2) A party in a proceeding that does not meet the criteria in section (1) of this rule may petition the Administrative Law Judge (ALJ) for major case status if the case:

(a) Is likely to result in a significant change in regulatory policy; or

(b) Raises novel questions of fact or law.

(3) When a docket is opened, any party may file a motion with the ALJ requesting that the case be classified as a major proceeding.

(a) The motion must:

(A) Set out with specificity how the case qualifies as a major proceeding under the criteria listed in section (1) of this rule; or

(B) Argue how the case qualifies as a major proceeding under section (2) of this rule.

(b) Answers to the motion are due within ten days of filing.

(c) The ALJ must rule on the motion within 15 days of filing.

(4) If a case is classified as a major proceeding, parties must schedule a date for oral argument before the Commission at the prehearing conference or as soon thereafter as possible.

(5) Any party to a case may present argument before the Commission if the case is defined as a major proceeding.

(6) The ALJ must determine the length of each party's presentation to the Commission, the right of any party to rebuttal of any other party's presentation, and the order of presentation.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 19-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; PUC 3-2003, f. & cert. ef. 11-03; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0060

Testimony and Exhibits

(1) When testimony or exhibits are offered in evidence, copies must be furnished to each party, the Commission and Administrative Law Judge (ALJ). When practicable, the parties must distribute copies of exhibits before or at the commencement of the hearing.

(2) When relevant evidence offered by a party is included in a book, paper, or document containing irrelevant material, the party offering the exhibit must plainly designate the matter offered:

(a) If irrelevant material is included in the exhibit that would encumber the record, the exhibit may not be received in evidence. The exhibit may be marked for identification, and, if properly authenticated, the relevant matter may be read into the record;

(b) If the Commission or ALJ directs, a copy of the relevant portions of the exhibit may be received as evidence. The offering party must offer copies of the document to all other parties appearing at the hearing. The parties must be afforded an opportunity to examine the exhibit and to offer in evidence other portions of the exhibit found to be relevant.

(3) Papers and documents on file with the Commission may be introduced by reference to number, date, or by any other method of identification satisfactory to the Commission or ALJ.

(4)(a) The Commission or ALJ may direct that the testimony of any witness, including supporting exhibits, be submitted in writing prior to hearing. Unless otherwise directed by the Commission or ALJ, such testimony, when sworn to orally or in writing by the witness under oath to be true, will be received in the same manner as an exhibit;

(b) The written testimony must be double spaced, prepared in question and answer or narrative form, and contain a statement of the qualifications of the witness. The written testimony is subject to rules of admissibility and cross-examination. Unless otherwise directed by the ALJ, all written testimony and exhibits must be paginated in the top right corner as follows: Party/Exhibit Number: Witness/Page Number:

(c) The Commission or ALJ may direct that demonstrative evidence be reduced to a diagram, map, photograph, or similar representation.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC

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10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127) PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0065

Depositions

(1) The testimony of any witness may be taken by deposition at any time before the hearing is closed.

(2) A party proposing to take a deposition must notify in writing every other party. Unless notice is waived, a party must provide ten days' notice to the parties of a deposition to be taken within the state and 15 days' notice for a deposition to be taken elsewhere. The notice must state the witness's name and address, the subject matter on which the witness is expected to testify, the time and place of taking the deposition, the name and address of the officer before whom the deposition is to be taken, and the reason why the deposition is to be taken. Other parties in the proceeding may make any appropriate response to the notice of deposition.

(3) A party may take a deposition before a person designated in the notice or agreed upon by the parties. The Commission or Administrative Law Judge (ALJ) may impose such conditions on the taking of the deposition as may be necessary to ensure fairness in the proceeding.

(4) Every person whose testimony is taken by deposition must swear or affirm concerning the matter about which s/he will testify. The testimony must be transcribed. The person before whom the deposition was taken must certify, under oath on the transcript, that the witness was sworn in the reporter's or transcriber's presence, and the transcript is a true record of the testimony or a correct transcription of the recording.

(5) A party may examine a deponent on any matter not privileged which appears reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts.

(6) Unless received in evidence by the Commission or ALJ, no portion of a deposition may constitute a part of the record in the proceeding. A party may object at the hearing in the proceeding to receiving in evidence any portion of the deposition. Upon request, the party examining the deponent must provide the Commission or ALJ a transcribed copy of any deposition taken in the proceeding.

(7) The party requesting the deposition must pay the deponents and the person taking the deposition the same fees as are paid for like services in the courts of record of the state in which the deposition is taken.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: Former OAR 860-14-065 was renumbered to 860-14-075 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 4-2002, f. & cert. ef. 2-8-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0070

Data Requests

(1) Subject to limitations imposed by the Commission or Administrative Law Judge (ALJ), the Commission, ALJ, or any party may submit data requests to any party. Data requests are written interrogatories or requests for production of documents. The data requests must be answered within ten Commission business days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, unless objected to, in which event the objection will be written in lieu of answer.

(2) A party submitting a data request must serve the request on all parties to the proceeding. The party answering the data request need only file a response to the submitting party, unless another party files a written request for a copy of a specific response. A party may not file a blanket request to receive copies of responses to all data request.

(3) If the party to whom the data requests are directed refuses to answer or objects to any data request, a party may file a motion seeking to compel an answer or impose sanctions for refusal to answer. Any motion regarding disputed data requests submitted to the Commission or ALJ, whether by motion or otherwise, must contain a certification that the parties have conferred and been unable to resolve the dispute. The certification may be included in the body of the motion. Any motion that does not contain this certification will be denied.

(4) Any party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of any data requests or answers must be attached to the submitted data requests with specific reference and grounds. The Commission or ALJ must rule on objections before receiving the submitted data requests in evidence. Every remedy

available to a party using deposition procedures must be available to a party using data requests.

(5) Parties should not file data requests or responses to data requests with the Commission or ALJ, except when requested by the Commission or ALJ or when seeking resolution of a discovery dispute under these rules.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: Former OAR 860-14-070 was Renumbered to 860-014-0080 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 13-1995, f. & cert. ef. 12-12-95 (Order No. 95-1284); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 4-2002, f. & cert. ef. 2-8-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0090

Briefs and Oral Arguments

(1) Parties may file briefs in any proceeding. The Commission or Administrative Law Judge (ALJ) may require a party to file a brief.

(2) The Commission or ALJ may require the parties to present their arguments and authority orally at the close of the hearing instead of by written brief.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-014-0080; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-014-0092

Proposed Order

(1) After a contested case hearing, the Administrative Law Judge may issue a proposed order.

(2) The Commission's staff and parties to the proceeding may file exceptions to a proposed order and a reply to the exceptions.

(3) The exceptions, if taken, must be:

(a) Confined to factual and legal issues that are essential to the ultimate and just determination of the proceeding and must be based on grounds that:

(A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence of record;

(B) A necessary legal conclusion is omitted or is contrary to law or the Commission's policy; or

(C) Prejudicial procedural error occurred.

(b) Numbered and specify the disputed findings, opinions, or conclusions. Supporting citations to the record and authorities must be provided. The nature of the suggested error must be specified and alternative or corrective language provided.

(c) Filed on or before the 15th day after the service date of the proposed order.

(4) A reply to the exceptions, if made, must be filed on or before the tenth day after the exceptions are due.

(5) The Commission may modify the proposed order, reject it, prepare a different order, or adopt the proposed order.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: PUC 8-1980, f. & ef. 12-11-80; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

860-021-0033

Annual Fees Payable to the Commission by an Electric Utility

(1) By September 1, 1998, the Commission must determine the following for each electric utility:

(a) The gross revenue fees per kilowatt-hour delivered to retail electric customers paid by the utility in 1997 relative to the gross revenue fees per kilowatt-hour paid by all electric utilities; and

(b) The average gross revenue for each retail customer class designation, calculated using 1997 loads and revenues and expressed on a per kilowatt-hour basis.

(2) By February 1 of each year, each electric utility must provide the Commission with the amount of kilowatt-hours delivered during the prior calendar year to each retail customer class designation.

(3) By March 1 of each year, the Commission must determine the average rate per kilowatt-hour to be charged each electric utility. The determination must maintain the same approximate fee relationships established in section (1)(a) of this rule between each electric utility. The average annu-

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al fee paid by each electric utility must not exceed eighteen-hundredths of one mill per kilowatt-hour applied to kilowatt-hours delivered to retail electric customers in the preceding calendar year.

(4) On statement forms prescribed by the Commission, each electric utility provide the requested information for the subject year.

(5) Each electric utility must pay to the Commission an annual fee determined by orders entered on or after March 1 of each year. Each utility must pay the annual fee on or before the date specified in a notice, which date must be at least 15 days after the mailing of the notice.

(6) Each electric utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (4) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(7) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(8) For any year in which an electric utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject kilowatt hours delivered, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(9) Rate filings made by an electric utility pursuant to ORS 757.210 must allocate the utility's total annual fees so that fees collected among different retail customer classes bear the same approximate relationship as the information developed by the Commission pursuant to section (1)(b) of this rule.

Stat. Auth.: ORS 183 & 756
Stats. Implemented: ORS 756.310, 756.320 & 756.350
Hist.: PUC 14-1998, f. & cert. ef. 7-15-98; PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; Renumbered from 860-011-0022, PUC 18-2004, f. & cert. ef. 12-30-04

860-021-0034

Annual Fees Payable to the Commission by Gas Utility or Steam Heat Utility

(1) On statement forms prescribed by the Commission, each gas utility and steam heat utility must provide the requested information for the subject year.

(2) Each gas utility and steam heat utility must pay to the Commission an annual fee on gross operating revenues derived within Oregon at a rate determined by Commission orders entered on or after March 1 of each year.

(3) Each gas utility and steam heat utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(4) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal

check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(5) For any year in which a gas utility or steam heat utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.310, 756.320 & 756.350
Hist.: PUC 11-1999, f. & cert. ef. 11-18-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-021-0036

Annual Fees Payable to the Commission by a Large Telecommunications Utility

(1) On statement forms prescribed by the Commission, each large telecommunications utility must provide the requested information for the subject year.

(2) Each large telecommunications utility must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each large telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the utility throughout Oregon, and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and:

(a) If the utility does not separately charge the customer an additional amount for the apportioned annual fee, then the utility may comply with section (4) of this rule by merely describing the apportioned amount of the charge on the retail customer's bill.

(b) If the utility separately charges the customer an additional amount for the apportioned annual fee, then the utility must comply with ORS 756.310(6)(c).

(6) For any year in which a large telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(7) Each large telecommunications utility must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

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(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request.

(8) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-021-0037

Estimated Annual Fees Payable to the Commission

(1) For any year in which an energy or large telecommunications utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission must provide written notice of the proposed annual fee to the energy or large telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the energy or large telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the energy or large telecommunications utility has not filed a petition by the end of the 30-day period, the Commission will enter an order based upon information in its files. The Commission's order is final upon service, and the ordered assessment is due and payable on the tenth day after the order becomes final.

(5) During the 30-day period allowed for filing a petition, the energy or large telecommunications utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-022-0005

Tariff Specifications for Energy Utilities and Large Telecommunications Utilities

(1) Form and style of tariffs:

(a) All tariffs must be in loose-leaf form so changes can be made by reprinting and inserting a single leaf;

(b) Each energy or large telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used; and

(d) Separate tariffs must be filed for electric, telecommunications, telegraph, gas, heat, or for any other service entered.

(2) Size of tariffs and copies required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Energy and large telecommunication utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The utility must supplement the filing with an exact copy of the tariff in electronic form as required in OAR 860-013-0036. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.205

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 15-1987, f. & cert. ef. 12-3-87 (Order No. 87-1185); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-022-0015

Tariff Changes by Energy Utilities and Large Telecommunications Utilities Require 30 Days' Notice to the Commission

Except as hereinafter provided in this Division, energy utilities and large telecommunications utilities must file with the Commission all tariffs, rate schedules, or supplements thereto containing any change in rates, tolls, charges, rules, or regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this Division.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.007, 757.220 & 759.190

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-022-0020

Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice

An energy or large telecommunications utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.

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

Stat. Auth.: ORS 183, 756 & 757, 759

Stats. Implemented: ORS 757.220, 759.190

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-022-0038

Notice to Interested Persons of Tariffs Filed Under ORS 757.205 or 759.175

(1) This rule applies to any tariff filed by an energy utility under ORS 757.205 or by a telecommunications utility under ORS 759.175.

(2) Any person who requests of the Commission, in writing, to be notified of utility tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OARs 860-022-0025 through 860-022-0035.

(4) The Commission may periodically delete persons' names from the notice list who do not demonstrate a continued interest in receiving the notices in section (2) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

(5) The notice must include the following information:

(a) Name of the filing utility;

(b) Subject;

(c) Advice number;

(d) Filing date;

(e) Effective date;

(f) Date of the public meeting when the tariff will be considered (when the information is available);

(g) Customer classes affected, if readily ascertainable from the utility's advice letter; and

(h) Whether the tariff schedule is primarily related to price competition or a service alternative, if readily ascertainable from the utility's advice letter.

Stat. Auth.: ORS 183, 756 & 757, 759

Stats. Implemented: ORS 757.205, 757.230, 759.175 & 759.210

Hist.: PUC 16-1988, f. & cert. ef. 10-21-88 (Order No. 88-1216); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-032-0095

Annual Fees Payable to the Commission by a Competitive Provider

(1) On statement forms prescribed by the Commission, each competitive provider must provide the requested information for the subject year.

(2) Each competitive provider must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the competitive provider's statement form,

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completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the competitive provider.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each competitive provider must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the competitive provider through Oregon, and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) Each competitive provider must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request. A competitive provider must keep all records supporting each statement form for three (3) years, or until a Commission review or audit is complete, whichever is later.

(6) For any year in which a competitive provider's statement form was due, the Commission may audit the competitive provider as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(b) If the Commission determines that the competitive provider has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the competitive provider has overpaid its annual fee, the Commission may, at its discretion, recompense the competitive provider with a refund or a credit against annual fees subsequently due.

(7) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

(8) A cooperative that is a competitive provider must pay an annual fee only on the gross retail intrastate revenue from telecommunications services that are provided under the cooperative's ORS 759.020 certificate of authority. A cooperative should not pay an annual fee on revenue from telecommunications services that are provided under the cooperative's ORS 759.025 certificate of authority.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & ORS 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-032-0097

Estimated Annual Fees Payable to the Commission

(1) For any year in which a competitive provider fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(2) The Commission must provide written notice of the proposed annual fee to the competitive provider.

(3) Within 30 days after service of the notice of proposed annual fee, the competitive provider may file a petition with the Commission for a hearing. In its petition, the competitive provider must specify its reasons for

disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the competitive provider has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the competitive provider may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-032-0610

General Provisions

(1) For the purpose of these rules, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(2) For the purpose of OARs 860-032-0610 through 860-032-0660, the quarterly revenue worksheet identified as "OPUC OUS 2" is known as the "contribution report."

(3) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.

(4) The Commission may add all costs incurred in collecting a past-due "Oregon universal service" (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.

(5) A telecommunications provider must pay a service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(6) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file its contribution report or its failure to pay its contribution amount in full.

(7) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider has overpaid its OUS contribution amount, the Commission will provide the telecommunications provider a credit in that amount against sums subsequently due from the telecommunications provider.

(8) In computing any time prescribed or allowed by these rules, the day of the act or event from which the designated time begins to run may not be included. The last day of the time period must be included, unless it is a Saturday or legal holiday, including Sunday, in which event the 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 187.020.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-033-0006

Monthly and Quarterly RSPF Surcharge Remittance Reports and Fees

(1) Each telecommunications provider must submit the RSPF remittance report and surcharge fees each billing period. The remittance report and surcharge fees are due on the 21st calendar day after the close of each monthly or quarterly billing period. The telecommunications provider must send the remittance report and surcharge fees to the RSPF manager at the Commission.

(a) Each telecommunications provider who has 1,000 or more customers must collect and submit the RSPF surcharge fee and remittance report monthly.

(b) Each telecommunications provider who has fewer than 1,000 customers must collect the RSPF surcharge fee and submit the remittance report either monthly or quarterly at the telecommunication provider's discretion.

(2) Each telecommunications provider must submit the remittance report and surcharge fee with no exceptions. If the surcharge collected is \$0.00, the telecommunications provider must still submit a monthly or quarterly remittance report, at the telecommunication provider's discretion.

(3) To cover administrative costs, for each billing period that a telecommunications provider fails to submit the surcharge fees in full on or before the day it is due as required by these rules, the telecommunications provider must pay a late payment fee in accordance with OAR 860-011-

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0080. The Commission may not impose a late payment fee until the surcharge fees are five business days past due.

(4) If a telecommunications provider fails to file a remittance report as required by these rules, the telecommunications provider must pay a late report fee in accordance with OAR 860-011-0080. The Commission may not impose a late report fee until the remittance report is five business days past due.

(5) If the telecommunications provider fails to submit the surcharge fee in full on or before it is due, the Commission will add interest in accordance with OAR 860-011-0080.

(6) If the amount shown due on a remittance report is not paid by the due date, the Commission may issue a proposed order to set the sum due. The Commission may waive late payment fees and interest if the evidence shows that the telecommunications provider submitted the surcharge fees late due to circumstances beyond its control.

(7) The telecommunications provider must pay a service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0095

Annual Fees Payable to the Commission by a Small Telecommunications Utility

(1) On statement forms prescribed by the Commission, each small telecommunications utility must provide the requested information for the subject year.

(2) Each small telecommunications utility must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each small telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the utility throughout Oregon; and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) Each small telecommunications utility must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request.

(6) For any year in which a small telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(7) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0097

Estimated Annual Fees Payable to the Commission

(1) For any year in which a small telecommunications utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission must provide written notice of the proposed annual fee to the small telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the small telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the small telecommunications utility does not file a petition within the 30-day period, the proposed annual fee is and payable.

(5) During the 30-day period allowed for filing a petition, the small telecommunications utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0300

Tariffs of Small Telecommunications Utilities

(1) Small telecommunications utilities not subject to ORS 759.175 must, upon the Commission's request, provide copies of any schedules showing rates, tolls, and charges, including all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(2) Small telecommunications utilities subject to ORS 759.175 must file tariffs in accordance with the following provisions:

(a) Form and style of tariffs:

(A) All tariffs must be in loose-leaf form so changes can be made by reprinting and inserting a single leaf;

(B) Each small telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and thereafter designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(C) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished upon request;

(b) Size of tariffs and required:

(A) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(B) Small telecommunications utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The utility must supplement the filing with an exact copy of the tariff in electronic form as required in OAR 860-013-0036. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

(c) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply;

(d) The small telecommunications utility's rules and regulations that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given must be included with each tariff;

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(e) Changes in tariffs may be made by filing an entirely new tariff or by filing revised sheets which must refer to the tariffs on file. Additions to the tariff on file may be made by filing additional sheets;

(f) Each small telecommunications utility filing tariffs or schedules changing existing tariffs or schedules must submit in the advice letter or other document the following information:

(A) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(B) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(C) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change;

(g) All tariff changes must be made applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of toll calls connected, basic service provided, or likewise as the context requires;

(h) Small telecommunications utilities entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control to the extent not exempted under ORS 759.040; and

(i) All special agreements designating service to be furnished at rates other than those shown in tariffs now on file in the Commission's office are rate schedules. A true and certified copy must be filed pursuant to requirements of this Division.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.045 & 759.175
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0320

Notice to Interested Persons of Tariffs Filed Under ORS 759.175 by Small Telecommunications Utilities

(1) This rule applies to any tariff filed under ORS 759.175.

(2) Any person who requests of the Commission, in writing, to be notified of a small telecommunications utility's tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OAR 860-034-0300.

(4) The Commission may periodically delete names of persons from the notice list who do not demonstrate a continued interest in receiving the notices set forth in section (2) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

(5) The notice must include the following information:

(a) Name of the filing small telecommunications utility;

(b) Subject;

(c) Advice number;

(d) Filing date;

(e) Effective date;

(f) Customer classes affected, if readily ascertainable from the small telecommunications utility's advice letter; and

(g) Whether the tariff schedule is primarily related to price competition or a service alternative, if readily ascertainable from the small telecommunications utility's advice letter.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 759.045
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0440

Applicability and Formal Requirements for Small Telecommunications Utilities and Telecommunications Cooperatives

(1) The rules contained in this division are auxiliary to and supplemental to the rules contained in divisions 011 through 014 of this chapter, Practice and Procedure, and all applications or petitions for approval of contracts or amendments thereto, allocations of territory, assignment or transfer of rights acquired pursuant to an allocation of territory, and all other pleadings filed with the Commission pursuant to ORS 759.500 to 759.595 inclusive, are governed by the rules in divisions 011 through 014 of this chapter, Practice and Procedure, except as provided in sections (2) and (3) of this rule.

(2) All applications and petitions must contain the full and correct name and business address of the applicant or petitioner.

(3) An original and three conformed of all applications and petitions, as well as supplemental electronic copies, must be filed with the Commission.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 759.045 & ORS 759.500 - 759.675
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 13-2002, f. & cert. ef. 3-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-034-0600

Definitions for Depreciation Guidelines for Small Telecommunications Utilities and Type 2 Cooperatives

As used in OARs 860-034-0600 through 860-034-0670:

(1) "Exception" means a rate for the depreciation of an investment made by a small telecommunications utility or Type 2 cooperative that exceeds the guideline rate. "Exception" also includes a rate for amortization of retired investment if the rate of amortization exceeds the otherwise applicable guideline rate for depreciation of that investment.

(2) "File" means compliance with Commission rules.

(3) "Guidelines" means the standards used by this Commission to determine rates for the depreciation of investment made by a small telecommunications utility or Type 2 cooperative to provide a through service.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.135, 759.220 & 759.225
Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0095

Annual Fees Payable to the Commission by a Water Utility

(1) On statement forms prescribed by the Commission, each water utility must provide the requested information for the subject year.

(2) Each water utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) For any year in which a water utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 56.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756
Stats. Implemented: ORS 756.310, 756.320 & 756.350
Hist.: PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0097

Estimated Annual Fees Payable to the Commission by a Water Utility

(1) For any year in which a wastewater utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

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(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission will provide written notice of the proposed annual fee to the wastewater utility.

(3) Within 30 days after service of the notice of proposed annual fee, the wastewater utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the wastewater utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the wastewater utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0605

Tariff Specifications

(1) Form and style of tariffs:

(a) All tariffs must be in loose-leaf form so that changes can be made by reprinting and inserting a single leaf;

(b) Each wastewater utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished by the Commission upon request; and

(d) Separate tariffs must be filed for wastewater service or for any other service entered.

(2) Size of tariffs and required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Wastewater utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.205

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0615

Tariff Changes Require 30 Days' Notice to the Commission

(1) This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061.

(2) Except as hereinafter provided in this Division, a water utility must file with the Commission all tariffs, rate schedules, revisions, or supplements thereto containing any change in rates, charges, or rules and regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this Division.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.007 & 757.220

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0625

Applications to Make Tariffs or Rate Schedules Effective on Less than Statutory Notice

A water utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.220

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0645

Notice to Interested Persons of Tariffs Filed Under ORS 757.205

(1) This rule applies to rate-regulated water utilities as defined in ORS 757.005 and ORS 757.061.

(2) This rule applies to any tariff filing that is filed under ORS 757.205.

(3) Any person who requests of the Commission, in writing, to be notified of the water utility tariff filings covered under section (2) of this rule must be included on a notice list.

(4) The Commission must notify all persons on the notice list referred to in section (3) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (2) of this rule that complies with OAR 860-036-0605 through 860-036-0635.

(5) The notice must include the following information:

(a) Name of the filing water utility;

(b) Subject;

(c) Filing date;

(d) Effective date;

(e) Date of the Commission's public meeting when the tariff will be considered; and

(f) Customer classes affected.

(6) The Commission may periodically delete names of persons from the notice list who do not demonstrate a continued interest in receiving the notices set forth in section (3) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.230

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0095

Annual Fees Payable to the Commission by a Wastewater Utility

(1) On statement forms prescribed by the Commission, each wastewater utility must provide the requested information for the subject year.

(2) Each wastewater utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) For any year in which a wastewater utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 14-2000, f. & cert. ef. 8-23-00; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0097

Estimated Annual Fees Payable to the Commission by a Wastewater Utility

(1) For any year in which a wastewater utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

ADMINISTRATIVE RULES

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission will provide written notice of the proposed annual fee to the wastewater utility.

(3) Within 30 days after service of the notice of proposed annual fee, the wastewater utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the wastewater utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the wastewater utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0410

Tariff Specifications

(1) Form and style of tariffs:

(a) All tariffs must be in loose-leaf form so that changes can be made by reprinting and inserting a single leaf;

(b) Each wastewater utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished by the Commission upon request; and

(d) Separate tariffs must be filed for wastewater service or for any other service entered.

(2) Size of tariffs and required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Wastewater utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0420

Tariff Changes Require 30 Days' Notice to the Commission

Except as hereinafter provided in this Division, a wastewater utility must file with the Commission all tariffs, rate schedules, revisions, or supplements thereto containing any change in rates, tolls, charges, or rules and regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this Division.

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

Stats. Implemented: ORS 756.040, 757.005, 757.007, 757.061 & ORS 757.220

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0430

Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice

A wastewater utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.220

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-037-0450

Notice to Interested Persons

(1) This rule applies to any tariff filing that is filed under ORS 757.205.

(2) Any person who requests of the Commission, in writing, to be notified of wastewater utility tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OAR 860-037-0410 through 860-037-0440.

(4) The notice must include the following information:

(a) Name of the wastewater utility submitting the filing;

(b) Subject;

(c) Filing date;

(d) Effective date;

(e) Date of the public meeting the tariff will be considered (when the information is available); and

(f) Customer classes affected.

(5) The Commission may periodically delete from the notice list names of persons who do not demonstrate a continued interest in receiving the notices set forth in section (2) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.230

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

OAR REVISION CUMULATIVE INDEX

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125-055-0005	12-28-04	Amend(T)	2-1-05	125-246-0500	3-1-05	Adopt	1-1-05
125-055-0010	12-28-04	Amend(T)	2-1-05	125-246-0550	3-1-05	Adopt	1-1-05
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125-145-0105	12-1-04	Adopt(T)	1-1-05	125-246-0800	3-1-05	Adopt	1-1-05
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125-246-0100	3-1-05	Adopt	1-1-05	125-247-0010	3-1-05	Adopt	1-1-05
125-246-0110	3-1-05	Adopt	1-1-05	125-247-0100	3-1-05	Adopt	1-1-05
125-246-0120	3-1-05	Adopt	1-1-05	125-247-0165	3-1-05	Adopt	1-1-05
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125-246-0150	3-1-05	Adopt	1-1-05	125-247-0255	3-1-05	Adopt	1-1-05
125-246-0170	3-1-05	Adopt	1-1-05	125-247-0256	3-1-05	Adopt	1-1-05
125-246-0200	3-1-05	Adopt	1-1-05	125-247-0260	3-1-05	Adopt	1-1-05
125-246-0210	3-1-05	Adopt	1-1-05	125-247-0261	3-1-05	Adopt	1-1-05
125-246-0220	3-1-05	Adopt	1-1-05	125-247-0265	3-1-05	Adopt	1-1-05
125-246-0300	3-1-05	Adopt	1-1-05	125-247-0270	3-1-05	Adopt	1-1-05
125-246-0310	3-1-05	Adopt	1-1-05	125-247-0275	3-1-05	Adopt	1-1-05
125-246-0320	3-1-05	Adopt	1-1-05	125-247-0280	3-1-05	Adopt	1-1-05
125-246-0321	3-1-05	Adopt	1-1-05	125-247-0285	3-1-05	Adopt	1-1-05
125-246-0322	3-1-05	Adopt	1-1-05	125-247-0286	3-1-05	Adopt	1-1-05
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125-246-0335	3-1-05	Adopt	1-1-05	125-247-0300	3-1-05	Adopt	1-1-05
125-246-0345	3-1-05	Adopt	1-1-05	125-247-0305	3-1-05	Adopt	1-1-05
125-246-0350	3-1-05	Adopt	1-1-05	125-247-0310	3-1-05	Adopt	1-1-05
125-246-0351	3-1-05	Adopt	1-1-05	125-247-0320	3-1-05	Adopt	1-1-05
125-246-0352	3-1-05	Adopt	1-1-05	125-247-0330	3-1-05	Adopt	1-1-05
125-246-0353	3-1-05	Adopt	1-1-05	125-247-0400	3-1-05	Adopt	1-1-05
125-246-0355	3-1-05	Adopt	1-1-05	125-247-0410	3-1-05	Adopt	1-1-05
125-246-0360	3-1-05	Adopt	1-1-05	125-247-0420	3-1-05	Adopt	1-1-05
125-246-0400	3-1-05	Adopt	1-1-05	125-247-0430	3-1-05	Adopt	1-1-05
125-246-0410	3-1-05	Adopt	1-1-05	125-247-0440	3-1-05	Adopt	1-1-05
125-246-0420	3-1-05	Adopt	1-1-05	125-247-0450	3-1-05	Adopt	1-1-05
125-246-0430	3-1-05	Adopt	1-1-05	125-247-0460	3-1-05	Adopt	1-1-05
125-246-0440	3-1-05	Adopt	1-1-05	125-247-0470	3-1-05	Adopt	1-1-05
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125-246-0460	3-1-05	Adopt	1-1-05	125-247-0490	3-1-05	Adopt	1-1-05
125-246-0470	3-1-05	Adopt	1-1-05	125-247-0500	3-1-05	Adopt	1-1-05

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
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125-247-0550	3-1-05	Adopt	1-1-05	125-249-0350	3-1-05	Adopt	1-1-05
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125-247-0650	3-1-05	Adopt	1-1-05	125-249-0420	3-1-05	Adopt	1-1-05
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125-247-0670	3-1-05	Adopt	1-1-05	125-249-0440	3-1-05	Adopt	1-1-05
125-247-0700	3-1-05	Adopt	1-1-05	125-249-0450	3-1-05	Adopt	1-1-05
125-247-0710	3-1-05	Adopt	1-1-05	125-249-0460	3-1-05	Adopt	1-1-05
125-247-0720	3-1-05	Adopt	1-1-05	125-249-0470	3-1-05	Adopt	1-1-05
125-247-0730	3-1-05	Adopt	1-1-05	125-249-0490	3-1-05	Adopt	1-1-05
125-247-0740	3-1-05	Adopt	1-1-05	125-249-0600	3-1-05	Adopt	1-1-05
125-247-0750	3-1-05	Adopt	1-1-05	125-249-0610	3-1-05	Adopt	1-1-05
125-247-0760	3-1-05	Adopt	1-1-05	125-249-0620	3-1-05	Adopt	1-1-05
125-247-0770	3-1-05	Adopt	1-1-05	125-249-0630	3-1-05	Adopt	1-1-05
125-247-0800	3-1-05	Adopt	1-1-05	125-249-0640	3-1-05	Adopt	1-1-05
125-248-0100	3-1-05	Adopt	1-1-05	125-249-0650	3-1-05	Adopt	1-1-05
125-248-0110	3-1-05	Adopt	1-1-05	125-249-0660	3-1-05	Adopt	1-1-05
125-248-0120	3-1-05	Adopt	1-1-05	125-249-0670	3-1-05	Adopt	1-1-05
125-248-0130	3-1-05	Adopt	1-1-05	125-249-0680	3-1-05	Adopt	1-1-05
125-248-0200	3-1-05	Adopt	1-1-05	125-249-0690	3-1-05	Adopt	1-1-05
125-248-0210	3-1-05	Adopt	1-1-05	125-249-0800	3-1-05	Adopt	1-1-05
125-248-0220	3-1-05	Adopt	1-1-05	125-249-0810	3-1-05	Adopt	1-1-05
125-248-0230	3-1-05	Adopt	1-1-05	125-249-0820	3-1-05	Adopt	1-1-05
125-248-0240	3-1-05	Adopt	1-1-05	125-249-0830	3-1-05	Adopt	1-1-05
125-248-0250	3-1-05	Adopt	1-1-05	125-249-0840	3-1-05	Adopt	1-1-05
125-248-0260	3-1-05	Adopt	1-1-05	125-249-0850	3-1-05	Adopt	1-1-05
125-248-0300	3-1-05	Adopt	1-1-05	125-249-0860	3-1-05	Adopt	1-1-05
125-248-0310	3-1-05	Adopt	1-1-05	125-249-0870	3-1-05	Adopt	1-1-05
125-248-0330	3-1-05	Adopt	1-1-05	125-249-0880	3-1-05	Adopt	1-1-05
125-248-0340	3-1-05	Adopt	1-1-05	125-249-0890	3-1-05	Adopt	1-1-05
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125-249-0150	3-1-05	Adopt	1-1-05	137-055-2165	1-3-05	Adopt	2-1-05
125-249-0160	3-1-05	Adopt	1-1-05	137-055-3430	1-3-05	Amend	2-1-05
125-249-0200	3-1-05	Adopt	1-1-05	137-055-4130	1-3-05	Amend	2-1-05
125-249-0210	3-1-05	Adopt	1-1-05	137-055-5020	1-3-05	Amend	2-1-05
125-249-0220	3-1-05	Adopt	1-1-05	137-055-6210	1-3-05	Amend	2-1-05
125-249-0230	3-1-05	Adopt	1-1-05	137-055-6220	1-3-05	Amend	2-1-05
125-249-0240	3-1-05	Adopt	1-1-05	137-055-6240	1-3-05	Amend	2-1-05
125-249-0250	3-1-05	Adopt	1-1-05	137-076-0010	11-22-04	Amend	1-1-05
125-249-0260	3-1-05	Adopt	1-1-05	137-076-0016	11-22-04	Adopt	1-1-05
125-249-0270	3-1-05	Adopt	1-1-05	137-076-0018	11-22-04	Adopt	1-1-05
125-249-0280	3-1-05	Adopt	1-1-05	137-076-0020	11-22-04	Amend	1-1-05
125-249-0290	3-1-05	Adopt	1-1-05	137-076-0025	11-22-04	Amend	1-1-05
125-249-0300	3-1-05	Adopt	1-1-05	137-084-0001	11-22-04	Amend	1-1-05
125-249-0310	3-1-05	Adopt	1-1-05	137-086-0000	11-22-04	Adopt	1-1-05
125-249-0320	3-1-05	Adopt	1-1-05	137-086-0010	11-22-04	Adopt	1-1-05
125-249-0330	3-1-05	Adopt	1-1-05	137-086-0020	11-22-04	Adopt	1-1-05

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137-086-0030	11-22-04	Adopt	1-1-05	150-OL 1997, Ch. 835, Sec. 38	12-31-04	Am. & Ren.	2-1-05
137-086-0040	11-22-04	Adopt	1-1-05	150-OL 1997, Ch. 835, Sec. 39	12-31-04	Am. & Ren.	2-1-05
137-086-0050	11-22-04	Adopt	1-1-05	161-002-0000	1-12-05	Amend	2-1-05
150-23.186	12-31-04	Am. & Ren.	2-1-05	161-025-0060	1-12-05	Amend	2-1-05
150-23.186-(A)	12-31-04	Am. & Ren.	2-1-05	170-060-1010	11-18-04	Amend	1-1-05
150-285B.713	12-31-04	Am. & Ren.	2-1-05	177-050-0027	11-29-04	Amend(T)	1-1-05
150-285B.719(8)	12-31-04	Am. & Ren.	2-1-05	250-025-0020	12-7-04	Amend(T)	1-1-05
150-285B.722	12-31-04	Repeal	2-1-05	250-025-0020(T)	12-7-04	Suspend	1-1-05
150-285B.728	12-31-04	Repeal	2-1-05	291-082-0010	1-7-05	Amend(T)	2-1-05
150-285C.170	12-31-04	Adopt	2-1-05	291-082-0020	1-7-05	Amend(T)	2-1-05
150-29.375(2)(c)	12-31-04	Am. & Ren.	2-1-05	291-082-0030	1-7-05	Amend(T)	2-1-05
150-293.525(1)(b)	12-31-04	Adopt	2-1-05	291-082-0031	1-7-05	Adopt(T)	2-1-05
150-305.220(1)	12-31-04	Amend	2-1-05	291-082-0032	1-7-05	Adopt(T)	2-1-05
150-305.220(2)	12-31-04	Amend	2-1-05	291-082-0033	1-7-05	Adopt(T)	2-1-05
150-307.262(2)	12-31-04	Adopt	2-1-05	291-131-0015	12-28-04	Amend(T)	2-1-05
150-308.010-(A)	12-31-04	Am. & Ren.	2-1-05	309-032-1240	1-3-05	Adopt(T)	2-1-05
150-308.010-(B)	12-31-04	Repeal	2-1-05	309-032-1245	1-3-05	Adopt(T)	2-1-05
150-308.010-(C)	12-31-04	Repeal	2-1-05	309-032-1250	1-3-05	Adopt(T)	2-1-05
150-308.205-(A)	12-31-04	Amend	2-1-05	309-032-1255	1-3-05	Adopt(T)	2-1-05
150-308.205-(D)	12-31-04	Amend	2-1-05	309-032-1260	1-3-05	Adopt(T)	2-1-05
150-308A.718	12-31-04	Amend	2-1-05	309-032-1265	1-3-05	Adopt(T)	2-1-05
150-309.024	12-31-04	Amend	2-1-05	309-032-1270	1-3-05	Adopt(T)	2-1-05
150-309.100(2)-(B)	12-31-04	Amend	2-1-05	309-032-1275	1-3-05	Adopt(T)	2-1-05
150-309.100(3)-(B)	12-31-04	Amend	2-1-05	309-032-1280	1-3-05	Adopt(T)	2-1-05
150-309.100(5)	12-31-04	Adopt	2-1-05	309-032-1285	1-3-05	Adopt(T)	2-1-05
150-309.110(1)	12-31-04	Amend	2-1-05	309-032-1290	1-3-05	Adopt(T)	2-1-05
150-309.110(1)-(A)	12-31-04	Amend	2-1-05	309-032-1295	1-3-05	Adopt(T)	2-1-05
150-311.688	12-31-04	Adopt	2-1-05	309-032-1300	1-3-05	Adopt(T)	2-1-05
150-311.690(4)	12-31-04	Amend	2-1-05	309-032-1305	1-3-05	Adopt(T)	2-1-05
150-311.723	12-31-04	Repeal	2-1-05	309-046-0100	1-1-05	Am. & Ren.	1-1-05
150-311.806-(A)	12-31-04	Amend	2-1-05	309-046-0110	1-1-05	Am. & Ren.	1-1-05
150-314.363-(A)	12-31-04	Repeal	2-1-05	309-046-0120	1-1-05	Am. & Ren.	1-1-05
150-314.363-(B)	12-31-04	Repeal	2-1-05	309-046-0130	1-1-05	Am. & Ren.	1-1-05
150-314.363-(C)	12-31-04	Repeal	2-1-05	309-046-0140	1-1-05	Am. & Ren.	1-1-05
150-314.415(6)	12-31-04	Amend	2-1-05	309-046-0150	1-1-05	Am. & Ren.	1-1-05
150-314.650	12-31-04	Amend	2-1-05	309-046-0160	1-1-05	Am. & Ren.	1-1-05
150-314.665(2)-(A)	12-31-04	Amend	2-1-05	309-046-0170	1-1-05	Am. & Ren.	1-1-05
150-314.670-(A)	12-31-04	Adopt	2-1-05	309-046-0180	1-1-05	Am. & Ren.	1-1-05
150-314.748(2)	12-31-04	Repeal	2-1-05	309-046-0190	1-1-05	Am. & Ren.	1-1-05
150-315.262	12-31-04	Amend	2-1-05	309-046-0200	1-1-05	Am. & Ren.	1-1-05
150-315.304(2)	12-31-04	Amend	2-1-05	309-046-0210	1-1-05	Am. & Ren.	1-1-05
150-316.014	12-31-04	Amend	2-1-05	309-046-0220	1-1-05	Am. & Ren.	1-1-05
150-316.587(1)	12-31-04	Amend	2-1-05	309-046-0230	1-1-05	Repeal	1-1-05
150-316.587(5)(b)	12-31-04	Amend	2-1-05	309-046-0240	1-1-05	Am. & Ren.	1-1-05
150-316.587(5)(c)	12-31-04	Amend	2-1-05	330-100-0000	12-20-04	Amend	2-1-05
150-317.715(3)(b)	12-31-04	Amend	2-1-05	330-100-0005	12-20-04	Amend	2-1-05
150-321.207(1)	12-31-04	Amend	2-1-05	330-105-0005	12-20-04	Amend	2-1-05
150-321.307(4)	12-31-04	Amend	2-1-05	330-105-0007	12-20-04	Amend	2-1-05
150-321.348(2)	12-31-04	Adopt	2-1-05	330-105-0008	12-20-04	Amend	2-1-05
150-321.358(2)	12-31-04	Am. & Ren.	2-1-05	330-105-0015	12-20-04	Amend	2-1-05
150-321.485(3)	12-31-04	Am. & Ren.	2-1-05	330-105-0020	12-20-04	Amend	2-1-05
150-321.741(2)	12-31-04	Adopt	2-1-05	330-105-0025	12-20-04	Amend	2-1-05
150-321.751(3)	12-31-04	Adopt	2-1-05	330-105-0030	12-20-04	Amend	2-1-05
150-321.754(3)	12-31-04	Adopt	2-1-05	330-105-0035	12-20-04	Amend	2-1-05
150-321.805	12-31-04	Am. & Ren.	2-1-05				
150-321.805(4)	12-31-04	Adopt	2-1-05				

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330-105-0045	12-20-04	Amend	2-1-05	333-100-0005(T)	12-1-04	Repeal	1-1-05
330-110-0005	12-20-04	Amend	2-1-05	333-100-0057	12-1-04	Adopt	1-1-05
330-110-0010	12-20-04	Amend	2-1-05	333-100-0057(T)	12-1-04	Repeal	1-1-05
330-110-0015	12-20-04	Amend	2-1-05	333-100-0060	12-1-04	Amend	1-1-05
330-110-0016	12-20-04	Amend	2-1-05	333-100-0060(T)	12-1-04	Repeal	1-1-05
330-110-0020	12-20-04	Amend	2-1-05	333-100-0065	12-1-04	Amend	1-1-05
330-110-0025	12-20-04	Amend	2-1-05	333-100-0065(T)	12-1-04	Repeal	1-1-05
330-110-0030	12-20-04	Amend	2-1-05	333-100-0070	12-1-04	Amend	1-1-05
330-110-0035	12-20-04	Amend	2-1-05	333-100-0070(T)	12-1-04	Repeal	1-1-05
330-110-0036	12-20-04	Amend	2-1-05	333-100-0080	12-1-04	Adopt	1-1-05
330-110-0040	12-20-04	Amend	2-1-05	333-100-0080(T)	12-1-04	Repeal	1-1-05
330-110-0042	12-20-04	Amend	2-1-05	333-101-0001	12-1-04	Amend	1-1-05
330-110-0045	12-20-04	Amend	2-1-05	333-101-0001(T)	12-1-04	Repeal	1-1-05
330-110-0050	12-20-04	Amend	2-1-05	333-101-0003	12-1-04	Adopt	1-1-05
330-110-0055	12-20-04	Amend	2-1-05	333-101-0003(T)	12-1-04	Repeal	1-1-05
333-008-0020	1-1-05	Amend	2-1-05	333-101-0010	12-1-04	Amend	1-1-05
333-024-0210	12-7-04	Amend	1-1-05	333-101-0010(T)	12-1-04	Repeal	1-1-05
333-024-0210(T)	12-7-04	Repeal	1-1-05	333-102-0001	12-1-04	Amend	1-1-05
333-024-0215	12-7-04	Amend	1-1-05	333-102-0001(T)	12-1-04	Repeal	1-1-05
333-024-0215(T)	12-7-04	Repeal	1-1-05	333-102-0005	12-1-04	Amend	1-1-05
333-024-0220	12-7-04	Amend	1-1-05	333-102-0005(T)	12-1-04	Repeal	1-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-102-0010	12-1-04	Amend	1-1-05
333-024-0225	12-7-04	Amend	1-1-05	333-102-0010(T)	12-1-04	Repeal	1-1-05
333-024-0225(T)	12-7-04	Repeal	1-1-05	333-102-0015	12-1-04	Amend	1-1-05
333-024-0230	12-7-04	Amend	1-1-05	333-102-0015(T)	12-1-04	Repeal	1-1-05
333-024-0230(T)	12-7-04	Repeal	1-1-05	333-102-0020	12-1-04	Amend	1-1-05
333-024-0231	12-7-04	Amend	1-1-05	333-102-0020(T)	12-1-04	Repeal	1-1-05
333-024-0231(T)	12-7-04	Repeal	1-1-05	333-102-0025	12-1-04	Amend	1-1-05
333-024-0232	12-7-04	Amend	1-1-05	333-102-0025(T)	12-1-04	Repeal	1-1-05
333-024-0232(T)	12-7-04	Repeal	1-1-05	333-102-0030	12-1-04	Amend	1-1-05
333-024-0235	12-7-04	Amend	1-1-05	333-102-0030(T)	12-1-04	Repeal	1-1-05
333-024-0235(T)	12-7-04	Repeal	1-1-05	333-102-0035	12-1-04	Amend	1-1-05
333-024-0240	12-7-04	Amend	1-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-024-0240(T)	12-7-04	Repeal	1-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-024-0241	12-7-04	Adopt	1-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
333-024-0241(T)	12-7-04	Repeal	1-1-05	333-102-0075	12-1-04	Amend	1-1-05
333-029-0015	1-14-05	Amend	2-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-029-0050	1-14-05	Amend	2-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-029-0075	1-14-05	Amend	2-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-030-0015	1-14-05	Amend	2-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-030-0040	1-14-05	Amend	2-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-030-0045	1-14-05	Amend	2-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-030-0050	1-14-05	Amend	2-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-030-0080	1-14-05	Amend	2-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-030-0085	1-14-05	Amend	2-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-030-0120	1-14-05	Amend	2-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-031-0002	1-14-05	Amend	2-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-031-0004	1-14-05	Amend	2-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-031-0006	1-14-05	Amend	2-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-031-0010	1-14-05	Amend	2-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-031-0012	1-14-05	Amend	2-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-031-0018	1-14-05	Amend	2-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-031-0066	1-14-05	Amend	2-1-05	333-102-0135(T)	12-1-04	Repeal	1-1-05
333-100-0001	12-1-04	Amend	1-1-05	333-102-0190	12-1-04	Adopt	1-1-05
333-100-0001(T)	12-1-04	Repeal	1-1-05	333-102-0190(T)	12-1-04	Repeal	1-1-05

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333-102-0200(T)	12-1-04	Repeal	1-1-05	333-103-0015(T)	12-1-04	Repeal	1-1-05
333-102-0203	12-1-04	Amend	1-1-05	333-105-0001	12-1-04	Amend	1-1-05
333-102-0203(T)	12-1-04	Repeal	1-1-05	333-105-0001(T)	12-1-04	Repeal	1-1-05
333-102-0225	12-1-04	Repeal	1-1-05	333-105-0003	12-1-04	Adopt	1-1-05
333-102-0235	12-1-04	Amend	1-1-05	333-105-0003(T)	12-1-04	Repeal	1-1-05
333-102-0235(T)	12-1-04	Repeal	1-1-05	333-105-0005	12-1-04	Amend	1-1-05
333-102-0240	12-1-04	Repeal	1-1-05	333-105-0005(T)	12-1-04	Repeal	1-1-05
333-102-0245	12-1-04	Amend	1-1-05	333-105-0050	12-1-04	Adopt	1-1-05
333-102-0245(T)	12-1-04	Repeal	1-1-05	333-105-0050(T)	12-1-04	Repeal	1-1-05
333-102-0247	12-1-04	Adopt	1-1-05	333-105-0075	12-1-04	Adopt	1-1-05
333-102-0247(T)	12-1-04	Repeal	1-1-05	333-105-0075(T)	12-1-04	Repeal	1-1-05
333-102-0250	12-1-04	Amend	1-1-05	333-105-0101	12-1-04	Repeal	1-1-05
333-102-0250(T)	12-1-04	Repeal	1-1-05	333-105-0105	12-1-04	Repeal	1-1-05
333-102-0255	12-1-04	Amend	1-1-05	333-105-0110	12-1-04	Repeal	1-1-05
333-102-0255(T)	12-1-04	Repeal	1-1-05	333-105-0115	12-1-04	Repeal	1-1-05
333-102-0260	12-1-04	Amend	1-1-05	333-105-0120	12-1-04	Repeal	1-1-05
333-102-0260(T)	12-1-04	Repeal	1-1-05	333-105-0125	12-1-04	Repeal	1-1-05
333-102-0265	12-1-04	Amend	1-1-05	333-105-0130	12-1-04	Repeal	1-1-05
333-102-0265(T)	12-1-04	Repeal	1-1-05	333-105-0135	12-1-04	Repeal	1-1-05
333-102-0270	12-1-04	Amend	1-1-05	333-105-0140	12-1-04	Repeal	1-1-05
333-102-0270(T)	12-1-04	Repeal	1-1-05	333-105-0201	12-1-04	Repeal	1-1-05
333-102-0275	12-1-04	Amend	1-1-05	333-105-0202	12-1-04	Repeal	1-1-05
333-102-0275(T)	12-1-04	Repeal	1-1-05	333-105-0205	12-1-04	Repeal	1-1-05
333-102-0285	12-1-04	Amend	1-1-05	333-105-0210	12-1-04	Repeal	1-1-05
333-102-0285(T)	12-1-04	Repeal	1-1-05	333-105-0301	12-1-04	Repeal	1-1-05
333-102-0287	12-1-04	Repeal	1-1-05	333-105-0305	12-1-04	Repeal	1-1-05
333-102-0290	12-1-04	Amend	1-1-05	333-105-0310	12-1-04	Repeal	1-1-05
333-102-0290(T)	12-1-04	Repeal	1-1-05	333-105-0315	12-1-04	Repeal	1-1-05
333-102-0293	12-1-04	Amend	1-1-05	333-105-0320	12-1-04	Repeal	1-1-05
333-102-0293(T)	12-1-04	Repeal	1-1-05	333-105-0325	12-1-04	Repeal	1-1-05
333-102-0295	12-1-04	Repeal	1-1-05	333-105-0330	12-1-04	Repeal	1-1-05
333-102-0300	12-1-04	Amend	1-1-05	333-105-0335	12-1-04	Repeal	1-1-05
333-102-0300(T)	12-1-04	Repeal	1-1-05	333-105-0420	12-1-04	Adopt	1-1-05
333-102-0305	12-1-04	Amend	1-1-05	333-105-0420(T)	12-1-04	Repeal	1-1-05
333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05
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

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333-105-0530(T)	12-1-04	Repeal	1-1-05	333-106-0101(T)	12-1-04	Repeal	1-1-05
333-105-0540	12-1-04	Adopt	1-1-05	333-106-0105	12-1-04	Amend	1-1-05
333-105-0540(T)	12-1-04	Repeal	1-1-05	333-106-0105(T)	12-1-04	Repeal	1-1-05
333-105-0550	12-1-04	Adopt	1-1-05	333-106-0210	12-1-04	Amend	1-1-05
333-105-0550(T)	12-1-04	Repeal	1-1-05	333-106-0210(T)	12-1-04	Repeal	1-1-05
333-105-0560	12-1-04	Adopt	1-1-05	333-106-0220	12-1-04	Amend	1-1-05
333-105-0560(T)	12-1-04	Repeal	1-1-05	333-106-0220(T)	12-1-04	Repeal	1-1-05
333-105-0570	12-1-04	Adopt	1-1-05	333-106-0325	12-1-04	Amend	1-1-05
333-105-0570(T)	12-1-04	Repeal	1-1-05	333-106-0325(T)	12-1-04	Repeal	1-1-05
333-105-0580	12-1-04	Adopt	1-1-05	333-106-0575	12-1-04	Amend	1-1-05
333-105-0580(T)	12-1-04	Repeal	1-1-05	333-106-0575(T)	12-1-04	Repeal	1-1-05
333-105-0590	12-1-04	Adopt	1-1-05	333-106-0700	12-1-04	Amend	1-1-05
333-105-0590(T)	12-1-04	Repeal	1-1-05	333-106-0700(T)	12-1-04	Repeal	1-1-05
333-105-0600	12-1-04	Adopt	1-1-05	333-106-0710	12-1-04	Amend	1-1-05
333-105-0600(T)	12-1-04	Repeal	1-1-05	333-106-0710(T)	12-1-04	Repeal	1-1-05
333-105-0610	12-1-04	Adopt	1-1-05	333-106-0720	12-1-04	Amend	1-1-05
333-105-0610(T)	12-1-04	Repeal	1-1-05	333-106-0720(T)	12-1-04	Repeal	1-1-05
333-105-0620	12-1-04	Adopt	1-1-05	333-106-0730	12-1-04	Amend	1-1-05
333-105-0620(T)	12-1-04	Repeal	1-1-05	333-106-0730(T)	12-1-04	Repeal	1-1-05
333-105-0630	12-1-04	Adopt	1-1-05	333-106-0750	12-1-04	Adopt	1-1-05
333-105-0630(T)	12-1-04	Repeal	1-1-05	333-106-0750(T)	12-1-04	Repeal	1-1-05
333-105-0640	12-1-04	Adopt	1-1-05	333-111-0010	12-1-04	Amend	1-1-05
333-105-0640(T)	12-1-04	Repeal	1-1-05	333-111-0010(T)	12-1-04	Repeal	1-1-05
333-105-0650	12-1-04	Adopt	1-1-05	333-116-0010	12-1-04	Amend	1-1-05
333-105-0650(T)	12-1-04	Repeal	1-1-05	333-116-0010(T)	12-1-04	Repeal	1-1-05
333-105-0660	12-1-04	Adopt	1-1-05	333-116-0020	12-1-04	Amend	1-1-05
333-105-0660(T)	12-1-04	Repeal	1-1-05	333-116-0020(T)	12-1-04	Repeal	1-1-05
333-105-0670	12-1-04	Adopt	1-1-05	333-116-0025	12-1-04	Adopt	1-1-05
333-105-0670(T)	12-1-04	Repeal	1-1-05	333-116-0025(T)	12-1-04	Repeal	1-1-05
333-105-0680	12-1-04	Adopt	1-1-05	333-116-0035	12-1-04	Adopt	1-1-05
333-105-0680(T)	12-1-04	Repeal	1-1-05	333-116-0035(T)	12-1-04	Repeal	1-1-05
333-105-0690	12-1-04	Adopt	1-1-05	333-116-0040	12-1-04	Amend	1-1-05
333-105-0690(T)	12-1-04	Repeal	1-1-05	333-116-0040(T)	12-1-04	Repeal	1-1-05
333-105-0700	12-1-04	Adopt	1-1-05	333-116-0050	12-1-04	Amend	1-1-05
333-105-0700(T)	12-1-04	Repeal	1-1-05	333-116-0050(T)	12-1-04	Repeal	1-1-05
333-105-0710	12-1-04	Adopt	1-1-05	333-116-0055	12-1-04	Adopt	1-1-05
333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0055(T)	12-1-04	Repeal	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0057	12-1-04	Adopt	1-1-05
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0057(T)	12-1-04	Repeal	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0059	12-1-04	Adopt	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0059(T)	12-1-04	Repeal	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0070	12-1-04	Amend	1-1-05
333-105-0740(T)	12-1-04	Repeal	1-1-05	333-116-0070(T)	12-1-04	Repeal	1-1-05
333-105-0750	12-1-04	Adopt	1-1-05	333-116-0080	12-1-04	Amend	1-1-05
333-105-0750(T)	12-1-04	Repeal	1-1-05	333-116-0080(T)	12-1-04	Repeal	1-1-05
333-105-0760	12-1-04	Adopt	1-1-05	333-116-0090	12-1-04	Amend	1-1-05
333-105-0760(T)	12-1-04	Repeal	1-1-05	333-116-0090(T)	12-1-04	Repeal	1-1-05
333-106-0005	12-1-04	Amend	1-1-05	333-116-0100	12-1-04	Amend	1-1-05
333-106-0005(T)	12-1-04	Repeal	1-1-05	333-116-0100(T)	12-1-04	Repeal	1-1-05
333-106-0035	12-1-04	Amend	1-1-05	333-116-0105	12-1-04	Adopt	1-1-05
333-106-0035(T)	12-1-04	Repeal	1-1-05	333-116-0105(T)	12-1-04	Repeal	1-1-05
333-106-0045	12-1-04	Amend	1-1-05	333-116-0107	12-1-04	Adopt	1-1-05
333-106-0045(T)	12-1-04	Repeal	1-1-05	333-116-0107(T)	12-1-04	Repeal	1-1-05
333-106-0055	12-1-04	Amend	1-1-05	333-116-0120	12-1-04	Amend	1-1-05
333-106-0055(T)	12-1-04	Repeal	1-1-05	333-116-0120(T)	12-1-04	Repeal	1-1-05
333-106-0101	12-1-04	Amend	1-1-05	333-116-0125	12-1-04	Amend	1-1-05

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333-116-0140	12-1-04	Amend	1-1-05	333-116-0470	12-1-04	Amend	1-1-05
333-116-0140(T)	12-1-04	Repeal	1-1-05	333-116-0470(T)	12-1-04	Repeal	1-1-05
333-116-0150	12-1-04	Amend	1-1-05	333-116-0480	12-1-04	Amend	1-1-05
333-116-0150(T)	12-1-04	Repeal	1-1-05	333-116-0480(T)	12-1-04	Repeal	1-1-05
333-116-0160	12-1-04	Amend	1-1-05	333-116-0490	12-1-04	Amend	1-1-05
333-116-0160(T)	12-1-04	Repeal	1-1-05	333-116-0490(T)	12-1-04	Repeal	1-1-05
333-116-0165	12-1-04	Adopt	1-1-05	333-116-0495	12-1-04	Adopt	1-1-05
333-116-0165(T)	12-1-04	Repeal	1-1-05	333-116-0495(T)	12-1-04	Repeal	1-1-05
333-116-0170	12-1-04	Amend	1-1-05	333-116-0510	12-1-04	Repeal	1-1-05
333-116-0170(T)	12-1-04	Repeal	1-1-05	333-116-0515	12-1-04	Adopt	1-1-05
333-116-0180	12-1-04	Amend	1-1-05	333-116-0515(T)	12-1-04	Repeal	1-1-05
333-116-0180(T)	12-1-04	Repeal	1-1-05	333-116-0525	12-1-04	Adopt	1-1-05
333-116-0190	12-1-04	Amend	1-1-05	333-116-0525(T)	12-1-04	Repeal	1-1-05
333-116-0190(T)	12-1-04	Repeal	1-1-05	333-116-0530	12-1-04	Amend	1-1-05
333-116-0200	12-1-04	Amend	1-1-05	333-116-0530(T)	12-1-04	Repeal	1-1-05
333-116-0200(T)	12-1-04	Repeal	1-1-05	333-116-0540	12-1-04	Amend	1-1-05
333-116-0250	12-1-04	Amend	1-1-05	333-116-0540(T)	12-1-04	Repeal	1-1-05
333-116-0250(T)	12-1-04	Repeal	1-1-05	333-116-0560	12-1-04	Amend	1-1-05
333-116-0260	12-1-04	Amend	1-1-05	333-116-0560(T)	12-1-04	Repeal	1-1-05
333-116-0260(T)	12-1-04	Repeal	1-1-05	333-116-0570	12-1-04	Amend	1-1-05
333-116-0265	12-1-04	Adopt	1-1-05	333-116-0570(T)	12-1-04	Repeal	1-1-05
333-116-0265(T)	12-1-04	Repeal	1-1-05	333-116-0573	12-1-04	Adopt	1-1-05
333-116-0290	12-1-04	Amend	1-1-05	333-116-0573(T)	12-1-04	Repeal	1-1-05
333-116-0290(T)	12-1-04	Repeal	1-1-05	333-116-0577	12-1-04	Adopt	1-1-05
333-116-0300	12-1-04	Amend	1-1-05	333-116-0577(T)	12-1-04	Repeal	1-1-05
333-116-0300(T)	12-1-04	Repeal	1-1-05	333-116-0580	12-1-04	Amend	1-1-05
333-116-0310	12-1-04	Amend	1-1-05	333-116-0580(T)	12-1-04	Repeal	1-1-05
333-116-0310(T)	12-1-04	Repeal	1-1-05	333-116-0583	12-1-04	Adopt	1-1-05
333-116-0320	12-1-04	Amend	1-1-05	333-116-0583(T)	12-1-04	Repeal	1-1-05
333-116-0320(T)	12-1-04	Repeal	1-1-05	333-116-0585	12-1-04	Adopt	1-1-05
333-116-0330	12-1-04	Amend	1-1-05	333-116-0585(T)	12-1-04	Repeal	1-1-05
333-116-0330(T)	12-1-04	Repeal	1-1-05	333-116-0587	12-1-04	Adopt	1-1-05
333-116-0340	12-1-04	Amend	1-1-05	333-116-0587(T)	12-1-04	Repeal	1-1-05
333-116-0340(T)	12-1-04	Repeal	1-1-05	333-116-0590	12-1-04	Amend	1-1-05
333-116-0350	12-1-04	Amend	1-1-05	333-116-0590(T)	12-1-04	Repeal	1-1-05
333-116-0350(T)	12-1-04	Repeal	1-1-05	333-116-0600	12-1-04	Amend	1-1-05
333-116-0360	12-1-04	Amend	1-1-05	333-116-0600(T)	12-1-04	Repeal	1-1-05
333-116-0360(T)	12-1-04	Repeal	1-1-05	333-116-0605	12-1-04	Adopt	1-1-05
333-116-0370	12-1-04	Amend	1-1-05	333-116-0605(T)	12-1-04	Repeal	1-1-05
333-116-0370(T)	12-1-04	Repeal	1-1-05	333-116-0610	12-1-04	Amend	1-1-05
333-116-0380	12-1-04	Amend	1-1-05	333-116-0610(T)	12-1-04	Repeal	1-1-05
333-116-0380(T)	12-1-04	Repeal	1-1-05	333-116-0640	12-1-04	Amend	1-1-05
333-116-0390	12-1-04	Amend	1-1-05	333-116-0640(T)	12-1-04	Repeal	1-1-05
333-116-0390(T)	12-1-04	Repeal	1-1-05	333-116-0660	12-1-04	Amend	1-1-05
333-116-0410	12-1-04	Amend	1-1-05	333-116-0660(T)	12-1-04	Repeal	1-1-05
333-116-0410(T)	12-1-04	Repeal	1-1-05	333-116-0670	12-1-04	Amend	1-1-05
333-116-0420	12-1-04	Amend	1-1-05	333-116-0670(T)	12-1-04	Repeal	1-1-05
333-116-0420(T)	12-1-04	Repeal	1-1-05	333-116-0680	12-1-04	Amend	1-1-05
333-116-0430	12-1-04	Amend	1-1-05	333-116-0680(T)	12-1-04	Repeal	1-1-05
333-116-0430(T)	12-1-04	Repeal	1-1-05	333-116-0720	12-1-04	Amend	1-1-05
333-116-0440	12-1-04	Amend	1-1-05	333-116-0720(T)	12-1-04	Repeal	1-1-05
333-116-0440(T)	12-1-04	Repeal	1-1-05	333-116-0730	12-1-04	Amend	1-1-05
333-116-0450	12-1-04	Amend	1-1-05	333-116-0730(T)	12-1-04	Repeal	1-1-05
333-116-0450(T)	12-1-04	Repeal	1-1-05	333-116-0830	12-1-04	Amend	1-1-05
333-116-0460	12-1-04	Amend	1-1-05	333-116-0830(T)	12-1-04	Repeal	1-1-05

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333-116-0905(T)	12-1-04	Repeal	1-1-05	333-120-0015(T)	12-1-04	Repeal	1-1-05
333-116-0910	12-1-04	Adopt	1-1-05	333-120-0017	12-1-04	Adopt	1-1-05
333-116-0910(T)	12-1-04	Repeal	1-1-05	333-120-0017(T)	12-1-04	Repeal	1-1-05
333-116-0915	12-1-04	Adopt	1-1-05	333-120-0100	12-1-04	Amend	1-1-05
333-116-0915(T)	12-1-04	Repeal	1-1-05	333-120-0100(T)	12-1-04	Repeal	1-1-05
333-118-0020	12-1-04	Amend	1-1-05	333-120-0110	12-1-04	Amend	1-1-05
333-118-0020(T)	12-1-04	Repeal	1-1-05	333-120-0110(T)	12-1-04	Repeal	1-1-05
333-118-0040	12-1-04	Amend	1-1-05	333-120-0130	12-1-04	Amend	1-1-05
333-118-0040(T)	12-1-04	Repeal	1-1-05	333-120-0130(T)	12-1-04	Repeal	1-1-05
333-118-0050	12-1-04	Amend	1-1-05	333-120-0170	12-1-04	Amend	1-1-05
333-118-0050(T)	12-1-04	Repeal	1-1-05	333-120-0170(T)	12-1-04	Repeal	1-1-05
333-118-0060	12-1-04	Amend	1-1-05	333-120-0180	12-1-04	Amend	1-1-05
333-118-0060(T)	12-1-04	Repeal	1-1-05	333-120-0180(T)	12-1-04	Repeal	1-1-05
333-118-0070	12-1-04	Amend	1-1-05	333-120-0190	12-1-04	Amend	1-1-05
333-118-0070(T)	12-1-04	Repeal	1-1-05	333-120-0190(T)	12-1-04	Repeal	1-1-05
333-118-0080	12-1-04	Amend	1-1-05	333-120-0200	12-1-04	Amend	1-1-05
333-118-0080(T)	12-1-04	Repeal	1-1-05	333-120-0200(T)	12-1-04	Repeal	1-1-05
333-118-0090	12-1-04	Amend	1-1-05	333-120-0210	12-1-04	Amend	1-1-05
333-118-0090(T)	12-1-04	Repeal	1-1-05	333-120-0210(T)	12-1-04	Repeal	1-1-05
333-118-0100	12-1-04	Amend	1-1-05	333-120-0215	12-1-04	Adopt	1-1-05
333-118-0100(T)	12-1-04	Repeal	1-1-05	333-120-0215(T)	12-1-04	Repeal	1-1-05
333-118-0110	12-1-04	Amend	1-1-05	333-120-0220	12-1-04	Amend	1-1-05
333-118-0110(T)	12-1-04	Repeal	1-1-05	333-120-0220(T)	12-1-04	Repeal	1-1-05
333-118-0120	12-1-04	Amend	1-1-05	333-120-0230	12-1-04	Amend	1-1-05
333-118-0120(T)	12-1-04	Repeal	1-1-05	333-120-0230(T)	12-1-04	Repeal	1-1-05
333-118-0130	12-1-04	Amend	1-1-05	333-120-0240	12-1-04	Amend	1-1-05
333-118-0130(T)	12-1-04	Repeal	1-1-05	333-120-0240(T)	12-1-04	Repeal	1-1-05
333-118-0140	12-1-04	Amend	1-1-05	333-120-0250	12-1-04	Amend	1-1-05
333-118-0140(T)	12-1-04	Repeal	1-1-05	333-120-0250(T)	12-1-04	Repeal	1-1-05
333-118-0150	12-1-04	Amend	1-1-05	333-120-0320	12-1-04	Amend	1-1-05
333-118-0150(T)	12-1-04	Repeal	1-1-05	333-120-0320(T)	12-1-04	Repeal	1-1-05
333-118-0160	12-1-04	Amend	1-1-05	333-120-0400	12-1-04	Amend	1-1-05
333-118-0160(T)	12-1-04	Repeal	1-1-05	333-120-0400(T)	12-1-04	Repeal	1-1-05
333-118-0170	12-1-04	Amend	1-1-05	333-120-0420	12-1-04	Amend	1-1-05
333-118-0170(T)	12-1-04	Repeal	1-1-05	333-120-0420(T)	12-1-04	Repeal	1-1-05
333-118-0180	12-1-04	Amend	1-1-05	333-120-0430	12-1-04	Amend	1-1-05
333-118-0180(T)	12-1-04	Repeal	1-1-05	333-120-0430(T)	12-1-04	Repeal	1-1-05
333-118-0190	12-1-04	Amend	1-1-05	333-120-0450	12-1-04	Amend	1-1-05
333-118-0190(T)	12-1-04	Repeal	1-1-05	333-120-0450(T)	12-1-04	Repeal	1-1-05
333-118-0200	12-1-04	Amend	1-1-05	333-120-0460	12-1-04	Amend	1-1-05
333-118-0200(T)	12-1-04	Repeal	1-1-05	333-120-0460(T)	12-1-04	Repeal	1-1-05
333-118-0800	12-1-04	Adopt	1-1-05	333-120-0520	12-1-04	Amend	1-1-05
333-118-0800(T)	12-1-04	Repeal	1-1-05	333-120-0520(T)	12-1-04	Repeal	1-1-05
333-119-0030	12-1-04	Amend	1-1-05	333-120-0540	12-1-04	Amend	1-1-05
333-119-0030(T)	12-1-04	Repeal	1-1-05	333-120-0540(T)	12-1-04	Repeal	1-1-05
333-119-0040	12-1-04	Amend	1-1-05	333-120-0550	12-1-04	Amend	1-1-05
333-119-0040(T)	12-1-04	Repeal	1-1-05	333-120-0550(T)	12-1-04	Repeal	1-1-05
333-119-0080	12-1-04	Amend	1-1-05	333-120-0560	12-1-04	Amend	1-1-05
333-119-0080(T)	12-1-04	Repeal	1-1-05	333-120-0560(T)	12-1-04	Repeal	1-1-05
333-119-0090	12-1-04	Amend	1-1-05	333-120-0600	12-1-04	Amend	1-1-05
333-119-0090(T)	12-1-04	Repeal	1-1-05	333-120-0600(T)	12-1-04	Repeal	1-1-05
333-119-0100	12-1-04	Amend	1-1-05	333-120-0610	12-1-04	Amend	1-1-05
333-119-0100(T)	12-1-04	Repeal	1-1-05	333-120-0610(T)	12-1-04	Repeal	1-1-05
333-119-0120	12-1-04	Amend	1-1-05	333-120-0640	12-1-04	Amend	1-1-05
333-119-0120(T)	12-1-04	Repeal	1-1-05	333-120-0640(T)	12-1-04	Repeal	1-1-05

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333-120-0650(T)	12-1-04	Repeal	1-1-05	340-071-0360	3-1-05	Amend	2-1-05
333-120-0660	12-1-04	Amend	1-1-05	340-071-0400	3-1-05	Amend	2-1-05
333-120-0660(T)	12-1-04	Repeal	1-1-05	340-071-0401	3-1-05	Repeal	2-1-05
333-120-0670	12-1-04	Amend	1-1-05	340-071-0410	3-1-05	Amend	2-1-05
333-120-0670(T)	12-1-04	Repeal	1-1-05	340-071-0415	3-1-05	Amend	2-1-05
333-120-0680	12-1-04	Amend	1-1-05	340-071-0420	3-1-05	Amend	2-1-05
333-120-0680(T)	12-1-04	Repeal	1-1-05	340-071-0425	3-1-05	Amend	2-1-05
333-120-0700	12-1-04	Amend	1-1-05	340-071-0430	3-1-05	Amend	2-1-05
333-120-0700(T)	12-1-04	Repeal	1-1-05	340-071-0435	3-1-05	Amend	2-1-05
333-120-0710	12-1-04	Amend	1-1-05	340-071-0440	3-1-05	Amend	2-1-05
333-120-0710(T)	12-1-04	Repeal	1-1-05	340-071-0445	3-1-05	Amend	2-1-05
333-120-0720	12-1-04	Amend	1-1-05	340-071-0450	3-1-05	Repeal	2-1-05
333-120-0720(T)	12-1-04	Repeal	1-1-05	340-071-0460	3-1-05	Amend	2-1-05
333-150-0000	1-14-05	Amend	2-1-05	340-071-0500	3-1-05	Amend	2-1-05
340-016-0055	11-19-04	Amend	1-1-05	340-071-0520	3-1-05	Amend	2-1-05
340-071-0100	3-1-05	Amend	2-1-05	340-071-0600	3-1-05	Amend	2-1-05
340-071-0110	3-1-05	Amend	2-1-05	340-071-0650	3-1-05	Adopt	2-1-05
340-071-0115	3-1-05	Amend	2-1-05	340-073-0025	3-1-05	Amend	2-1-05
340-071-0116	3-1-05	Am. & Ren.	2-1-05	340-073-0026	3-1-05	Amend	2-1-05
340-071-0117	3-1-05	Am. & Ren.	2-1-05	340-073-0030	3-1-05	Amend	2-1-05
340-071-0120	3-1-05	Amend	2-1-05	340-073-0035	3-1-05	Amend	2-1-05
340-071-0130	3-1-05	Amend	2-1-05	340-073-0040	3-1-05	Amend	2-1-05
340-071-0131	3-1-05	Adopt	2-1-05	340-073-0041	3-1-05	Amend	2-1-05
340-071-0140	3-1-05	Amend	2-1-05	340-073-0045	3-1-05	Amend	2-1-05
340-071-0150	3-1-05	Amend	2-1-05	340-073-0050	3-1-05	Amend	2-1-05
340-071-0155	3-1-05	Amend	2-1-05	340-073-0055	3-1-05	Amend	2-1-05
340-071-0160	3-1-05	Amend	2-1-05	340-073-0056	3-1-05	Amend	2-1-05
340-071-0162	3-1-05	Amend	2-1-05	340-073-0060	3-1-05	Amend	2-1-05
340-071-0165	3-1-05	Amend	2-1-05	340-073-0065	3-1-05	Amend	2-1-05
340-071-0170	3-1-05	Amend	2-1-05	340-073-0070	3-1-05	Amend	2-1-05
340-071-0175	3-1-05	Amend	2-1-05	340-073-0075	3-1-05	Amend	2-1-05
340-071-0185	3-1-05	Amend	2-1-05	340-073-0080	3-1-05	Amend	2-1-05
340-071-0195	3-1-05	Repeal	2-1-05	340-073-0085	3-1-05	Amend	2-1-05
340-071-0200	3-1-05	Amend	2-1-05	340-150-0250	12-27-04	Amend	2-1-05
340-071-0205	3-1-05	Amend	2-1-05	340-200-0040	12-15-04	Amend	1-1-05
340-071-0210	3-1-05	Amend	2-1-05	340-200-0040	1-4-05	Amend	2-1-05
340-071-0215	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0220	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
340-071-0260	3-1-05	Amend	2-1-05	340-204-0040	1-4-05	Amend	2-1-05
340-071-0265	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
340-071-0270	3-1-05	Amend	2-1-05	340-224-0060	1-4-05	Amend	2-1-05
340-071-0275	3-1-05	Amend	2-1-05	340-224-0070	1-4-05	Amend	2-1-05
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340-071-0285	3-1-05	Amend	2-1-05	340-225-0045	1-4-05	Amend	2-1-05
340-071-0295	3-1-05	Amend	2-1-05	340-225-0090	1-4-05	Amend	2-1-05
340-071-0300	3-1-05	Repeal	2-1-05	340-240-0030	1-4-05	Amend	2-1-05
340-071-0302	3-1-05	Amend	2-1-05	340-240-0100	1-4-05	Amend	2-1-05
340-071-0305	3-1-05	Am. & Ren.	2-1-05	340-240-0110	1-4-05	Amend	2-1-05
340-071-0310	3-1-05	Amend	2-1-05	340-240-0120	1-4-05	Amend	2-1-05
340-071-0315	3-1-05	Amend	2-1-05	340-240-0130	1-4-05	Amend	2-1-05
340-071-0320	3-1-05	Amend	2-1-05	340-240-0140	1-4-05	Amend	2-1-05
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340-071-0335	3-1-05	Amend	2-1-05	340-240-0190	1-4-05	Amend	2-1-05
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340-240-0220	1-4-05	Amend	2-1-05	411-045-0080	1-4-05	Amend	2-1-05
340-240-0230	1-4-05	Amend	2-1-05	411-045-0090	1-4-05	Amend	2-1-05
340-240-0240	1-4-05	Repeal	2-1-05	411-045-0100	1-4-05	Amend	2-1-05
340-240-0270	1-4-05	Repeal	2-1-05	411-045-0110	1-4-05	Amend	2-1-05
340-242-0440	12-15-04	Amend	1-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-050-0860	12-3-04	Amend(T)	1-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-121-0030	12-1-04	Amend	1-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-121-0032	1-1-05	Adopt	2-1-05	411-070-0359	12-28-04	Amend	2-1-05
410-121-0040	12-1-04	Amend	1-1-05	411-070-0428	12-28-04	Amend	2-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	411-070-0440	12-28-04	Repeal	2-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	411-070-0442	12-28-04	Adopt	2-1-05
410-121-0320	1-1-05	Amend	2-1-05	411-070-0446	12-28-04	Repeal	2-1-05
410-122-0190	1-1-05	Amend	2-1-05	411-070-0465	12-28-04	Amend	2-1-05
410-122-0202	1-1-05	Amend	2-1-05	411-335-0010	1-1-05	Adopt	1-1-05
410-122-0204	1-1-05	Amend	2-1-05	411-335-0020	1-1-05	Adopt	1-1-05
410-122-0207	1-1-05	Amend	2-1-05	411-335-0030	1-1-05	Adopt	1-1-05
410-122-0208	1-1-05	Amend	2-1-05	411-335-0040	1-1-05	Adopt	1-1-05
410-122-0340	1-1-05	Amend	2-1-05	411-335-0050	1-1-05	Adopt	1-1-05
410-122-0365	1-1-05	Amend	2-1-05	411-335-0060	1-1-05	Adopt	1-1-05
410-122-0400	1-1-05	Amend	2-1-05	411-335-0070	1-1-05	Adopt	1-1-05
410-122-0475	1-1-05	Amend	2-1-05	411-335-0080	1-1-05	Adopt	1-1-05
410-122-0560	1-1-05	Amend	2-1-05	411-335-0090	1-1-05	Adopt	1-1-05
410-122-0580	1-1-05	Amend	2-1-05	411-335-0100	1-1-05	Adopt	1-1-05
410-122-0630	1-1-05	Amend	2-1-05	411-335-0110	1-1-05	Adopt	1-1-05
410-122-0720	1-1-05	Amend	2-1-05	411-335-0120	1-1-05	Adopt	1-1-05
410-124-0000	12-10-04	Amend(T)	1-1-05	411-335-0130	1-1-05	Adopt	1-1-05
410-124-0000	12-30-04	Amend(T)	2-1-05	411-335-0140	1-1-05	Adopt	1-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	411-335-0150	1-1-05	Adopt	1-1-05
410-124-0000(T)	12-30-04	Suspend	2-1-05	411-335-0160	1-1-05	Adopt	1-1-05
410-130-0240	12-1-04	Amend	1-1-05	411-335-0170	1-1-05	Adopt	1-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-335-0180	1-1-05	Adopt	1-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0220	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0230	1-1-05	Adopt	1-1-05
411-031-0040	1-1-05	Amend(T)	2-1-05	411-335-0240	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0250	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0260	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0270	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0280	1-1-05	Adopt	1-1-05
411-034-0030	12-1-04	Amend	1-1-05	411-335-0290	1-1-05	Adopt	1-1-05
411-034-0035	12-1-04	Adopt	1-1-05	411-335-0300	1-1-05	Adopt	1-1-05
411-034-0040	12-1-04	Adopt	1-1-05	411-335-0310	1-1-05	Adopt	1-1-05
411-034-0050	12-1-04	Amend	1-1-05	411-335-0320	1-1-05	Adopt	1-1-05
411-034-0055	12-1-04	Adopt	1-1-05	411-335-0330	1-1-05	Adopt	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	411-335-0340	1-1-05	Adopt	1-1-05
411-034-0090	12-1-04	Amend	1-1-05	411-335-0350	1-1-05	Adopt	1-1-05
411-045-0000	1-4-05	Amend	2-1-05	411-335-0360	1-1-05	Adopt	1-1-05
411-045-0010	1-4-05	Amend	2-1-05	411-335-0370	1-1-05	Adopt	1-1-05
411-045-0020	1-4-05	Amend	2-1-05	411-335-0380	1-1-05	Adopt	1-1-05
411-045-0030	1-4-05	Amend	2-1-05	411-335-0390	1-1-05	Adopt	1-1-05
411-045-0040	1-4-05	Amend	2-1-05	411-340-0020	1-1-05	Amend(T)	2-1-05
411-045-0050	1-4-05	Amend	2-1-05	411-340-0130	1-1-05	Amend(T)	2-1-05
411-045-0060	1-4-05	Amend	2-1-05	411-346-0165	1-1-05	Adopt	1-1-05

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411-360-0020	2-1-05	Adopt	2-1-05	413-055-0145	1-1-05	Amend	2-1-05
411-360-0030	2-1-05	Adopt	2-1-05	413-055-0150	1-1-05	Amend	2-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-055-0155	1-1-05	Repeal	2-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-055-0160	1-1-05	Amend	2-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-055-0165	1-1-05	Amend	2-1-05
411-360-0070	2-1-05	Adopt	2-1-05	414-061-0080	12-17-04	Amend	2-1-05
411-360-0080	2-1-05	Adopt	2-1-05	414-061-0100	11-16-04	Amend	1-1-05
411-360-0090	2-1-05	Adopt	2-1-05	414-061-0110	11-16-04	Amend	1-1-05
411-360-0100	2-1-05	Adopt	2-1-05	414-205-0170	11-16-04	Amend	1-1-05
411-360-0110	2-1-05	Adopt	2-1-05	416-170-0000	1-11-05	Amend	2-1-05
411-360-0120	2-1-05	Adopt	2-1-05	416-170-0010	1-11-05	Amend	2-1-05
411-360-0130	2-1-05	Adopt	2-1-05	416-170-0020	1-11-05	Amend	2-1-05
411-360-0140	2-1-05	Adopt	2-1-05	416-170-0030	1-11-05	Amend	2-1-05
411-360-0150	2-1-05	Adopt	2-1-05	416-170-0050	1-11-05	Adopt	2-1-05
411-360-0160	2-1-05	Adopt	2-1-05	416-170-0050	1-13-05	Renumber	2-1-05
411-360-0170	2-1-05	Adopt	2-1-05	416-250-0000	1-11-05	Amend	2-1-05
411-360-0180	2-1-05	Adopt	2-1-05	416-250-0010	1-11-05	Amend	2-1-05
411-360-0190	2-1-05	Adopt	2-1-05	416-250-0020	1-11-05	Amend	2-1-05
411-360-0200	2-1-05	Adopt	2-1-05	416-250-0030	1-11-05	Amend	2-1-05
411-360-0210	2-1-05	Adopt	2-1-05	416-250-0040	1-11-05	Amend	2-1-05
411-360-0220	2-1-05	Adopt	2-1-05	416-250-0050	1-11-05	Amend	2-1-05
411-360-0230	2-1-05	Adopt	2-1-05	416-250-0060	1-11-05	Amend	2-1-05
411-360-0240	2-1-05	Adopt	2-1-05	416-250-0070	1-11-05	Amend	2-1-05
411-360-0250	2-1-05	Adopt	2-1-05	416-250-0080	1-11-05	Amend	2-1-05
411-360-0260	2-1-05	Adopt	2-1-05	416-250-0090	1-11-05	Amend	2-1-05
411-360-0270	2-1-05	Adopt	2-1-05	416-400-0000	1-11-05	Repeal	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	436-001-0005	1-14-05	Amend	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	437-001-0001	12-30-04	Amend	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	437-002-0120	11-19-04	Amend	1-1-05
411-360-0300	2-1-05	Adopt	2-1-05	437-004-6000	12-30-04	Amend	2-1-05
411-360-0310	2-1-05	Adopt	2-1-05	437-005-0001	12-30-04	Amend	2-1-05
413-050-0500	1-1-05	Amend	2-1-05	441-710-0045	11-30-04	Adopt	1-1-05
413-050-0510	1-1-05	Amend	2-1-05	441-860-0020	1-1-05	Amend	1-1-05
413-050-0515	1-1-05	Amend	2-1-05	441-860-0050	1-1-05	Amend	1-1-05
413-050-0525	1-1-05	Repeal	2-1-05	441-930-0030	1-1-05	Amend	1-1-05
413-050-0530	1-1-05	Amend	2-1-05	441-930-0210	1-1-05	Amend	1-1-05
413-050-0535	1-1-05	Amend	2-1-05	441-930-0270	1-1-05	Amend	1-1-05
413-050-0540	1-1-05	Repeal	2-1-05	443-001-0000	1-1-05	Amend	2-1-05
413-050-0545	1-1-05	Repeal	2-1-05	443-001-0005	1-1-05	Amend	2-1-05
413-050-0550	1-1-05	Repeal	2-1-05	443-002-0010	1-1-05	Adopt	2-1-05
413-050-0555	1-1-05	Amend	2-1-05	443-002-0020	1-1-05	Adopt	2-1-05
413-050-0560	1-1-05	Amend	2-1-05	443-002-0030	1-1-05	Adopt	2-1-05
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413-050-0570	1-1-05	Amend	2-1-05	443-002-0050	1-1-05	Adopt	2-1-05
413-050-0575	1-1-05	Amend	2-1-05	443-002-0060	1-1-05	Adopt	2-1-05
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413-055-0105	1-1-05	Amend	2-1-05	443-002-0100	1-1-05	Adopt	2-1-05
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413-055-0125	1-1-05	Repeal	2-1-05	443-002-0140	1-1-05	Adopt	2-1-05
413-055-0130	1-1-05	Repeal	2-1-05	443-002-0150	1-1-05	Adopt	2-1-05
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443-005-0000	1-1-05	Repeal	2-1-05	461-155-0270	1-1-05	Amend	2-1-05
443-005-0010	1-1-05	Repeal	2-1-05	461-155-0300	1-1-05	Amend	2-1-05
443-005-0020	1-1-05	Repeal	2-1-05	461-160-0030	1-1-05	Amend	2-1-05
443-005-0040	1-1-05	Repeal	2-1-05	461-160-0055	1-1-05	Amend	2-1-05
443-005-0050	1-1-05	Repeal	2-1-05	461-160-0550	1-1-05	Amend	2-1-05
443-005-0060	1-1-05	Repeal	2-1-05	461-160-0580	1-1-05	Amend	2-1-05
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443-010-0010	1-1-05	Repeal	2-1-05	461-165-0082	1-1-05	Adopt	2-1-05
443-015-0010	1-1-05	Repeal	2-1-05	461-165-0100	1-1-05	Amend	2-1-05
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459-005-0525	12-15-04	Amend(T)	1-1-05	461-170-0101	1-1-05	Amend	2-1-05
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459-005-0560	12-15-04	Amend(T)	1-1-05	461-175-0340	1-1-05	Amend	2-1-05
459-005-0590	12-15-04	Amend(T)	1-1-05	461-175-0340	1-1-05	Amend	2-1-05
459-005-0591	12-15-04	Amend(T)	1-1-05	461-180-0020	1-1-05	Amend	2-1-05
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459-007-0240	3-15-05	Amend	1-1-05	461-180-0090	1-1-05	Amend	2-1-05
459-007-0250	3-15-05	Amend	1-1-05	461-180-0125	1-1-05	Adopt	2-1-05
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632-007-0000	12-10-04	Amend	1-1-05	635-039-0090	1-1-05	Amend	1-1-05
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690-385-3600	11-16-04	Adopt	1-1-05	732-010-0010	1-1-05	Amend	2-1-05
690-385-4000	11-16-04	Adopt	1-1-05	732-010-0010(T)	1-1-05	Repeal	2-1-05
690-385-4100	11-16-04	Adopt	1-1-05	732-010-0015	1-1-05	Amend	2-1-05
690-385-4200	11-16-04	Adopt	1-1-05	732-010-0020	1-1-05	Amend	2-1-05

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732-010-0030	1-1-05	Amend	2-1-05	801-040-0070	1-1-05	Amend	2-1-05
732-010-0035	1-1-05	Amend	2-1-05	801-040-0090	1-1-05	Amend	2-1-05
732-010-0035(T)	1-1-05	Repeal	2-1-05	801-040-0100	1-1-05	Amend	2-1-05
732-010-0040	1-1-05	Repeal	2-1-05	801-040-0150	1-1-05	Amend	2-1-05
732-010-0045	1-1-05	Amend	2-1-05	801-040-0160	1-1-05	Amend	2-1-05
732-020-0005	1-1-05	Amend	2-1-05	808-002-0540	12-15-04	Amend(T)	1-1-05
732-020-0010	1-1-05	Repeal	2-1-05	808-004-0211	12-15-04	Adopt(T)	1-1-05
732-020-0015	1-1-05	Repeal	2-1-05	808-008-0020	12-15-04	Amend(T)	1-1-05
732-020-0020	1-1-05	Amend	2-1-05	808-008-0030	12-15-04	Amend(T)	1-1-05
732-020-0025	1-1-05	Amend	2-1-05	808-008-0051	12-15-04	Adopt(T)	1-1-05
732-020-0030	1-1-05	Amend	2-1-05	808-008-0060	12-15-04	Amend(T)	1-1-05
732-020-0035	1-1-05	Amend	2-1-05	808-008-0085	12-15-04	Amend(T)	1-1-05
732-020-0040	1-1-05	Amend	2-1-05	808-008-0140	12-15-04	Amend(T)	1-1-05
732-020-0045	1-1-05	Amend	2-1-05	808-008-0240	12-15-04	Suspend	1-1-05
734-071-0005	1-1-05	Amend	2-1-05	808-008-0280	12-15-04	Amend(T)	1-1-05
734-071-0010	1-1-05	Amend	2-1-05	808-008-0291	12-15-04	Adopt(T)	1-1-05
734-071-0030	1-1-05	Amend	2-1-05	808-008-0400	12-15-04	Amend(T)	1-1-05
734-071-0060	1-1-05	Adopt	2-1-05	808-008-0420	12-15-04	Amend(T)	1-1-05
735-001-0020	11-17-04	Amend	1-1-05	808-008-0425	12-15-04	Amend(T)	1-1-05
735-001-0050	11-17-04	Amend	1-1-05	808-008-0430	12-15-04	Amend(T)	1-1-05
735-070-0030	1-1-05	Amend	1-1-05	808-008-0440	12-15-04	Amend(T)	1-1-05
735-070-0054	11-17-04	Amend	1-1-05	808-008-0460	12-15-04	Amend(T)	1-1-05
735-070-0060	11-17-04	Amend	1-1-05	808-008-0500	12-15-04	Amend(T)	1-1-05
735-070-0110	11-17-04	Amend	1-1-05	808-008-0511	12-15-04	Adopt(T)	1-1-05
735-070-0190	11-17-04	Amend	1-1-05	808-008-0521	12-15-04	Adopt(T)	1-1-05
735-074-0220	11-17-04	Amend	1-1-05	811-030-0030	12-10-04	Amend	1-1-05
735-090-0000	11-17-04	Amend	1-1-05	812-001-0015	12-10-04	Amend	1-1-05
735-090-0020	11-17-04	Amend	1-1-05	812-001-0040	12-10-04	Amend	1-1-05
735-090-0040	11-17-04	Amend	1-1-05	812-002-0260	12-10-04	Amend	1-1-05
735-090-0051	11-17-04	Adopt	1-1-05	812-002-0555	12-10-04	Amend	1-1-05
735-090-0101	11-17-04	Adopt	1-1-05	812-002-0800	12-10-04	Amend	1-1-05
735-090-0130	11-17-04	Adopt	1-1-05	812-003-0000	12-10-04	Repeal	1-1-05
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735-152-0020	11-17-04	Amend	1-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
735-152-0050	11-17-04	Amend	1-1-05	812-003-0012	12-10-04	Repeal	1-1-05
740-200-0010	1-1-05	Amend	2-1-05	812-003-0015	12-10-04	Repeal	1-1-05
740-200-0020	1-1-05	Amend	2-1-05	812-003-0020	12-10-04	Repeal	1-1-05
740-200-0040	1-1-05	Amend	2-1-05	812-003-0025	12-10-04	Repeal	1-1-05
800-020-0015	1-5-05	Amend	2-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
801-001-0000	1-1-05	Amend	2-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
801-010-0010	1-1-05	Amend	2-1-05	812-003-0050	12-10-04	Repeal	1-1-05
801-010-0050	1-1-05	Amend	2-1-05	812-003-0100	12-10-04	Adopt	1-1-05
801-010-0060	1-1-05	Amend	2-1-05	812-003-0110	12-10-04	Adopt	1-1-05
801-010-0065	1-1-05	Amend	2-1-05	812-003-0120	12-10-04	Adopt	1-1-05
801-010-0085	1-1-05	Amend	2-1-05	812-003-0130	12-10-04	Adopt	1-1-05
801-020-0620	1-1-05	Amend	2-1-05	812-003-0140	12-10-04	Adopt	1-1-05
801-020-0690	1-1-05	Amend	2-1-05	812-003-0150	12-10-04	Adopt	1-1-05
801-020-0700	1-1-05	Amend	2-1-05	812-003-0160	12-10-04	Adopt	1-1-05
801-020-0710	1-1-05	Amend	2-1-05	812-003-0170	12-10-04	Adopt	1-1-05
801-020-0720	1-1-05	Amend	2-1-05	812-003-0180	12-10-04	Adopt	1-1-05
801-040-0010	1-1-05	Amend	2-1-05	812-003-0190	12-10-04	Adopt	1-1-05
801-040-0020	1-1-05	Amend	2-1-05	812-003-0200	12-10-04	Adopt	1-1-05
801-040-0030	1-1-05	Amend	2-1-05	812-003-0210	12-10-04	Adopt	1-1-05
801-040-0040	1-1-05	Amend	2-1-05	812-003-0220	12-10-04	Adopt	1-1-05
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812-003-0260	12-10-04	Adopt	1-1-05	813-230-0015	12-17-04	Amend(T)	2-1-05
812-003-0270	12-10-04	Adopt	1-1-05	813-230-0020	12-17-04	Amend(T)	2-1-05
812-003-0280	12-10-04	Adopt	1-1-05	818-021-0011	12-1-04	Amend	1-1-05
812-003-0290	12-10-04	Adopt	1-1-05	818-021-0025	12-1-04	Amend	1-1-05
812-003-0300	12-10-04	Adopt	1-1-05	818-042-0050	12-1-04	Amend	1-1-05
812-003-0310	12-10-04	Adopt	1-1-05	818-042-0060	12-1-04	Amend	1-1-05
812-003-0330	12-10-04	Adopt	1-1-05	818-042-0120	12-1-04	Amend	1-1-05
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812-003-0350	12-10-04	Adopt	1-1-05	836-053-0510	11-19-04	Amend	1-1-05
812-003-0360	12-10-04	Adopt	1-1-05	837-012-0510	12-13-04	Amend(T)	1-1-05
812-003-0370	12-10-04	Adopt	1-1-05	837-012-0515	11-17-04	Amend(T)	1-1-05
812-003-0380	12-10-04	Adopt	1-1-05	837-012-0520	12-13-04	Amend(T)	1-1-05
812-003-0410	12-10-04	Adopt	1-1-05	837-012-0525	12-13-04	Amend(T)	1-1-05
812-003-0420	12-10-04	Adopt	1-1-05	837-012-0530	11-17-04	Amend(T)	1-1-05
812-003-0430	12-10-04	Adopt	1-1-05	837-012-0540	12-13-04	Amend(T)	1-1-05
812-004-0001	12-10-04	Amend	1-1-05	837-012-0545	12-13-04	Amend(T)	1-1-05
812-004-0240	12-10-04	Amend	1-1-05	837-012-0555	1-13-05	Amend(T)	2-1-05
812-004-0260	12-10-04	Amend	1-1-05	837-040-0010	1-3-05	Amend(T)	2-1-05
812-004-0320	12-10-04	Amend	1-1-05	839-003-0040	1-7-05	Amend	2-1-05
812-004-0470	12-10-04	Amend	1-1-05	839-004-0021	1-19-05	Amend	2-1-05
812-004-0530	12-10-04	Amend	1-1-05	839-009-0240	1-7-05	Amend	2-1-05
812-004-0540	12-10-04	Amend	1-1-05	839-009-0260	1-7-05	Amend	2-1-05
812-004-0560	12-10-04	Amend	1-1-05	839-010-0200	1-7-05	Adopt	2-1-05
812-004-0590	12-10-04	Amend	1-1-05	839-010-0205	1-7-05	Adopt	2-1-05
812-004-0600	12-10-04	Amend	1-1-05	839-010-0210	1-7-05	Adopt	2-1-05
812-005-0005	12-10-04	Amend	1-1-05	839-016-0700	12-13-04	Amend	1-1-05
812-006-0020	12-10-04	Amend	1-1-05	839-016-0700	1-1-05	Amend	2-1-05
812-006-0030	1-5-05	Amend(T)	2-1-05	839-021-0106	1-3-05	Adopt	2-1-05
812-008-0020	12-10-04	Amend	1-1-05	839-021-0355	1-3-05	Amend	2-1-05
812-008-0070	12-10-04	Amend	1-1-05	845-004-0101	1-1-05	Amend	1-1-05
812-008-0110	12-10-04	Amend	1-1-05	845-005-0312	1-1-05	Amend	2-1-05
812-009-0400	12-10-04	Amend	1-1-05	845-009-0200	1-1-05	Amend	2-1-05
812-010-0040	12-10-04	Amend	1-1-05	845-010-0905	12-1-04	Amend	1-1-05
812-010-0050	12-10-04	Amend	1-1-05	845-010-0915	12-1-04	Amend	1-1-05
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812-010-0260	12-10-04	Amend	1-1-05	848-001-0005	12-29-04	Amend	2-1-05
812-010-0300	12-10-04	Amend	1-1-05	848-005-0030	12-29-04	Adopt	2-1-05
812-010-0320	12-10-04	Amend	1-1-05	848-010-0010	12-29-04	Amend	2-1-05
812-010-0340	12-10-04	Amend	1-1-05	848-010-0015	12-29-04	Amend	2-1-05
812-010-0360	12-10-04	Amend	1-1-05	848-010-0020	12-29-04	Amend	2-1-05
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812-010-0420	12-10-04	Amend	1-1-05	848-010-0033	12-29-04	Adopt	2-1-05
812-010-0480	12-10-04	Amend	1-1-05	848-010-0035	12-29-04	Amend	2-1-05
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813-003-0011	11-23-04	Adopt	1-1-05	848-010-0050	12-29-04	Repeal	2-1-05
813-003-0015	11-23-04	Adopt	1-1-05	848-010-0060	12-29-04	Repeal	2-1-05
813-003-0021	11-23-04	Adopt	1-1-05	848-010-0070	12-29-04	Repeal	2-1-05
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848-015-0020	12-29-04	Adopt	2-1-05	860-012-0015	12-28-04	Amend	2-1-05
848-015-0030	12-29-04	Adopt	2-1-05	860-013-0021	12-30-04	Am. & Ren.	2-1-05
848-020-0000	12-29-04	Amend	2-1-05	860-013-0036	12-30-04	Adopt	2-1-05
848-020-0010	12-29-04	Amend	2-1-05	860-013-0037	12-30-04	Adopt	2-1-05
848-020-0020	12-29-04	Repeal	2-1-05	860-013-0040	12-30-04	Repeal	2-1-05
848-020-0030	12-29-04	Amend	2-1-05	860-013-0060	12-30-04	Amend	2-1-05
848-020-0040	12-29-04	Amend	2-1-05	860-013-0065	12-30-04	Amend	2-1-05
848-020-0050	12-29-04	Amend	2-1-05	860-013-0070	12-30-04	Amend	2-1-05
848-020-0060	12-29-04	Amend	2-1-05	860-013-0071	12-30-04	Amend	2-1-05
848-030-0000	12-29-04	Amend	2-1-05	860-013-0075	12-30-04	Amend	2-1-05
848-030-0010	12-29-04	Amend	2-1-05	860-014-0005	12-30-04	Amend	2-1-05
848-040-0000	12-29-04	Repeal	2-1-05	860-014-0010	12-30-04	Amend	2-1-05
848-040-0010	12-29-04	Repeal	2-1-05	860-014-0023	12-30-04	Amend	2-1-05
848-040-0020	12-29-04	Repeal	2-1-05	860-014-0060	12-30-04	Amend	2-1-05
848-040-0030	12-29-04	Repeal	2-1-05	860-014-0065	12-30-04	Amend	2-1-05
848-040-0040	12-29-04	Repeal	2-1-05	860-014-0070	12-30-04	Amend	2-1-05
848-040-0050	12-29-04	Repeal	2-1-05	860-014-0090	12-30-04	Amend	2-1-05
848-040-0100	12-29-04	Adopt	2-1-05	860-014-0092	12-30-04	Amend	2-1-05
848-040-0105	12-29-04	Adopt	2-1-05	860-021-0009	12-1-04	Amend	1-1-05
848-040-0110	12-29-04	Adopt	2-1-05	860-021-0021	12-1-04	Amend	1-1-05
848-040-0115	12-29-04	Adopt	2-1-05	860-021-0034	12-1-04	Amend	1-1-05
848-040-0120	12-29-04	Adopt	2-1-05	860-021-0034	12-30-04	Amend	2-1-05
848-040-0125	12-29-04	Adopt	2-1-05	860-021-0036	12-1-04	Amend	1-1-05
848-040-0130	12-29-04	Adopt	2-1-05	860-021-0036	12-30-04	Amend	2-1-05
848-040-0135	12-29-04	Adopt	2-1-05	860-021-0037	12-1-04	Amend	1-1-05
848-040-0140	12-29-04	Adopt	2-1-05	860-021-0037	12-30-04	Amend	2-1-05
848-040-0145	12-29-04	Adopt	2-1-05	860-021-0125	12-1-04	Amend	1-1-05
848-040-0150	12-29-04	Adopt	2-1-05	860-021-0130	12-1-04	Amend	1-1-05
848-040-0155	12-29-04	Adopt	2-1-05	860-021-0200	12-1-04	Amend	1-1-05
848-040-0160	12-29-04	Adopt	2-1-05	860-021-0205	12-1-04	Amend	1-1-05
848-040-0165	12-29-04	Adopt	2-1-05	860-021-0206	12-1-04	Amend	1-1-05
848-040-0170	12-29-04	Adopt	2-1-05	860-021-0210	12-1-04	Amend	1-1-05
848-045-0010	12-29-04	Adopt	2-1-05	860-021-0420	12-1-04	Amend	1-1-05
848-045-0020	12-29-04	Adopt	2-1-05	860-022-0005	12-30-04	Amend	2-1-05
848-050-0000	12-29-04	Repeal	2-1-05	860-022-0015	12-30-04	Amend	2-1-05
848-050-0010	12-29-04	Repeal	2-1-05	860-022-0020	12-30-04	Amend	2-1-05
848-050-0020	12-29-04	Repeal	2-1-05	860-022-0038	12-30-04	Amend	2-1-05
848-050-0030	12-29-04	Repeal	2-1-05	860-032-0095	12-1-04	Amend	1-1-05
848-050-0100	12-29-04	Adopt	2-1-05	860-032-0095	12-30-04	Amend	2-1-05
848-050-0110	12-29-04	Adopt	2-1-05	860-032-0097	12-1-04	Amend	1-1-05
848-050-0120	12-29-04	Adopt	2-1-05	860-032-0097	12-30-04	Amend	2-1-05
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860-011-0010	12-30-04	Amend	2-1-05	860-033-0006	12-1-04	Adopt	1-1-05
860-011-0011	12-30-04	Adopt	2-1-05	860-033-0006	12-30-04	Amend	2-1-05
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860-033-0535	12-1-04	Amend	1-1-05	860-037-0097	12-1-04	Amend	1-1-05
860-033-0536	12-1-04	Amend	1-1-05	860-037-0097	12-30-04	Amend	2-1-05
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860-037-0095	12-30-04	Amend	2-1-05				