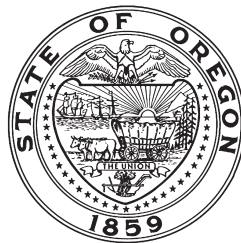


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

Volume 44, No. 1
January 1, 2005

For November 16, 2004–December 15, 2004



Published by
BILL BRADBURY
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

CHANCE TO COMMENT ON... PROPOSED REMOVAL OF THE FIFTEENMILE CREEK SITE (ECSI #2709) FROM THE CONFIRMED RELEASE LIST AND INVENTORY

COMMENTS DUE: January 31, 2005

PROJECT LOCATION: Fifteenmile Creek, near the confluence with the Columbia River, The Dalles

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for removal of the site from the Confirmed Release List and Inventory.

HIGHLIGHTS: The DEQ Site Response Program has reviewed the information gathered during an environmental evaluation of the Fifteenmile Creek site. On August 22, 2000, a truck traveling west on Interstate 84 crashed as it passed over Fifteenmile Creek, a tributary of the Columbia River. The truck was carrying 4,100 gallons of the herbicide Goal 2XL. Approximately 2,600 gallons of herbicide spilled and an unknown portion of this entered the creek. About 1,200 feet of the creek—from the accident site to the confluence with the Columbia River—was affected. DEQ conducted the investigation of the spill site, which included emergency response measures focused on preventing contamination from escaping into the Columbia River. Additional remedial work was conducted between August 2000 and February 2001. In total, about 6 million gallons of water and 5,500 tons of sediment, soil and debris were removed and disposed of offsite. The site was added to DEQ's Confirmed Release List and Inventory of Hazardous Substance sites in March 2003. However, risk assessments were conducted to evaluate residual risk to human and ecological receptors. These assessments, which were based on studies conducted between 2000 and 2003, indicated that this risk had been reduced to safe levels. The Department, therefore, concludes that no further action was required on November 4, 2004. Since no further actions are required for the site, DEQ proposes to remove the site from the Confirmed Release and Inventory lists.

HOW TO COMMENT: The administrative record and other project files are available for public review (by appointment) at DEQ's Eastern Region, The Dalles Office, 400 East Scenic Drive, Suite #307, The Dalles, Oregon, 97058. To schedule a file review appointment, call: 503-298-7255; toll free at 1-800-452-4011. Comments and questions, by phone, fax, mail or e-mail, should be directed to: Bob Schwarz, Project Manager, at the address listed above or via e-mail at Schwarz.bob@deq.state.or.us. DEQ must receive written comments by 5 p.m. on Friday, December 31, 2004. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

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

THE NEXT STEP: DEQ will consider all public comments received by the January 31, 2004, deadline. In the absence of comments, DEQ will remove the Fifteenmile site from the Confirmed Release List and Inventory.

A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR REMEDIAL ACTION COSTS AT THE FORMER VAN OSTEN POST AND POLE IN BEND, OREGON

COMMENTS DUE: January 31, 2005

PROJECT LOCATION: 21372 East Highway 20, Bend, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment regarding a portion of DEQ's remedial action costs (cleanup costs) at the former Van Osten

Post and Pole site in Bend, Oregon. The Decree is with Barbara Van Osten, formerly doing business with her husband, now deceased, as Van Osten Logging, Van Osten Logging Co., Van Osten Enterprises, V. O's Enterprises, and Van Osten Posts and Poles.

HIGHLIGHTS: The former Van Osten Post and Pole site was the site of a post and pole treating operation. During wood treating operations, hazardous substances were released into the ground and air at the property and adjacent properties. Mr. and Mrs. Van Osten owned wood treating operations at the site from approximately 1969 to the early 1980's. DEQ has conducted removal and remedial actions at the Van Osten property and adjacent properties and has incurred substantial remedial action costs. DEQ previously entered into a Consent Judgment with Tom and Barbara Hicks—who leased the property and ran the operation from the mid 1980's into the early 1990's—and their insurer. This Decree will fully settle DEQ's claims against Ms. Van Osten and her husband's estate personally, and against certain of their insurers (including those insurers' affiliates). DEQ retains rights to pursue other insurers of the businesses run at the site by Mr. and Mrs. Van Osten.

HOW TO COMMENT: Written comments concerning the Consent Decree should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm January 31, 2005. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Decree may be reviewed at DEQ's Headquarters' Office and at the DEQ Office in Bend by contacting Cliff Walkey at (541) 388-6146.

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

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

CHANCE TO COMMENT ON PROPOSED DETERMINATION OF NO FURTHER ACTION FOR 32 FORMER AREAS OF CONCERN AT WAH CHANG IN MILLERSBURG, OREGON

COMMENTS INVITED through February 1, 2005

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is holding a 30-day public comment period to solicit questions, comments, or additional information on its proposal to issue no further action determinations for 32 former areas of concern at the Wah Chang plant in Millersburg.

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

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

HIGHLIGHTS: From 1980 until closure in 2001, Wah Chang operated an industrial furnace under a Resource Conservation and Recovery Act (RCRA) Hazardous Waste Facility Permit application submitted to DEQ. This application allowed the facility to store and treat by incineration hazardous wastes resulting from on-site manufacturing operations. Between 1996 and October 2001, Wah Chang modified routine site operations and submitted proposals to demonstrate closure of the permit. In October 2001, it was determined that routine site operations were appropriately modified and the permit was closed.

Following closure of the furnace, Wah Chang is required to investigate and address all historic releases of hazardous waste and materials that may have occurred at the facility. This investigation and cleanup is called the RCRA Corrective Action process and is con-

OTHER NOTICES

ducted with oversight by the Environmental Protection Agency (EPA) and DEQ. The process is a phased approach consisting of assessment, investigation, identification and evaluation of cleanup alternatives, and implementation of a selected alternative.

Under the direction of EPA and DEQ, the assessment phase of the process was conducted at Wah Chang by an EPA contractor and the results were documented in a final report in August 1997. Based upon the findings of the assessment, a total of 387 "units" or locations were recommended for further evaluation and investigation to help determine if additional action is needed for these locations. A "unit" is a container, tank or particular location where a chemical release has or may have occurred. Of the 387 units identified in the initial EPA assessment, 345 are individual catch basins and sumps connected to the facility-wide drain system. The remaining 42 units, plus one additional unit added after EPA's initial assessment, are "non-drain" related locations. Contaminants of potential concern that may have been released at these locations include: Solvents; PCBs; Petroleum Compounds; Metals; Radionuclides; Fluorides; and Nitrates.

From October 2001 through November 2004, Wah Chang prepared and submitted work plans to DEQ that focused on the 43 non-drain related locations. The information, along with DEQ site visits, demonstrated that releases or suspected releases of contaminants at 32 locations have met one of the following conditions:

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

Based on the review of information for these 32 units, DEQ has determined that no additional investigation or action is required at these locations. A no further action does not preclude DEQ from modifying their decision should new or previously undisclosed information indicate that there is, or may be, a release from the location that poses a threat to human health or the environment.

DEQ has requested additional information or is awaiting sampling results for the remaining 11 units in the work plans submitted for the 43 units. Wah Chang is currently updating the facility's wastewater treatment system maps and compiling information for use in prioritizing the remaining units associated with the drain system.

HOW TO COMMENT: Comments must be received by 5:00 PM on February 1, 2005. The investigative reports, and other project files are available for public review at DEQ's Salem Office. To schedule an appointment, please call the Salem Office at (503) 378-8240, toll free at 1-800-349-7677, TTY at 503-378-3684. For questions or comments about the no further actions, please call or send written comments by fax or email to: Nancy Gramlich, Project Manager, 503-378-8240 ext. 259 (toll free & TTY above), Fax: 503-373-7944, gramlich.nancy@deq.state.or.us

THE NEXT STEP: DEQ will consider all public comments received by the February 1, 2005 deadline before making a final decision on the no further actions. The issuance of the no further actions does not affect the continuing Corrective Action work. Additional 30-day public comment periods will be held in the future to address the remaining 356 locations.

DEQ PROPOSES ISSUANCE OF CERTIFICATION OF COMPLETION AND FINAL APPROVAL OF CLEANUP ACTIONS AT THE FORMER DOW CORNING SITE IN SPRINGFIELD

COMMENTS INVITED through February 1, 2005

PROPOSAL: The Oregon Department of Environmental Quality is proposing to issue a certification of completion and final approval for the environmental cleanup of solvent contaminated groundwater

at the site formerly known as Dow Corning located at 1801 Aster Street in Springfield.

HIGHLIGHTS: Environmental investigation and cleanup activities were conducted under DEQ oversight from 1988 through 1995. The investigations found soil and groundwater contamination from solvent use and previous disposal practices. A soil removal action was conducted in November 1998, and it was determined that the removal was successful in eliminating the source of the contaminants in groundwater. DEQ entered into a Consent Order with Dow Corning in February 1992. The Order required Dow Corning to investigate and address the groundwater contamination at the site. DEQ issued a Record of Decision (ROD) based on the investigative data collected under the Order in September 1993. The ROD specified the remaining cleanup actions for the contaminated groundwater at the site. In January 1994, the Consent Order was amended to incorporate the final cleanup actions of the ROD. The requirements include:

1. Conduct groundwater monitoring until 1995 to confirm: Solvent contaminant concentrations are decreasing; Contaminant concentrations do not exceed applicable health-based levels; and Contaminants have not migrated off-site.
2. Assess long-term contaminant migration and degradation.
3. Assess long-term risks to human health and the environment based on the residual contaminant concentrations.
4. Evaluate the need for continuation of groundwater monitoring or property deeds.
5. Submit a final report summarizing the groundwater monitoring data and the results of the data evaluation for requirements 1 through 4 above.

DEQ received and reviewed the final report, and supplemental investigative data, between September 2004 and December 2004. Based on the review, DEQ has determined that the cleanup was performed in accordance with the requirements specified in the Consent Order ECSR-WVR-91-10 and Record of Decision. DEQ is now proposing that the Order be terminated and recommends no additional investigation be required at the former Dow Corning site.

HOW TO COMMENT: Comments must be received by 5:00 PM on February 1, 2005. Information about the project is available for public review at DEQ's Eugene Office. To schedule an appointment, please call the Eugene Office at (541) 686-7848. For questions or comments, please call or send written comments by fax or email to: Nancy Gramlich, Project Manager, 503-378-8240 ext. 259 (toll free at 1-800-349-7677, TTY at 503-378-3684), Fax: 503-373-7944, gramlich.nancy@deq.state.or.us. DEQ will consider all public comments received by the February 1, 2005 deadline before making a final decision.

PROPOSED APPROVAL OF CLEANUP AT THE PROSPECT FARM OIL STORAGE SHED STANFIELD, OREGON

COMMENTS DUE: February 1, 2005

PROJECT LOCATION: 79509 Stage Gulch Road, Stanfield, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a "No Further Action" determination based on approval of the environmental investigation and remedial action at the Prospect Farm Oil Storage Shed, located approximately 5 miles east of Stanfield, in Umatilla County, Oregon.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed the information gathered during the investigation of environmental conditions and underground and above-ground storage tank decommissioning. Representatives of the Ransier Estate have removed three underground, and two above-ground petroleum storage tanks, dispensers and associated piping. In addition, approximately 432 tons of petroleum contaminated soil was excavated from beneath the oil shed and disposed of at the Finley Buttes Landfill in Morrow County.

OTHER NOTICES

The proposed No-Further-Action (NFA) determination applies only to the former oil storage shed area of the Prospect Farm.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact John Dadoly at (541) 278-4616. Written comments should be sent by February 1, 2005 to John Dadoly, Project Manager, at the address listed above.

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

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

PROPOSED APPROVAL OF CLEANUP AT THE EUREKA AND EXCELSIOR (E&E) MINE BAKER COUNTY, OREGON

COMMENTS DUE: February 1, 2005

PROJECT LOCATION: Bourne, OR

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a "No Further Action" determination based on approval a remedial action at the E&E Mine located approximately 1/2 mile north of the historic gold mining town of Bourne, Oregon, in Section 32, T8S, R37E, W.M.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed the information gathered during the investigation of environmental conditions and remedial action at the E&E Mine. Cracker Creek Gold Mining Company, the owner of the site, has completed the proposed remedy by removing approximately 10,000 cubic yards of mine waste rock, and placing the material in an on-site waste repository (landfill).

The proposed No-Further-Action (NFA) determination applies only to the vicinity of the E&E Ore Processing Mill where the remedial action took place. The proposed NFA requires a deed restriction to be placed on the waste rock repository area. The deed restriction requires maintenance of the repository cap and will not allow residential development of the repository area without further investigation and cleanup.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact John Dadoly at (541) 278-4616. Written comments should be sent by February 5, 2005 to John Dadoly, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

PUBLIC NOTICE SELECTED REMEDIAL ACTIONS FOR MERLIN LANDFILL

PROJECT LOCATION: Merlin Landfill, 1749 Merlin Road, Josephine County, Oregon

CLEANUP DECISION: As required by ORS 465.320 and OAR 340-122-100, the Department of Environmental Quality (DEQ) issues this notice of a selected cleanup decision to address the groundwater contamination from the Merlin Landfill site in Josephine County, Oregon. The DEQ finalized the selection of the remedial actions with the issuance of the Record of Decision on December 17, 2004.

BACKGROUND: The City of Grants Pass owns and has operated the landfill since 1967. Landfill operations ceased in 2000 and a final cover was constructed over the landfill in 2001. The landfill is regulated by DEQ under a Solid Waste Closure Permit (#159) and a 1996 Consent Order between the City and DEQ. The Consent Order focused on groundwater contamination emanating from the landfill.

Remedial investigations (RI) completed by the City showed two plumes of groundwater contamination emanating from the landfill; one plume migrating to the north towards Louse Creek, and the other plume migrating to the east-northeast that may eventually reach Louse Creek. Contaminants present in the groundwater are volatile organic compounds including tetrachloroethene (PCE), trichloroethene (TCE), and vinyl chloride. Risk assessment studies have found that the groundwater contamination does not pose a threat to the environment. However, there is the potential for an unacceptable level of risk to human health if the contaminated water is used for drinking or bathing; although no drinking water wells are contaminated at this time.

SELECTED REMEDIAL ACTIONS: For the onsite landfill area, the selected remedial actions consists of a landfill cap, landfill gas control, surface water drainage control, fencing, deed restrictions, and groundwater monitoring. For both groundwater contamination plume areas, the selected actions include purchase of select properties, providing City water via a municipal water supply line, the potential use of deed restrictions to limit groundwater use to irrigation only, discontinue active groundwater treatment to allow natural processes (physical and biological) to clean up groundwater, and continued groundwater monitoring. Several of these actions have already been implemented to prevent human exposure to contaminated groundwater. In addition, DEQ has modified the City's Solid Waste Permit to establish inorganic chemical constituent concentration limits for the monitored groundwater. The limits will be used to gauge the progress the remedial action controls are having on decreasing the groundwater contamination so that human health and the environment will continue to be protected.

INFORMATION: A detailed description of DEQ's selected remedial action is provided in the Record of Decision for the site. The Record of Decision, documents in the administrative record, and other project files are available for public review at the City of Grants Pass Administrative Offices located at 101 Northwest "A" Street, Grants Pass. Project documents are also available for review at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene. Appointments to review these files can be made by calling 1-800-844-8467. The TTY number for the hearing impaired is (541) 687-5603. Information is also available on DEQ's web site at <http://www.deq.state.or.us/wmc/cleanup/merlin.htm>

Additional information regarding the selected remedial action for the site may be obtained by contacting Gene Wong, P.E., DEQ Project Manager, at the above Eugene address, by calling 541-686-7838, or by e-mail at wong.gene@deq.state.or.us.

THE NEXT STEP: DEQ is currently negotiating an amendment to the existing Consent Order with the City of Grants Pass to implement the selected remedial action and to cover post-closure monitoring and care of the landfill.

PUBLIC NOTICE PROPOSED REMEDIAL ACTION AT THE DB ANDERSON BULK PLANT (FORMER) ONTARIO, OREGON

COMMENTS DUE: January 31, 2005

PROJECT LOCATION: 76 Northeast 6th Avenue, Ontario, Malheur County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a remedial action at the former DB Anderson Bulk Plant located at 76 NE 6th Avenue in Ontario, Oregon.

OTHER NOTICES

HIGHLIGHTS: The DEQ Site Assessment Section has reviewed the information gathered during site investigations performed at the site. Based on the information gathered during the investigation, no compounds were detected in soil or groundwater at concentrations exceeding DEQ's generic risk-based concentrations (RBCs) levels listed in DEQ's "*Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites*" dated September 22, 2003 for any of the site specific pathways with the exception of the groundwater in excavation pathway.

The proposed remedial action is a deed restriction in the form of an Easement and Equitable Servitude Agreement. The purpose of the deed restriction is to maintain land use consistent with the conceptual site model and prevent future beneficial use of groundwater.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be sent by January 31, 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 issuing a record of decision for the site.

PROPOSED NO FURTHER ACTION DECISION UPLAND SPADA SOUTH RIVERSIDE CORPORATE CENTER DEVELOPMENT NE 185TH AVENUE AND RIVERSIDE PARKWAY PORTLAND, OREGON

COMMENT PERIOD: January 1, 2005 to January 31, 2005

COMMENTS DUE: January 31, 2005

PROPOSAL: DEQ proposes issuing a no further action decision for the Uplands portion of the Spada South site. An environmental investigation and cleanup of the historic irrigation ditches that border the site is being performed by Portland Development Commission under a voluntary agreement with DEQ, and is not subject to this proposal.

HIGHLIGHTS: The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the Uplands portion of the Spada South site. Historical agricultural practices at the site included the use of pesticides. Several phases of environmental testing performed at the site identified pesticide chemicals in site soils. Pesticides were not detected in groundwater. A risk assessment was conducted to evaluate potential human health and ecological risks

posed by the pesticides in soil. The findings of the risk assessment indicate the residual pesticide contamination does 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 January 31, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

PROPOSED CONDITIONAL NO FURTHER ACTION DECISION, FORMER GEORGIA PACIFIC CHIP LOADING FACILITY, 199 SOUTH FOOTHILLS ROAD LAKE OSWEGO, OREGON

COMMENT PERIOD: January 1, 2005 to January 31, 2005

COMMENTS DUE: January 31, 2005

HIGHLIGHTS: The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the former Georgia-Pacific Chip Loading Facility site, now being developed as Foothills Park in Lake Oswego, Oregon. Environmental testing performed at the site identified soil and groundwater impacts related to past site operations. An environmental cleanup, which included the removal of contaminated soils, was completed in August 2004. Following the removal, a risk assessment was conducted to evaluate potential human health and ecological risks posed by contaminants remaining in site soils. The findings indicate that the residual contamination in soils do not pose an unacceptable risk to human health or potential ecological receptors. DEQ proposes issuing a conditional no further action decision for site soil. The conditional no further action decision requires further monitoring of site groundwater quality to confirm that groundwater discharge to the Willamette River does not pose a potential risk to ecological receptors. DEQ will issue public notice regarding its proposed decision on groundwater following completion of the additional monitoring at the site.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment call (503) 229-6729. The DEQ project manager is Anna Coates, (503) 229-5213. Written comments should be sent to Anna Coates, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by January 31, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

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 670.310 & 673.410
Stats. Implemented: ORS 673.445, 673.160, 673.410 & 673.445
Proposed Amendments: 801-030-0015
Last Date for Comment: 1-21-05
Summary: This rule was previously noticed and a hearing was conducted. The rule is re-noticed to provide clarification of the potential fiscal impact of revisions to OAR 801-030-0015(2)(e), increasing the record retention period for attest and audit working papers from 5 years to 7 years.
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 Architect Examiners
Chapter 806

Date:	Time:	Location:
2-9-05	9 a.m.	205 Liberty St. NE, #A OBAE Salem, OR

Hearing Officer: Kim Arbuckle
Stat. Auth.: ORS 671.120, 671.125 & 182.462; Other Auth.: SB 1127 (1999)
Stats. Implemented: ORS 671.125 & 182.462
Proposed Amendments: 806-001-0003
Last Date for Comment: 2-9-05, 4:30 p.m.
Summary: This rule is amended to adopt the Oregon State Board of Architect Examiners 2005-2007 biennial budget - with an expenditure limit of \$647,750. A copy of the proposed budget and/or rule amendment is available by contacting the agency rules coordinator listed above, or on the Board's web site of www.orbae.com.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Carol Halford
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

Board of Chiropractic Examiners Chapter 811

Date:	Time:	Location:
1-20-05	11 a.m.	630 Hawthorne Ave. SE Comfort Suites Salem, OR 97301

Hearing Officer: Dave McTeague, Exec. Director
Stat. Auth.: ORS 684; Other Auth.: ORS 684.155
Stats. Implemented: ORS 684.155
Proposed Amendments: 811-015-0010
Last Date for Comment: 1-20-05
Summary: 811-015-0010 Proposed amendments to the Clinical Justification Rule update treatment parameters to address over-treatment and under-treatment by chiropractic physicians.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Dave McTeague
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311
Telephone: (503) 378-5816, ext. 23

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Board of Naturopathic Examiners
Chapter 850

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.060
Proposed Amendments: 850-020-0000, 850-020-0005, 850-020-0020, 850-020-0025, 850-020-0030
Proposed Repeals: 850-020-0010, 850-020-0015
Last Date for Comment: 1-28-05
Summary: Following the legislature's 2003 approval of change to ORS 685.060(b), Division 20 needed amending with the repeal of some rules. The amendment/repeal does not give up the Board's ability to approve a Naturopathic program; it does allow the Board to rely on other accrediting bodies to certify and maintain the educational standards for graduates applying for licensure in our state.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232
Telephone: (503) 731-4045

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Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.010(4)
Proposed Amendments: 850-010-0220
Last Date for Comment: 1-28-05
Summary: Will clarify what Naturopathic physicians can prescribe, dispense and order.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232
Telephone: (503) 731-4045

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Board of Nursing
Chapter 851

Date:	Time:	Location:
2-10-05	9 a.m.	800 N.E. Oregon St. Portland State Office Building Rm. 120-C Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President
Stat. Auth.: ORS 678.385
Stats. Implemented: ORS 678.375 & 678.385
Proposed Amendments: 851-050-0131
Last Date for Comment: 2-8-05, 5 p.m.
Summary: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in

NOTICES OF PROPOSED RULEMAKING

Schedules II, III, III N, IV and V. This amendment adds the November and December 2004 and January 2005 updates to Drugs Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner Formulary.

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

Rules Coordinator: KC Cotton

Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

Telephone: (503) 731-4754

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Date:	Time:	Location:
2-10-05	9 a.m.	800 NE Oregon St. Rm. 120-C Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.375, 678.380, 678.385 & 678.390

Stats. Implemented: ORS 678.375, 678.380, 678.385 & 678.390

Proposed Amendments: 851-050-0002

Last Date for Comment: 2-8-05

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

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

Rules Coordinator: KC Cotton

Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

Telephone: (503) 731-4754

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Board of Pharmacy Chapter 855

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205, 183.335, 183.341(2)

Proposed Amendments: 855-001-0000

Last Date for Comment: 1-21-05

Summary: To clarify that the Board will always give notice prior to permanently adopting, amending or repealing any rule as required by ORS 183.335(1).

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St.. - Suite 425, Portland, OR 97232

Telephone: (503) 731-4032, ext. 223

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Bureau of Labor and Industries Chapter 839

Stat. Auth.: ORS 183 & 651.060

Stats. Implemented: ORS 183, 279, 652, 653, 658 & 659A

Proposed Amendments: 839-050-0050, 839-050-0220, 839-050-0360

Last Date for Comment: 1-21-05

Summary: The proposed amendments correct technical errors, improve grammar and clarity and conform the Division 50 Contested Case Rules with the Oregon Administrative Procedures Act.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232

Telephone: (503) 731-4212

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Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380 (ORS 279C.800 - 279C.870)

Proposed Ren. & Amends: Rules in 839-016 to 839-025

Last Date for Comment: 1-25-05

Summary: The proposed renumbering of the Prevailing Wage Rate rules amends the rules to bring them into conformance with the provisions of HB 2341 (revised "Public Contracting Code"), passed by the 2003 Legislature, in ORS 279A, 279B and 279C.

The proposed amendments and renumbering of the Prevailing Wage Rate rules are "housekeeping" in nature and conform to the statutes implemented.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232

Telephone: (503) 731-4212

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Commission for the Blind Chapter 585

Stat. Auth.: ORS 346.150; Other Auth.: ORS 183.341

Stats. Implemented:

Proposed Amendments: 585-001-0000, 585-010-0115, 585-010-0120, 585-010-0125, 585-010-0130, 585-010-0150, 585-010-0210, 585-010-0215, 585-010-0220, 585-010-0225, 585-010-0230, 585-010-0310, 585-020-0010, 585-020-0020, 585-020-0035

Proposed Renumberings: 585-010-0300 to 585-001-0006

Last Date for Comment: 1-21-05

Summary: Division 1 - Procedural Rules: A. Updates Name; B. Renumbers 585-010-0300 and moves it to Division 1

Division 10 - College Training for Blind Persons: Changes a few technical corrections to reflect current language in the Rehabilitation Act as well as clarify that Merit Based Scholarships are not a comparable benefit (which is language from the Act).

Division 10 - Reader's Service for Blind Students: Requires updating. A maximum of 70 hours of reader's services cannot be imposed. Also, added some procedural clarification and removed language this is no longer reflecting agency practice. Division 10 - Business Policy: One correction to reflect current language.

Division 20 - Equipment Policy: Updates language to reflect the Rehabilitation Act.

Rules Coordinator: Linda Mock

Address: Commission for the Blind, 535 SE 12th Ave., Portland, OR 97214

Telephone: (503) 731-3221

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Department of Agriculture Chapter 603

Date:	Time:	Location:
1-24-05	11 a.m.	635 Capitol St. NE ODA Salem, OR 97301

Hearing Officer: Ron McKay

Stat. Auth.: ORS 596; Other Auth.: ORS 561

Stats. Implemented: ORS 596.392

Proposed Amendments: 603-011-0610, 603-011-0620, 603-011-0630

Last Date for Comment: 2-4-05

Summary: The proposed amendments reflect house keeping changes recommended by the Trichomoniasis Advisory Committee to increase the effectiveness of the Trichomoniasis Control Program by increasing the number of negative tests required to remove bulls from quarantine in an infected herd. It also gives more decision-making authority to the state veterinarian to determine disease exposure of other cattle, and redefines potentially infected herds. Trichomoniasis is a cattle reproductive disease.

**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) 986-4583

NOTICES OF PROPOSED RULEMAKING

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

Date: 1-19-05 **Time:** 10 a.m. **Location:** 1535 NW Edgewater St.
Salem, OR 97310

Hearing Officer: Richard J. Baumann
Stat. Auth.: ORS 446.160, 446.176 & 446.185
Stats. Implemented: ORS 446.160 & 446.176
Proposed Amendments: 918-525-0065, 918-525-0070, 918-525-0080, 918-525-0250, 918-525-0450, 918-525-0510
Proposed Repeals: 918-525-0230
Last Date for Comment: 1-21-05, 5 p.m.

Summary: This rulemaking eliminates costly and time consuming out of state inspections performed by the division throughout the U.S. and Canada. In addition, it will consolidate division paperwork containing manufacturer information for each manufacturing facility and reduce paperwork necessary to perform out of state in-plant inspections. All recreational vehicle inspections would take place in Oregon on units manufactured for Oregon. This rulemaking allows the division the option of performing out-of-state in-plant inspections as necessary to ensure compliance with statute and rule.

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

Rules Coordinator: Heather L. Gravelle
Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Date: 1-19-05 **Time:** 11 a.m. **Location:** 1535 NW Edgewater St.
Salem, OR 97310

Hearing Officer: Twyla Knowles
Stat. Auth.: ORS 446.100 & 446.185
Stats. Implemented: ORS 446.100 & 455.110
Proposed Adoptions: 918-500-0021
Last Date for Comment: 1-21-05, 5 p.m.
Summary: This rulemaking adopts rules to document amendments to the Manufactured Dwelling and Park Specialty Code. These rules Amend the Manufactured Dwelling and Park Specialty Code to allow manufactured dwellings to be spaced less than 10 feet apart, if a one-hour fire resistive wall separates them. This requirement is equal to the current requirement that is found in the One- and Two-family Dwelling Specialty Code for residential dwellings.

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

Rules Coordinator: Heather L. Gravelle
Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Date: 1-19-05 **Time:** 9 a.m. **Location:** 1535 NW Edgewater St.
Salem, OR 97309

Hearing Officer: Jim Runyan
Stat. Auth.: ORS 455.020, 455.030, 455.110 & 460.085
Stats. Implemented: ORS 460.048, 460.055 & 460.085
Proposed Amendments: 918-400-0270, 918-400-0455, 918-400-0465, 918-400-0525, 918-400-0630, 918-400-0740
Last Date for Comment: 1-21-05, 5 p.m.

Summary: These proposed rules update the Oregon Elevator Specialty Code with the latest editions and addenda's for elevator and escalator safety standards and lift standards.

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

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Department of Consumer and Business Services, Insurance Division Chapter 836

Date: 1-25-05 **Time:** 1:30 p.m. **Location:** 350 Winter St. NE
Conf. Rm. F (basement)
Salem, OR

Hearing Officer: Lewis Littlehales
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 733.090
Proposed Amendments: 836-031-0410
Last Date for Comment: 2-4-05

Summary: This proposed rulemaking establishes a reserving requirement for title insurance for the year 2008 and each year thereafter, replacing a scheme that would have required an increasingly greater percentage over a longer period, arriving at ten percent in 2011 and years thereafter.

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

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

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Stat. Auth.: ORS 442.807
Stats. Implemented: ORS 442.800 - 442.807
Proposed Amendments: 836-052-0700
Last Date for Comment: 1-26-05

Summary: This rulemaking proposes to amend the rule that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate recent changes recommended by the Advisory Committee on Physician Credentialing Information in the Office for Oregon Health Plan Policy and Research. The applications allow collection of uniform information needed by health care service contractors to credential and recredential physicians seeking designation as participating providers for health plans. The Director of DCBS and the Director of Human Services are required to adopt identical rules in a timely manner to carry out the recommendations.

The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application with the recommended changes incorporated are available for review through the Insurance Division website at www.oregoninsurance.org. Then click on "Laws, Rules and Bulletins." If you wish to have a paper copy of the applications, please call 503-947-7272.

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

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Stat. Auth.: ORS 731.244 & 737.322
Stats. Implemented: ORS 737.322 & 746.240
Proposed Amendments: 836-085-0201, 836-085-0225
Proposed Repeals: 836-085-0220
Last Date for Comment: 1-25-05

Summary: This rulemaking proposes to repeal OAR 836-085-0220, which requires each workers' compensation insurer to submit experience rating exposure, premium and loss data to the rating organization and requires the rating organization to report each late submission of data by an insurer for an employer and each instance of an insurer's failure to provide data. This rulemaking also makes changes to other rules because of the repeal.

Rules Coordinator: Sue Munson

NOTICES OF PROPOSED RULEMAKING

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

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Department of Corrections
Chapter 291

Date:	Time:	Location:
1-21-05	9 a.m.	Offender Information & Sentence Computation Coffee Creek Correctional Facility, Bldg. Z 24499 SW Grahams Ferry Rd. Wilsonville, OR 97070

Hearing Officer: Birdie Worley
Stat. Auth.: ORS 137, 144, 161.610, 179.040, 421, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137, 144, 161.610, 179.040, 421, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-100-0085, 291-100-0105, 291-100-0115, 291-100-0160
Proposed Amendments: 291-100-0005 – 291-100-0080, 291-100-0090, 291-100-0100, 291-100-0110, 291-100-0120 – 291-100-0150
Last Date for Comment: 1-26-05

Summary: These rule amendments are necessary to clarify and update the policy and procedures computation of sentences, and the admission and release of inmates consistent with applicable law. Additional amendments are necessary to reflect operational and organizational changes within the department.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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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Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-013-0065, 291-013-0100, 291-013-0104
Last Date for Comment: 1-26-05

Summary: The department recently adopted several changes to its rules governing use of physical force by department staff. While training staff on the recently adopted changes, it became apparent language in the rule regarding use of lethal force at co-located facilities was not clearly understood. These rule amendments are necessary to provide clear direction when lethal force may or may not be used to prevent the escape of an inmate from a minimum security facility that is co-located on the grounds of a medium or higher security facility, and to align the rule with a recently adopted policy on critical incident, which include the discharge of a firearm while on duty.

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Environmental Quality
Chapter 340

Date:	Time:	Location:
1-18-05	6 p.m.	1240 SE 12th Ave. Portland, OR 97214

Hearing Officer: Shari Jay
Stat. Auth.: ORS 468A.380(1)(c)
Stats. Implemented:
Proposed Amendments: 340-256-0010, 340-256-0100, 340-256-0130, 340-256-0300, 340-256-0310, 340-256-0340, 340-256-0350, 340-256-0380, 340-256-0390
Last Date for Comment: 1-21-05

Summary: The Oregon Department of Environmental Quality (DEQ) is proposing to phase-out the Enhanced vehicle emissions test for 1981-95 model year vehicles in the Portland area Vehicle Inspection Program by January 2007, and replace it with the existing Basic emissions test. DEQ has used the Enhanced test since September 1997. This change will have no effect on Medford area vehicle inspections since Enhanced testing was never implemented in Medford.

Phasing out the Enhanced test will maintain good air quality in the Portland area while reducing DEQ's costs to conduct the tests. Reducing operating costs will allow DEQ to delay future fee increases. We are able to achieve this cost savings without significantly impacting air quality due to the effectiveness of a test method DEQ introduced in December 2000 called the On-Board Diagnostic (OBD) test. The OBD system keeps 1996 and newer vehicles clean by very precisely controlling all aspects of the vehicle operation. The OBD system is only present on 1996 and newer model year vehicles which now make up approximately 50 percent of the Portland area vehicles. The number of OBD vehicles is forecast to grow to 75 percent by January 2007 when the proposed Enhanced test phase-out is expected to be complete.

These Amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

To submit comments or request additional information, please contact Jerry Coffey at the Department of Environmental Quality (DEQ), Vehicle Inspection Program, 1240 SE 12th Avenue, Portland, OR 97214, toll free in Oregon at 800-452-4011 or 503-731-3050 Ext 229, coffey.jerry@deq.state.or.us, 503-731-3269, or visit DEQ's web site at <http://www.deq.state.or.us/news/index.asp>
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Roberta Young
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6408

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Date:	Time:	Location:
1-26-05	5 p.m.	DEQ 811 SW 6th Ave. Portland, OR Rm. 3A
1-27-05	5 p.m.	DSL, 773 Summer St. Salem, OR Suite 100
2-1-05	5 p.m.	Anne Basker Auditorium 604 NW 6th St. Grants Pass, OR
2-3-05	5 p.m.	Baker City Hall 1655 First St. Baker City, OR

Hearing Officer: Ranei Nomura, Mark Hamlin, Jon Gasik, Mitch Wolgamott

Stat. Auth.: ORS 468B.030, 468B.035 & 468B.050
Stats. Implemented: ORS 468B.020, 468B.025, 468B.030, 468B.050 & 183.310
Proposed Amendments: 340-045-0033, 340-045-0070, 340-045-0075

Last Date for Comment: 2-11-05
Summary: The Department of Environmental Quality (DEQ) is proposing to amend its rules to renew the 700-J NPDES General Permit. This permit covers discharges from suction dredge operations used to recover precious metals and minerals from stream bed sediments.

The proposed renewal applies to suction dredges that have engines up to 30 horsepower, and use a suction hose and a suction nozzle with an inside diameter no greater than 6 inches. DEQ is proposing to amend the discharge and monitoring requirements for turbidity. DEQ is also clarifying the suction dredge operation and management practices, and requiring annual and short-term activity permitting

NOTICES OF PROPOSED RULEMAKING

fees. In addition, the proposed renewal includes a condition to allow the Department of State Lands (DSL) to administer the terms and conditions of the permit in order to consolidate similar, applicable regulatory requirements of DEQ and DSL.

To submit comments or request additional information, please contact Scott Manzano at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, toll free in Oregon at 800-452-4011 or (503) 229-5185, Manzano.Scott@deq.state.or.us, Fax (503) 229-5408, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

Rules Coordinator: Roberta Young

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

Telephone: (503) 229-6408

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Department of Fish and Wildlife
Chapter 635

Date:	Time:	Location:
2-11-05	8 a.m.	1106 East Columbia River Hwy. Sam Cox Bldg. Troutdale, OR 97060

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496, 497 & 498

Stats. Implemented: ORS 496, 497 & 498

Proposed Amendments: 635-010-0020

Last Date for Comment: 2-11-05

Summary: Amend rule to require that duplicate angling harvest tags be issued only at Oregon Department of Fish and Wildlife offices.

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

**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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Date:	Time:	Location:
2-11-05	8 a.m.	1106 East Columbia River Hwy. Sam Cox Bldg. Troutdale, OR 97060

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Proposed Adoptions: Rules in 635-003, 635-023, 635-041, 635-042

Proposed Amendments: Rules in 635-003, 635-023, 635-041, 635-042

Proposed Repeals: Rules in 635-003, 635-023, 635-041, 635-042
Last Date for Comment: 2-11-05

Summary: The Columbia River Compact Agencies of Oregon and Washington will meet jointly to consider amendment of rules related to 1) commercial fishing in the Columbia River below Bonneville Dam and select areas; 2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and 3) sport fishing in the mainstem Columbia River.

In Oregon State action, the Agency will repeal and readopt North of Falcon regulations in order to separate the identification of Cape Falcon and Humbug Mountain fishing areas.

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

**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

Date:	Time:	Location:
1-6-05	1-5 p.m.	3406 Cherry Ave. NE ODFW Commission Rm. Salem, OR 97303
2-10-05	1-5 p.m.	1106 East Columbia River Hwy. Sam Cox Annex Bldg. Troutdale 97060

Hearing Officer: Oregon Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 183 & 496

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026, 183 & 496

Proposed Adoptions: Rules in 635-110

Proposed Amendments: Rules in 635-043

Last Date for Comment: 2-10-05

Summary: The Oregon Fish and Wildlife Commission proposes to adopt an Oregon Wolf Conservation and Management Plan and associated administrative rules, and to amend certain existing rules to ensure consistency with the Plan.

Notice was originally published in the November 2004 Bulletin. This notice reflects extension of the public comment period and addition of a hearing in February. By the time this notice is published, one hearing would have already been held on December 10, 2004.

As this notice explains, the public comment period now extends until close of business on February 10, 2005. All comments submitted during the public comment period will be considered. However, the Commission encourages those with written comments to submit them before February 4 to allow Commission members the maximum amount of time to analyze the comments before voting on the draft plan on February 11.

**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,
Child Welfare Programs
Chapter 413

Date:	Time:	Location:
1-21-05	8:30 a.m.	500 Summer St. NE Rm. 257 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419.370

Proposed Adoptions: 413-010-0710

Proposed Amendments: 413-010-0700 – 413-010-0750

Last Date for Comment: 1-21-05

Summary: These Notice and Review of CPS Founded Disposition rules are being changed to reflect both name and number changes to forms and newly created forms that are attachments to these rules. In addition, there are a few minor modifications to clarify the intent of the existing rule.

These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

Telephone: (503) 945-6067

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Date:	Time:	Location:
1-21-05	9:30 a.m.	500 Summer St. NE Rm. 257 Salem, OR

Hearing Officer: Annette Tesch

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 418.005; Other Auth.: Sec. 1130 of the Social Security Act

Stats. Implemented: ORS 418.005

Proposed Amendments: 413-070-0920, 413-070-0930, 413-070-0935, 413-070-0945

Last Date for Comment: 1-31-05

Summary: These Guardianship Assistance rules are being changed to delete duplicative program statements referencing title XIX personal care rules. References will be made only to personal care rule numbers with this revision. This revision also clarifies the requirements around the annual reviews of personal care payments issued as Guardianship Assistance payments and sets limits on the number of service hours that may be authorized for personal care services. The rule now states that hours of care paid for personal care services may never exceed the service hours in effect at the time Guardianship Assistance was established. Thus, if the hourly rate of pay for personal care services goes up or down, the maximum hours of care that may be authorized will remain the same, even though the payment rate for those service hours may change. These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

Telephone: (503) 945-6067

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

Date:	Time:	Location:
1-24-05	10 a.m.–12 p.m.	500 Summer St. NE Rm. 166 Salem, OR

Hearing Officer: Bill Vehrs

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736, §§ 15 - 36

Proposed Adoptions: 410-050-0401, 410-050-0411, 410-050-0421, 410-050-0431, 410-050-0441, 410-050-0451, 410-050-0461, 410-050-0471, 410-050-0481, 410-050-0491, 410-050-0501, 410-050-0511, 410-050-0521, 410-050-0531, 410-050-0541, 410-050-0551, 410-050-0561, 410-050-0571, 410-050-0581, 410-050-0591

Last Date for Comment: 1-24-05, 12 p.m.

Summary: Oregon Administrative Rules 410-050-0401 through 410-050-0591, the Long Term Care Facility Provider Tax, establish the taxation of Long Term Care Facilities. The rules implement the tax permitted in H.B. 2747, passed during the 2003 legislative session. These permanent rules supersede the previous Temporary Oregon Administrative Rules 410-050-0400 through 410-050-0590, and when effective will be retroactive to July 1, 2003.

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

Rules Coordinator: Patricia Bougher

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E22, Salem, OR 97301

Telephone: (503) 945-5844

Date:	Time:	Location:
1-18-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0021, 410-121-0135, 410-121-0150, 410-121-0185, 410-121-0190

Proposed Repeals: 410-141-0065

Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will amend 410-121-0021 to clarify policy of authorized pharmacy providers for pharmaceutical prescription dispensing, 410-121-0135 to consolidate the pharmacy management program requirements, 410-121-0150 to clarify billing requirements for providers who have prescription writing authority, 410-121-0185 to correct billing language only, 410-121-0190 to update and correct a procedure code, and 410-141-0065 will be repealed. The text from this rule will be consolidated with text in 410-121-0135.

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

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Date:	Time:	Location:
1-18-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-148-0090

Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Home Enteral/Parenteral and Intravenous Services (EPIV) administrative rules govern the Office of Medical Assistance Programs' payment for certain services rendered to clients. OMAP will amend 410-148-0090 to take care of a housekeeping correction for General Rule citation related to OHP Standard benefit package.

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

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Date:	Time:	Location:
1-18-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-131-0120, 410-131-0280

Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Physical and Occupational Therapy Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP will amend 410-131-0120 and 410-131-0280 to clarify what services are funded under the Health Services Commission's Prioritized List of Health Services for the Oregon Health Plan.

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

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

NOTICES OF PROPOSED RULEMAKING

Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-129-0070, 410-129-0200, 410-129-0240, 410-129-0280

Last Date for Comment: 1-18-05, 12 p.m.
Summary: The Speech-language pathology, Audiology, and Hearing Aid Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP will amend 410-129-0070 to clarify language related to coverage of hearing aids, speech-language and dysphagia evaluations, and to clarify that cochlear implant batteries are covered and require payment authorization; 410-129-0200 to add a new CPT code; 410-129-0240 to add new CPT codes for cochlear implant batteries; and, OAR 410-129-0280 to add new CPT codes and eliminates obsolete CPT code.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-122-0010, 410-122-0020, 410-122-0040, 410-122-0055, 410-122-0200, 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0375, 410-122-0420, 410-122-0590, 410-122-0660, 410-122-0625

Last Date for Comment: 1-18-05, 12 p.m.
Summary: The Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS) program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP will amend rules listed above to reflect technical changes, code updates and word clarification. OMAP will amend 410-122-0020 to rename and rewrite content for clarification only.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-120-0000, 410-120-1200, 410-120-1260, 410-120-1280, 410-120-1320

Last Date for Comment: 1-18-05, 12 p.m.
Summary: The General Rules program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP will amend as follows: 410-120-0000, to add

definitions for diagnosis related group, hospice, inpatient, and out-patient; 410-120-1200, to include exclusion of self help programs; 410-120-1260, to clarify enrollment responsibilities for billing providers, performing providers, locus tenens, reciprocal billing arrangements, required reporting updates, and coordination with Electronic Data Interchange (EDI) rules required by Health Insurance Portability and Accountability Act (HIPAA); 410-120-1280, to clarify billing practices affected by HIPAA and EDI requirements, and OMAP's adherence to national coding requirements; and, 410-120-1320, to clarify that a payment authorization may not exceed the date a client's benefit package no longer covers the service. Also, OMAP will take care of necessary housekeeping corrections.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-125-0220, 410-125-0410
Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Hospital Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will amend 410-125-0410 to clarify intent of policy for readmission to hospitals and amend 410-125-0220 to reflect technical changes only.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-25-05
Time: 1:30 p.m.
Location: 500 Summer St. NE
Dept. of Human Services
Rm. 137B
Salem, OR 97301-0199

Hearing Officer: MaryAnn Evans
Stat. Auth.: ORS 409
Stats. Implemented: OL 2003, Ch. 736
Proposed Adoptions: 410-050-0700, 410-050-0710, 410-050-0720, 410-050-0730, 410-050-0740, 410-050-0750, 410-050-0760, 410-050-0770, 410-050-0780, 410-050-0790, 410-050-0800, 410-050-0810, 410-050-0820, 410-050-0830, 410-050-0840, 410-050-0850, 410-050-0860, 410-050-0870
Last Date for Comment: 1-25-05

Summary: These rules establish the rate of tax and provide for the administration of the tax on hospitals as required by HB 2747, passed during the 2003 legislative session.

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

Rules Coordinator: Pat Bougher
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E22, Salem, OR 97301
Telephone: (503) 945-5844

NOTICES OF PROPOSED RULEMAKING

Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-123-1085, 410-123-1260, 410-123-1670
Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Dental Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP will amend 410-123-1085, 410-123-1260 and 410-123-1670 as follows: The term "limited" was missing from the language pertaining to the OHP Standard Limited Emergency Dental benefit, causing some confusion on intent; Added language to clarify intent of service limitations; Made "housekeeping" changes to reflect HIPAA requirements, correct edition of code books and to reflect code changes effective January 1, 2005.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-146-0080
Last Date for Comment: 1-18-05, 12 p.m.

Summary: The American Indian/Alaska Native Services program administrative rules govern the Office of Medical Assistance Programs' payment for certain services rendered to clients. 410-146-0080 referred to another OAR with an incorrect OAR number for OHP Standard rules. This revision will correct the OAR reference.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Date: 1-18-05
Time: 10:30 a.m.–12 p.m.
Location: 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Adoptions: Rules in 410-130
Proposed Amendments: 410-130-0160, 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0587, 410-130-0680, 410-130-0700
Proposed Repeals: 410-130-0010, 410-130-0020, 410-130-0040
Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Medical-Surgical Services program administrative rules govern the Office of Medical Assistance Programs' (OMAP) payment for certain services provided to clients. OMAP will adopt two new rules to address telemedicine and to include language regarding anesthesia (language removed from 410-130-0240). OMAP will amend rules to make technical changes and clarify policy. OMAP will repeal rules to remove billing instructions that are

not necessary in rule. This information is found in the Medical-Surgical Supplemental information on OMAP's website.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0300
Last Date for Comment: 1-18-05, 12 p.m.

Summary: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. In December 2004, OMAP temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This is the Notice to permanently amend the rule to update Transmittal #37, with Title XIX State Agency Letter Number 04-05, changes to the list, effective for services rendered on or after October 28, 2004, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177
Telephone: (503) 945-6927

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

Date: 1-28-05
Time: 1 p.m.
Location: 500 Summer St. NE
Human Service Bldg.
Rms. 137 B, C, and D
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 409.010 & 409.050
Stats. Implemented: ORS 443.705 - 443.825
Proposed Adoptions: 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385
Proposed Ren. & Amends: 309-040-0000 to 309-040-0300, 309-040-0005 to 309-040-0305, 309-040-0010 to 309-040-0310, 309-040-0011 to 309-040-0320, 309-040-0012 to 309-040-0325, 309-040-0015 to 309-040-0315, 309-040-0020 to 309-040-0340, 309-040-0025 to 309-040-0345, 309-040-0030 to 309-040-0335, 309-040-0035 to 309-040-0350, 309-040-0040 to 309-040-0355, 309-040-0045 to 309-040-0360, 309-040-0050 to 309-040-0365, 309-040-0052 to 309-040-0390, 309-040-0055 to 309-040-0395, 309-040-0057 to 309-040-0450, 309-040-0060 to 309-040-0400, 309-040-0065 to 309-040-0410, 309-040-0070 to 309-040-0405, 309-040-0075 to 309-040-0415, 309-040-0090 to 309-040-0420, 309-040-0092 to 309-040-0425, 309-040-0093 to 309-040-0430, 309-040-0095 to 309-040-0435, 309-040-0097 to 309-040-0440, 309-040-0098 to 309-040-0445, 309-040-0099 to 309-040-0455, 309-040-0100 to 309-040-0330

Last Date for Comment: 1-28-05, 5 p.m.
Summary: The proposed amendments, rule numbers and text clarify, simplify, and make current the rules for Adult Foster Homes serving five or fewer adult residents licensed by the Office of Mental Health and Addiction Services (OMHAS).

In addition:

1. OMHAS and the Office of Developmental Disabilities no longer share the same rules. All references to the Office of Developmental Disabilities have been removed from these rules.

NOTICES OF PROPOSED RULEMAKING

2. OMHAS has added definitions to clarify text of the rule and statutory requirements.

3. OMHAS has conformed the rule language to be consistent to HIPAA confidentiality requirements.

4. OMHAS has conformed the rule requirements to meet the standards set forth by the International Building and Universal Fire Code changes adopted on October 1, 2004.

5. OMHAS has conformed the rule language to be consistent to current Children and Families statutes (ORS 418.005 through 418.640) regarding the composition and capacity of an adult foster home.

6. OMHAS has conformed the rule language and references to be consistent with proposed OAR 410-009-0050 through 410-009-0160 Abuse Reporting and Protective Services in Community Programs and Community Facilities.

7. OMHAS has conformed the rule language and references to be consistent to OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

8. OMHAS has conformed the rule language to be consistent to the Secretary of State's Administrative Rule language and process.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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

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Date: 1-28-05	Time: 8 a.m.	Location: 500 Summer St. NE Human Service Bldg. Rms. 137 B, C, and D Salem, OR
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Hearing Officer: Staff
Stat. Auth.: ORS 409.010 & 409.050
Stats. Implemented: ORS 443.705 - 443.825
Proposed Amendments: Rules in 309-035
Last Date for Comment: 1-28-05, 5 p.m.
Summary: The proposed amendments and text clarify, simplify, and make current the rules for Residential Treatment Facilities and Residential Treatment Homes serving adult residents licensed by the Office of Mental Health and Addiction Services (OMHAS).

In addition:

1. OMHAS has conformed the rule requirements to meet the standards set forth by the International Building and Universal Fire Code changes adopted on October 1, 2004.

2. OMHAS has conformed the rule language and references to be consistent with proposed OAR 410-009-0050 through 410-009-0160 Abuse Reporting and Protective Services in Community Programs and Community Facilities.

3. OMHAS has conformed the rule language and references to be consistent to OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

4. OMHAS has conformed the rule language to be consistent to the Secretary of State's Administrative Rule language and process.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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

Department of Human Services, Public Health Chapter 333

Date: 1-24-05	Time: 1:30 p.m.	Location: 800 NE Oregon St. Portland State Office Bldg. Rm. 120C Portland, OR
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Hearing Officer: Jana Fussell
Stat. Auth.: ORS 409.010 & 435.205; Other Auth.: Centers for Medicare and Medicaid Services (CMS) demonstration project approval letter dated October 2003.

Stats. Implemented: ORS 409.010
Proposed Adoptions: 333-004-0000 – 333-004-0190

Last Date for Comment: 1-24-05, 5 p.m.
Summary: The Family Planning Expansion Program is a Medicaid waiver demonstration project reapproved by the Centers for Medicare and Medicaid Services (CMS) to continue operation. At this time the program seeks to adopt rules to standardize provider enrollment, to regulate providers, and implement quality assurance standards.

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

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

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Date: 2-2-05	Time: 1:30 p.m.	Location: 800 NE Oregon St. Portland State Office Bldg. Rm. 140 Portland, OR
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Hearing Officer: Jana Fussell
Stat. Auth.: ORS 409.615 - 409.623
Stats. Implemented: ORS 409.615 - 409.623
Proposed Adoptions: 333-002-0000 – 333-002-0090
Last Date for Comment: 2-2-05, 5 p.m.

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

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

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

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Date: 2-3-05	Time: 7 p.m.	Location: 800 NE Oregon St. Portland State Office Bldg. Suite 120C Portland, OR
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NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Proposed Adoptions: Rules in 333-121

Proposed Amendments: Rules in 333-100, 333-101, 333-106, 333-116

Last Date for Comment: 2-4-05, 5 p.m.

Summary: To revise and update dental, fluoroscopy and PET/CT rules to meet current trends and emerging technologies in these fields. Also, to update and maintain compatibility with Nuclear Regulatory Commission regulations for radioactive materials, a requirement of our Agreement State status. Additional changes utilize guidance from the Suggested State Regulations for the Control of Radiation published by the Conference of Radiation Control Program Directors.

333-100 General Provisions: Add new definitions.

333-101 Registration of Radiation Machines, General License Radioactive Materials, Licensing of Radiation Services, and Accreditation of Hospital Radiology Inspectors: Change the number of training hours for x-ray vendors.

333-106 X-rays in the Healing Arts: Revise training requirements for dental assistants, revise operator qualifications for fluoroscopic equipment, addition to Table 3 for f-speed film, add PET/CT training requirements, change to average glandular dose for mammography, and minor changes to mammography quality assurance requirements.

333-116 Use of Radionuclides in The Healing Arts: Change training requirements for PET authorized users and nuclear pharmacists, add training requirements for PET/CT operators, and implement required NRC changes from 10 CFR 35 to maintain Agreement State compatibility.

333-121 Licensing and Radiation Safety Requirements for Irradiators: New section for large irradiators.

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

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (503) 731-4405

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Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800 - 442.807

Proposed Amendments: 333-505-0007

Last Date for Comment: 1-22-05

Summary: Amend the rule that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate changes recommended by the Advisory Committee on Physician Credentialing Information (ACPCI) in the Office for Oregon Health Policy and Research. The ACPCI has met according to enrolled HB 2144 and statute to review and update the Oregon Practitioner Credentialing and Recredentialing Application forms, which were originally approved by the Advisory Committee on November 14, 2000. The applications are adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 through 442.807. The Director of the Department of Consumer and Business Services and the Director of the Department of Human Services are required to adopt identical rules in a timely manner to carry out the recommendations of the ACPCI. Applications are also available upon request; please call 503-731-4405.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (503) 731-4405

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

Date:
1-18-05

Time:
9 a.m.

Location:
500 Summer St.
Rm. 137d
Salem

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 409, 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Proposed Amendments: 411-070-0032

Last Date for Comment: 1-22-05

Summary: Chapter 411, Division 070, Temporary Rule 0032, the Post Hospital Extended Care benefit is proposed to be transitioned for permanent adoption, effective 01/28/2005. This rule provides clarification and guidance for implementation of OMAP rules that reference the Post Hospital Skilled Care benefit, (410-120-1210).

The Department of Human Services, Seniors and People with Disabilities local offices and Area Agencies on Aging (AAA) are responsible for prior authorization of this benefit for Fee-For-Service OHP clients and are unfamiliar with federal Medicare rules for skilled care. The rule gives clear requirements for assessing a client's eligibility for the PHEC benefit.

**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

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Department of State Lands Chapter 141

Date:
1-25-05

Time:
1-3 p.m.

Location:
Land Board Rm.
Oregon Dept. of State Lands
775 Summer St. NE, Suite 100
Salem, OR

1-27-05

1-3 p.m.

Auditorium
South Slough National
Estuarine Research Reserve
61907 Seven Devils Rd.
Charleston, OR

Hearing Officer: Jeannette Holman or designee

Stat. Auth.: ORS 273.045 & Enrolled SB 311 (Chapter 253 2003 Laws)

Stats. Implemented: Enrolled SB 311 (Chapter 253 2003 Laws), ORS 273.196, 273.197 & 273.199

Proposed Adoptions: Rules in 141-130

Last Date for Comment: 2-8-05

Summary: The proposed rules are necessary to implement the provisions of sections 28 to 30 of Enrolled SB 311 (2003 Legislative Session). The legislation authorizes the Oregon Department of State Lands to enter into agreements with volunteer groups and others to assist with Department programs and maintenance and to provide interpretive and educational functions of State Lands.

Text of the proposed rules will be available approximately January 5, 2005, on the web site www.oregonstatelands.us

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

Rules Coordinator: Nicole Kielsmeier

Address: Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-3805, ext. 239

NOTICES OF PROPOSED RULEMAKING

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.600 - 803.650 & 806.080

Stats. Implemented: ORS 803.565 & 803.600 - 803.650

Proposed Amendments: 735-034-0010, 735-150-0080

Last Date for Comment: 1-21-05

Summary: At the request of the Oregon Dealer Advisory Committee (ODAC), DMV proposes to amend OAR 735-150-0080 (Requirements for Issuing Trip Permits). The amendment extends from five (5) to seven (7) the number of days from the date of issuance of a trip permit that a dealer or trip permit agent must mail or deliver a copy of the trip permit to DMV. The change will make reporting trip permit sales more efficient for dealers because the seven-day period is the same as the filing period for the Dealer Notice of Vehicle Purchase, Form 735-165 required to be filed by dealers with DMV upon the transfer, purchase or sale of a vehicle. This will allow both notices to be filed at the same time, and is intended to save the dealers time and effort.

For consistency, OAR 735-034-0010(2)(f)(A) and (3)(a) are also being amended to change the submission period for trip permits from five (5) to seven (7) days from the date a permit is issued or is voided. A non-substantive grammatical change was also made.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.220 & 802.230

Stats. Implemented: ORS 746.265 & 802.220

Proposed Amendments: 735-010-0030

Last Date for Comment: 1-21-05

Summary: As one of its services, DMV provides an automatic reporting service to Record Inquiry Account holders who qualify. An account holder who subscribes to the service provides DMV with a list of individuals and DMV will automatically send the account holder a certified driving record when certain convictions, accidents, suspensions, revocations or cancellations are posted to the individual's driving record. The account holder must pay a \$3 fee for each record sent by DMV and a \$2 fee each time DMV adds or deletes an individual from the reporting service list. An online service option now allows account holders to modify their reporting service list online. DMV proposes to amend OAR 735-010-0030(1)(n) to delete the \$2 fee if the account holder adds or deletes an individual from the reporting service list using DMV's online option and to change the name of the service to the Automated Reporting Service (A.R.S.). DMV also proposes to amend OAR 735-010-0030(1)(i)(A) to include a reference to records requested through the A.R.S.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/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, Motor Carrier Transportation Division Chapter 740

Stat. Auth.: ORS 153.022, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990

Stats. Implemented: ORS 802.200, 810.560, 825.210, 825.250, 825.252, 825.258 & 825.260

Proposed Amendments: 740-100-0010, 740-100-0015, 740-100-0020, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010

Last Date for Comment: 1-21-05

Summary: These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. In addition, it is proposed that Oregon adopt Title 49 CFR Part 380 related to Special Training Requirements for new commercial motor vehicle drivers and drivers of long combination vehicles (LCV). Part 380 was added to Title 49 in 2004 and is currently applicable to interstate operations. An amendment to OAR 740-100-0015 is needed to clarify that ODOT may require a certified commercial vehicle inspector to sever an employment relationship with a regulated motor carrier as a condition of being certified. Currently motor carriers file two separate accident reports. Proposed amendments to OAR 740-100-0020 will streamline accident reporting by simplifying availability and filing of both required ODOT accident forms and will extend protection of personal information to the Motor Carrier Crash Report. OAR 740-100-0100 is being amended to adopt the current Uniform Fine Schedule for motor carrier out-of-service violations.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/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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Employment Department Chapter 471

Date:	Time:	Location:
1-19-05	1 p.m.	875 Union NE Employment Dept. Auditorium Salem, OR 97311

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.734

Proposed Amendments: Rules in 471-015

Last Date for Comment: 1-19-05, 5 p.m.

Summary: The Employment Department is proposing to amend:

OAR 471-015-0020 to reflect that standards of aggregation have been revised from 6 unit records to 3 unit records.

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

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Employment Relations Board Chapter 115

Date:	Time:	Location:
1-19-05	11:15 a.m.	528 Cottage St. N.E. Suite 340 Salem, OR 97301

Hearing Officer: Paul B. Gamson, Chair

Stat. Auth.: ORS 240.086(3)

Stats. Implemented: ORS 240.560

Proposed Amendments: 115-045-0005, 115-045-0010, 115-045-0020, 115-045-0021, 115-045-0023, 115-045-0025

Last Date for Comment: 1-24-05

Summary: Adopt rules regarding change in time period for filing appeals, change in what constitutes a timely filing of the appeal, and

NOTICES OF PROPOSED RULEMAKING

change in a hearing's postponement past the 30-day requirement on agreement between the parties; rules necessitated by enactment of House Bill 2474, adopted by 2003 Legislature.

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

Rules Coordinator: Tonie Cotell
Address: Employment Relations Board, 528 Cottage St. NE, Suite 400, Salem, OR 97301-3807
Telephone: (503) 378-3807, ext. 248

Insurance Pool Governing Board
Chapter 442

Date:	Time:	Location:
1-20-05	9 a.m.	525 Trade St. SE Salem, OR 97301

Hearing Officer: Wanda Davis
Stat. Auth.: ORS 735.708
Stats. Implemented: ORS 735.700 - 735.740
Proposed Adoptions: Rules in 442-006
Proposed Repeals: Rules in 442-002
Last Date for Comment: 1-25-05

Summary: Repealing Division 002 and adopting Division 006 to implement the Certified Plans as directed by HB 2537 passed by the 72nd Session of the Oregon Legislature.

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

Rules Coordinator: Nicole Shuba
Address: Insurance Pool Governing Board, 250 Church St. SE, Suite 200, Salem, OR 97301-3291
Telephone: (503) 378-4676

Land Conservation and Development Department
Chapter 660

Date:	Time:	Location:
2-4-05	8:30 a.m.	Agriculture Bldg. Basement Hrg. Rm. 635 Capitol St. NE Salem, OR
3-16-05	1:30 p.m.	Agriculture Bldg. Basement Hrg. Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: LCDC Staff
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.025, 197.040 & 197.712
Proposed Amendments: 660-012-0005, 660-012-0060
Last Date for Comment: 3-16-05

Summary: Section 0060 of the Transportation Planning Rule (OAR Chapter 660, Division 012), requires that local governments assess whether proposed plan and land use regulation amendments will significantly affect the transportation system. Where an effect occurs, local governments are required to take steps to put planned land use in balance with the planned transportation system. Proposed amendments would clarify how local governments should assess whether or not a proposed plan or land use regulation amendment causes a significant effect and what corrective actions may be taken to put land use and transportation in balance.

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

Rules Coordinator: Shelia Preston
Address: Land Conservation and Development Department, 635 Capitol St. NE - Suite 150, Salem, OR 97301-2540
Telephone: (503) 373-0050, ext. 222

Date:	Time:	Location:
2-3-05	2 p.m.	Agriculture Bldg. Basement Hrg. Rm. 635 Capitol St. NE Salem, OR

3-17-05	9 a.m.	Agriculture Bldg. Basement Hrg. Rm. 635 Capitol St. NE Salem, OR
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Hearing Officer: LCDC Staff
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Proposed Adoptions: 660-009-0030
Proposed Amendments: 660-009-0000, 660-009-0005, 660-009-0010, 660-009-0015, 660-009-0020, 660-009-0025
Last Date for Comment: 3-17-05

Summary: Proposed amendments will clarify and simplify existing requirements for local governments to conduct economic opportunities analyses and inventory industrial and commercial lands to ensure that land is available for a variety of economic uses.

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

Rules Coordinator: Shelia Preston
Address: Land Conservation and Development Department, 635 Capitol St. NE - Suite 150, Salem, OR 97301-2540
Telephone: (503) 373-0050, ext. 222

Landscape Contractors Board
Chapter 808

Date:	Time:	Location:
1-21-05	11 a.m.	235 Union St. NE Landscape Contractors Board Salem, OR

Hearing Officer: Ron Overstreet
Stat. Auth.: ORS 36, 87, 183, 670 & 671.670; Other Auth.: HB 2279 (Ch. 598, OL 2003)

Stats. Implemented: ORS 36, 87, 183 & 671
Proposed Adoptions: 808-002-0325, 808-004-0195, 808-004-0211, 808-008-0051, 808-008-0291, 808-008-0511, 808-008-0521
Proposed Amendments: 808-001-0005, 808-001-0030, 808-002-0260, 808-002-0540, 808-002-0725, 808-004-0250, 808-004-0300, 808-004-0440, 808-004-0510, 808-004-0520, 808-008-0020, 808-008-0030, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0180, 808-008-0280, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500, 808-009-0100

Proposed Repeals: 808-008-0240
Last Date for Comment: 1-21-05

Summary: 808-002-0540, 808-008-0020, 808-004-0211, 808-008-0030, 808-008-0051, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0240, 808-008-0280, 808-008-0291, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500, 808-008-0511, 808-008-0521 are adopted or amended to implement HB 2279 (chapter 598, Oregon Laws 2003).

808-001-0005: Amended to adopt the new revised January 15, 2004 version of the Attorney General's Uniform and Model Rules of Procedure.

808-001-0030: Amended to update cite since temporary rule.

808-002-0325: Adopt a new definition to implement the Board's policy regarding direct contractual relationship

808-002-0260: Amended to clarify that this definition includes arbitration. Add the concept that a court must be of competent jurisdiction if this definition applies. This extends this concept to all rules using this definition (OAR 808-004-0250, 808-004-0510 and 808-004-0520)

808-002-0725: Amended to correct cite.

808-004-0195: Adopt the rule to allow the agency to request that a party submitting exhibits that cannot be easily reproduced on an agency copier to submit copies for the agency file, investigator, other side and Office of Administrative Hearings.

808-004-0250: Amended rule to conform to change in definition of "court, arbitrator or other entity." Substitutes a better description of the damages excluded under the phrase "administrative damages."

NOTICES OF PROPOSED RULEMAKING

808-004-0300: Amended to establish the filing date of a claim.
 808-004-0440: Amended section (1)(c) to clarify agency procedure. This amendment emphasizes the need for respondent to initiate mediation or arbitration if respondent wants to maintain a contractual right to mediation or arbitration.

808-004-0510: Amended to conform to a change in definition of "court, arbitrator or other entity."

808-004-0520: Amend rule to conform to a change in definition of "court, arbitrator or other entity." In section (3)(d) provides that claimant must deliver a certified copy of a final judgment to the LCB in order for the LCB to continue processing the claim.

808-008-0020: Amended to delete unnecessary language to include applicable section of the revised Uniform Arbitration Act related to the effective date of the Act. Rearrange order of sections in rule so temporary section can be deleted later without renumbering sections

808-008-0060: Amended to correct cite since temporary rule filing

808-008-0140: Amended to clarify statute cite since temporary rule filing.

808-008-0180: Amended to clarify which statute controls representation by an attorney. This is necessary because both ORS Chapter 671 and the Revised Uniform Arbitration Act cover this subject.

808-008-0420: Amended to:
 Delete section (8). Payment from a bond is covered I OAR 808-004-0600

Correct internal cites in sections (6) and (10).
 Amend section (11) new (10) to adjust for amendments in law relating to arbitration awards made by 2003 legislature.

808-008-0425: Amended to add section (7)(b) to expand what an arbitrator may reconsider on a petition to modify or correct an arbitrator award to include reconsideration on the grounds that the arbitrator made an award on a claim not submitted to the arbitrator. Under the state arbitration law, only a court may modify or correct an award on these grounds, unless the arbitration agreement provides otherwise. We do not see any reason for limiting this decision to a petition to the court.

808-008-0440: Amends the procedure to collection money to simplify the process.

808-008-0460: Amended to delete provisions that do not apply anymore under the revised Uniform Arbitration Act enacted by the 2003 legislature and rewrite rule to comply with that act.

808-008-0500: Amended to correct cite since temporary rule filing.

808-009-0100: Amended to clarify statute cite.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301
Telephone: (503) 986-6570

Oregon Board of Dentistry
Chapter 818

Date:	Time:	Location:
1-20-05	7 p.m.	611 SW Campus Drive OHSU School of Dentistry Rms. 220 & 225 Portland, OR

Hearing Officer: Board President or Designee
Stat. Auth.: ORS 183, 192, 679 & 680
Stats. Implemented: ORS 183.341, 676.345, 679.010, 679.020, 679.025, 679.060, 679.090, 679.120, 679.250, 680.010, 680.020, 680.050 & 680.072
Proposed Adoptions: 818-021-0088
Proposed Amendments: 818-001-0002, 818-001-0005, 818-001-0087, 818-026-0030, 818-026-0050, 818-026-0060, 818-035-0025, 818-035-0030, 818-042-0116

Last Date for Comment: 1-20-05
Summary: The Board is amending 818-001-0002 to create a definition for a Volunteer Licensee.

The Board is amending 818-001-0087 Fees, which will create the categories Volunteer Dentist and Volunteer Dental Hygienist and set the current fees at \$0 and to also eliminate the words "minimal" and "conscious" from the fee schedule to be consistent with amendments made previously in Division 26.

The Board is adopting 818-021-0088 which will detail the specific requirements of a Volunteer License.

The Board is amending 818-001-0005 Model Rules of Procedure to always have the Board in compliance with the most current version of the Attorney General's Model Rules of Procedures under the Administrative Procedures Act.

The Board is amending 818-026-0030 which clarifies that a dentist or dental hygienist must maintain current certification in Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR), or its equivalent, or holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, when holding an Anesthesia Permit.

The Board is amending 818-026-0050 Class 2 Anesthesia Permit to clarify the appropriate training requirements for application for anesthesia permits and to create separate designations on those permits for parenteral use, enteral use, or both parenteral and enteral use.

The Board is amending 818-026-0060 Class 3 Anesthesia Permit to eliminate the word "conscious" which was missed when the rule was previously amended.

The Board is amending 818-035-0025 Prohibitions to allow Dental Hygienists to diagnose and treatment plan for dental hygiene services, to allow for certain drugs within the scope of dental hygiene to be prescribed, and to remove the prohibition of taking permanent impressions.

The Board is amending 818-035-0030 Additional Functions of Dental Hygienists to remove the conflict in language that would occur with changes to 818-035-0025.

The Board is amending 818-042-0116 Certification - Oral Surgery Assistant to update the list of accepted examinations and organizations who administer the examinations and to provide for successor examinations or organizations.

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

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

Rules Coordinator: Sharon Ingram
Address: Oregon Board of Dentistry, 1600 SW 4th Ave., Suite 770, Portland, OR 97201
Telephone: (503) 229-5520

Oregon Public Employees Retirement System
Chapter 459

Date:	Time:	Location:
1-25-05	10:30 a.m.	11410 SW 68th Pkwy. Boardroom PERS Headquarters Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.630, 238.305, 238.650, 238A.005, 238A.125, 238A.130, 238A.170, 238A.370, 238A.410 & 238A.430
Stats. Implemented: ORS 238.005 - 238.715
Proposed Amendments: Rules in 459-005
Last Date for Comment: 1-28-05

Summary: The proposed rule modifications affect a series of rules in the OAR Chapter 459, Division 005, relating to the administration of the PERS Plan. Generally, the modifications are to apply the IRS limitations to the new OPSRP programs from ORS Chapter 238A and update provisions that have been affected by federal law

NOTICES OF PROPOSED RULEMAKING

and rule changes. The rules to be modified are summarized briefly below with explanations for the modifications to each rule affected:

• OAR 459-005-0506: Updates statutory references to include the OPSRP programs and other changes. Adds clarifying language regarding federal tax treatment of the PERS Plan components as defined contribution or defined benefit plans.

• OAR 459-005-0525: Updates statutory references to include OPSRP programs and terminology.

• OAR 459-005-0535: Incorporates OPSRP statutory references and terminology. Changes the mortality table used for calculating benefit limitations to the table prescribed by the Internal Revenue Code.

• OAR 459-005-0545: Refers to the Internal Revenue Code section method to adjust the annual limitation so it will increase consistently with the IRS' requirements. Otherwise, changes are to incorporate OPSRP references as needed.

• OAR 459-005-0560: Updates references to IRS regulations that became final this past summer. Modifications specify limitations and choices dictated by IRS rules. IRS regulations used to prevent a member in RMD from "popping up" to Option 1; the new regulations allow that change, so the rule is changed accordingly.

• OAR 459-005-0590: Incorporates OPSRP statutory references.

• OAR 459-005-0591: Adds a provision that the rollover must be to a defined contribution plan that accepts the distribution.

• OAR 459-005-0595: Adds language to clarify rollover eligibility for a PERS Plan distribution that is based in part on after-tax employee contributions includible in the member's gross income.

Rules Coordinator: David K. Martin

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

Telephone: (503) 603-7713

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Oregon State Lottery Chapter 177

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

Stats. Implemented: ORS 461.250

Proposed Amendments: 177-050-0027

Last Date for Comment: 1-25-05

Summary: This rule is being amended to clarify that a damaged Scratch-it ticket may still be paid by the Lottery if it can be reconstructed or there is enough of the ticket intact to validate that it is indeed a winning ticket.

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

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Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Date:	Time:	Location:
1-17-05	10:30 a.m.	1500 Valley River Dr. Suite 100 Eugene, OR 97401

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: 1-17-05

Summary: Revises eligibility for application for doctoral degree program approval. Requires applicant doctoral programs in professional fields to be intended to meet standards of Oregon state licensing boards in those fields.

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

Rules Coordinator: Susan Degen

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

Telephone: (541) 687-7451

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Oregon Youth Authority Chapter 416

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810 - 420.840 & 420.888 - 420.892

Proposed Amendments: 416-550-0000, 416-550-0010, 416-550-0020, 416-550-0030, 416-550-0040, 416-550-0050, 416-550-0060, 416-550-0070, 416-550-0080

Last Date for Comment: 2-7-05

Summary: These rules are being amended to clarify terminology used. "Youth offender" has been changed to "offender" and "youth offender treatment foster care" shortened to "treatment foster care." Definitions have been aligned with other recent definition revisions established through the administrative rule review process. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker

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

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-430-0040

Last Date for Comment: 2-7-05

Summary: This rule is being repealed as relevant language has been moved to OAR 416, Chapter 340 which is concurrently being noticed for change. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker

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

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Proposed Amendments: 416-340-0000, 416-340-0010, 416-340-0020, 416-340-0030, 416-340-0040, 416-340-0050, 416-340-0060, 416-340-0070

Proposed Repeals: 416-340-0080, 416-340-0090, 416-340-0100, 416-340-0110

Last Date for Comment: 2-7-05

Summary: OAR 416-340-0000 is being amended to clarify the purpose of this division. OAR 416-340-0010 (Definitions) is being amended by adding some additional definitions; OAR 416-340-0020 (General Standards) is being amended to clarify use, consent to, and storage of medication; OAR 416-340-0030 (Medication Administration) is being amended with minor grammatical revisions and clarification of documentation for side effects; OAR 416-340-0040 (Medication Records) is being amended to better define information included on the Medication Administration Record; OAR 416-340-0050 (Intra-muscular injections) is being amended to clarify procedure; OAR 416-340-0060 (Psychotropic medications) is being amended to clarify procedures; OAR 416-340-0070 (Medication Management in Substitute Care) is being amended and renamed to include all notification processes. OAR 416-340-0080, OAR 416-340-0090, OAR 416-340-0100, and OAR 416-340-0110 will be repealed. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker

NOTICES OF PROPOSED RULEMAKING

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

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Proposed Amendments: 416-530-0010
Last Date for Comment: 2-7-05

Summary: OAR 416-530-0010 is being amended to redefine a "respite provider" by removing the language "and not a member of the household." Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

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

Parks and Recreation Department Chapter 736

Date:	Time:	Location:
1-24-05	6-7 p.m.	Oregon Parks and Recreation Dept., Rm. 124A 725 Summer St. NE, Suite C Salem, OR

Hearing Officer: Ron Campbell
Stat. Auth.: ORS 390.180(1)(c)
Stats. Implemented: ORS 390.180(1)(c)
Proposed Amendments: 736-018-0045
Last Date for Comment: 1-31-05

Summary: ORS 390.180(1)(c) requires the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting an amended master plan for Hares Canyon State Park. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the amended master plan as a state rule.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The amended plan was formulated through OPRD's mandated process for adopting and amending master plans and coordinating with affected local governments as described in OAR 736 Division 18 and OAR 660 Division 34.

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

Rules Coordinator: Jo Bell
Address: Parks and Recreation Department, 725 Summer St. NE, Suite. C, Salem, OR 97301
Telephone: (503) 986-0719

Public Utility Commission Chapter 860

Date:	Time:	Location:
2-8-05	9:30 a.m.	550 Capitol St. NE Public Utility Commission Small Hearing Rm. - 2nd Floor Salem, OR

Hearing Officer: Allan Arlow
Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040 & 759.035
Proposed Amendments: 860-032-0700
Last Date for Comment: 2-8-05

Summary: The proposed rule would mandate that telecommunications utilities publish specialized directories within their telephone directories. The specialized directories would contain listings for government entities and schools. Telecommunications utilities would be encouraged to include private non-profit agencies in their specialized directories.

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

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

Secretary of State, Archives Division Chapter 166

Date:	Time:	Location:
1-18-05	10 a.m.	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: 1-18-05, 5 p.m.

Summary: Deletes Administrative, General, and Ephemeral correspondence categories currently found in OAR 166-300-0015 and replaces them with Correspondence and Informational Communications. Also deletes the fiscal correspondence category in OAR 166-300-0025.

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

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

Secretary of State, Corporation Division Chapter 160

Date:	Time:	Location:
1-21-05	9 a.m.-12 p.m.	255 Capitol St. NE Suite 151 Salem, OR 97310

Hearing Officer: Gary Johnson
Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0515 & 79.0521
Proposed Amendments: 160-040-0103
Last Date for Comment: 1-21-05

Summary: This amendment adopts the latest version of the national standard UCC forms, while acknowledging the acceptability of the statutorily described forms.

**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

Secretary of State, Elections Division Chapter 165

Date:	Time:	Location:
2-1-05	9-9:30 a.m.	255 Capitol St. NE Public Service Bldg. Basement C Salem, OR

Hearing Officer: Brenda Bayes
Stat. Auth.: ORS 246.150, 250.105, 250.215, 250.315 & 255.175
Stats. Implemented: ORS 250.105, 250.215, 250.315 & 255.175
Proposed Amendments: 165-014-0030, 165-014-0110
Last Date for Comment: 2-1-05, 5 p.m.

Summary: These rules are proposed for amendment to modify the criteria for which the Secretary of State's staff or local elections offi-

NOTICES OF PROPOSED RULEMAKING

cials will remove cover and signature sheets prior to signature verification.

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

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

Telephone: (503) 986-1518

Date:	Time:	Location:
2-1-05	9-9:30 a.m.	255 Capitol St. NE Public Service Bldg. Basement C Salem, OR

Hearing Officer: Brenda Bayes

Stat. Auth.: ORS 246.150, 249.008, 250.105, 250.215, 250.315 & 255.175

Stats. Implemented: ORS 249.008, 249.875, 250.105, 250.215, 250.315 & 255.175

Proposed Adoptions: 165-014-0270

Last Date for Comment: 2-1-05, 5 p.m.

Summary: This proposed rule adopts specific standards for what constitutes a sufficient circulator's certification on Initiative, Referendum, Recall, and Candidate Nominating petitions.

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

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

Telephone: (503) 986-1518

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Proposed Amendments: 165-001-0005

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

Summary: This proposed amendment will adopt the most recent version, January 15, 2004, of the Oregon Attorney General's Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedure Act, which is the model and guide for agency rulemaking.

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

Telephone: (503) 986-1518

ADMINISTRATIVE RULES

Board of Chiropractic Examiners Chapter 811

Adm. Order No.: BCE 3-2004

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-10-04

Notice Publication Date: 11-1-04

Rules Amended: 811-030-0030

Subject: 811-030-0030: Makes amendments to the X-ray rules update requirements based on best current evidence.

Rules Coordinator: Dave McTeague—(503) 378-5816, ext. 23

811-030-0030

X-Ray Departments, Equipment and Procedures

(1) All X-ray departments, equipment and procedures including fluoroscopy shall be in compliance with the current rules and regulations of the Oregon State Health Division Radiation Control Section, including but not limited to, the physical design of the department, occupational exposure, collimation, shielding, exposure charts.

(2) In addition:

(a) The patient shall be an adequate candidate for the radiographic or fluoroscopic procedure employed;

(b) The radiographic field shall be restricted to the area of clinical interest;

(c) Specialized views shall be used any time the area of clinical interest is not clearly visualized on a standard film;

(d) Every exposure, including post-treatment exposures, and scanograms, shall have clinical justification with adequate documentation consistent with the patient's case history;

(e) The operator shall maintain a record on each exposure of each patient containing the patient's name, the date, the operator's name or initials, the type of exposure and the radiation factors of time, mA, kVp and target film distance, including those exposures resulting in the necessity of repeat exposure for better diagnostic information such as patient motion or poor technical factors. For computerized and automated systems the recording of technique factors is not necessary as long as the equipment is calibrated and maintained. OAR 333-106-045 requires the facility to determine the typical patient exposure for their most common radiographic examinations, i.e. technique chart.

(f) Each film shall be properly identified by date of exposure, location of X-ray department, patient's name or number, patient's age, right or left marker and postural position marker and indication of the position of the patient;

(g) The patient with tremors must be immobilized;

(h) The radiographs of a patient with an antalgic posture may be taken in an upright position only if the patient is adequately supported and immobilized to insure diagnostic quality. Otherwise, the recumbent position shall be used;

(i) Upright or postural views shall not be used for any patient whose size exceeds the capacity of the X-ray equipment. Penetration must be adequate on all films;

(j) Sectional views shall be taken in preference to a single 14 x 36 inch film if the patient's size or height prevents diagnostic quality on a single 14 x 36 inch film;

(k) If two exposures are made on a single film, the area of exposure shall be critically collimated to avoid double exposure of the overlapping area;

(l) All views shall employ graduated filtration or adequate devices to attenuate the primary beam for the purpose of reducing unnecessary radiation and to improve film quality. Split screens, gradient or graded screens, paper light barriers inside the cassette, or any other attenuating device in the beam between the patient and the film shall not be permitted, other than the grid controlling scattered radiation.

(m) A record of radiographic findings on every set of radiographs reviewed shall be included in the patient's permanent file;

(n) Radiographs shall be kept and available for review for a minimum of seven years or until a minor becomes 18 years of age, whichever is longer.

Stat. Auth.: ORS 441 & 684

Stats. Implemented: ORS 684.025, 684.150, 684.155 & 441.059

Hist.: 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 1-1980, f. 1-16-80, ef. 2-1-80; CE 7-1993, f. 12-9-93, cert. ef. 12-10-93; BCE 3-2004, f. & cert. ef. 12-10-04

Board of Nursing Chapter 851

Adm. Order No.: BN 16-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 11-30-04

Notice Publication Date: 10-1-04

Rules Amended: 851-050-0131

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

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

851-050-0131

Formulary for Nurse Practitioners with Prescriptive Authority

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

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

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated October 2004 with the exception of certain drugs and drug groups, which are listed below.

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

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

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

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;

(c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;

(d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/collaboration with another health care provider who has the authority and experience to prescribe the drug(s);

(e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over the counter drugs;

(b) Appliances and devices.

(5) Nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated October 2004:

(a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel).

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Treprostinil Sodium (Romodulin).

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam);

(C) Dofetilide (Tikosyn); and

(D) Bosentan (Tracleer).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

ADMINISTRATIVE RULES

Bureau of Labor and Industries Chapter 839

(g) Central Nervous System Agents:

(A) Class II Controlled Substances — Only the following drugs:

- (i) Tincture of opium;
- (ii) Codeine;
- (iii) Hydromorphone;
- (iv) Morphine;
- (v) Oxycodone, Oxymorphone;
- (vi) Topical Cocaine Extracts and Compounds;
- (vii) Fentanyl;
- (viii) Meperidine;
- (ix) Amphetamines;
- (x) Methylphenidates;
- (xi) Pentobarbital;
- (xii) Secobarbital;
- (xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and
- (xiv) Levorphanol.

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and

(C) Chymopapain is excluded.

(h) Gastrointestinal Agents — all drugs except: Monoctanoic;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

- (A) Punctal plugs;
 - (B) Collagen Implants;
 - (C) Indocyanine Green;
 - (D) Hydroxypropyl (Methyl) Cellulose;
 - (E) Polydimethylsiloxane;
 - (F) Fomivirsin Sodium (Vitrevane);
 - (G) Verteporfin;
 - (H) Levobetaxolol HCL (Betaxon);
 - (I) Travoprost (Travatan);
 - (J) Bimatoprost (Lumigan); and
 - (K) Unoprostone Isopropyl (Rescula).
- (m) Antineoplastic Agents — all drugs except:
- (A) NCI Investigational Agents;
 - (B) Samarium Sm53;
 - (C) Denileukin Diftitox (Ontak);
 - (D) BCG, Intravesical (Pacis);
 - (E) Arsenic Trioxide (Trisenox);
 - (F) Ibritumomab Tiuxetan (Zevalin);
 - (G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar); and
 - (H) Sclerosol.

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

(C) Miscellaneous Radiopaque agents — no drugs from this category except:

- (i) Iopamidol;
- (ii) Iohexol; and
- (iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.375 & 678.385

Stats. Implemented: ORS 678.385

Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; NB 4-1998, f. & cert. ef. 3-13-98; NB 5-1998, f. & cert. ef. 5-11-98; NB 8-1998, f. & cert. ef. 7-16-98; NB 12-1998, f. & cert. ef. 9-22-98; NB 13-1998, f. & cert. ef. 12-1-98; NB 1-1999, f. & cert. ef. 3-4-99; NB 3-1999, f. & cert. ef. 5-4-99; NB 5-1999, f. & cert. ef. 7-1-99; NB 9-1999, f. & cert. ef. 10-20-99; NB 13-1999, f. & cert. ef. 12-1-99; NB 3-2000, f. & cert. ef. 2-25-00; NB 5-2000, f. & cert. ef. 4-24-00; NB 8-2000, f. & cert. ef. 7-3-00; NB 9-2000, f. & cert. ef. 9-18-00; NB 10-2000, f. & cert. ef. 12-15-00; NB 2-2001, f. & cert. ef. 2-21-01; NB 6-2001, f. & cert. ef. 4-24-01; NB 9-2001, f. & cert. ef. 7-9-01; NB 13-2001, f. & cert. ef. 10-16-01; NB 4-2002, f. & cert. ef. 3-5-02; NB 11-2002, f. & cert. ef. 4-25-02; NB 14-2002, f. & cert. ef. 7-17-02; NB 19-2002, f. & cert. ef. 10-18-02; NB 21-2002, f. & cert. ef. 12-17-02; NB 2-2003, f. & cert. ef. 3-6-03; NB 4-2003, f. & cert. ef. 4-23-03; NB 8-2003, f. & cert. ef. 7-7-03; NB 10-2003, f. & cert. ef. 10-2-03; NB 13-2003, f. & cert. ef. 12-9-03; NB 6-2004, f. & cert. ef. 2-26-04; NB 10-2004, f. & cert. ef. 5-4-04; NB 12-2004, f. & cert. ef. 7-13-04; NB 15-2004, f. & cert. ef. 10-26-04; NB 16-2004, f. & cert. ef. 11-30-04

Adm. Order No.: BLI 17-2004

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-13-04

Notice Publication Date:

Rules Amended: 839-016-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2004.

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 July 1, 2004 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2004, and the effective date of the applicable special wage determination:

(a) Amendment to Oregon Determination 2004-02 (effective October 1, 2004).

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

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon dated July 1, 2004, 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) 731-4723

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS.279.359

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

Construction Contractors Board Chapter 812

Adm. Order No.: CCB 9-2004

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-10-04

Notice Publication Date: 11-1-04

Rules Adopted: 812-003-0100, 812-003-0110, 812-003-0120, 812-003-0130, 812-003-0140, 812-003-0150, 812-003-0160, 812-003-0170, 812-003-0180, 812-003-0190, 812-003-0200, 812-003-0210, 812-003-0220, 812-003-0230, 812-003-0240, 812-003-0260, 812-003-0270, 812-003-0280, 812-003-0290, 812-003-0300, 812-003-0310, 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360, 812-003-0370, 812-003-0380, 812-003-0410, 812-003-0420, 812-003-0430

Rules Amended: 812-001-0015, 812-001-0040, 812-002-0260, 812-002-0555, 812-002-0800, 812-004-0001, 812-004-0240, 812-004-0260, 812-004-0320, 812-004-0470, 812-004-0530, 812-004-0540, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0005, 812-006-0020, 812-008-0020, 812-008-0070, 812-008-0110, 812-009-0400, 812-010-0040, 812-010-0050, 812-010-0200, 812-010-0220, 812-010-0260, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0420, 812-010-0480

ADMINISTRATIVE RULES

Rules Repealed: 812-003-0000, 812-003-0012, 812-003-0015, 812-003-0020, 812-003-0025, 812-003-0050

Rules Ren. & Amended: 812-003-0002 to 812-003-0250, 812-003-0005 to 812-003-0320, 812-003-0030 to 812-003-0390, 812-003-0040 to 812-003-0400

Subject: OAR 812-001-0015 is amended to delete the refund of license fee language from this rule and the language is amended and adopted into 812-003-0140.

OAR 812-001-0040, 812-002-0260, 812-002-0555, 812-002-0800, 812-004-0001, 812-004-0240, 812-004-0260, 812-004-0470, 812-004-0530, 812-004-0540, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0005, 812-006-0020, 812-008-0020, 812-008-0110, 812-009-0400, 812-010-0040, 812-010-0200, 812-010-0220, 812-010-0260, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, and 812-010-0480 are amended to correct cite references.

OAR 812-004-0320 is amended to correct cite references and adjusts jurisdictional requirements for employee claims to restrict jurisdiction for claims for unpaid labor to period when contractor was licensed.

OAR 812-008-0070 is amended to correct numbering error.

OAR 812-010-0050 and 812-0010-0420 are amended to correct the wording.

The following rules are amended and renumbered:

- OAR 812-003-0002 to 812-003-0250, which sets out the exempt and non-exempt class of independent contractor.

- OAR 812-003-0005 to 812-003-0320, which explains record changes and what is required when changes are made to a license record.

- OAR 812-003-0030 to 812-003-0390, which discusses revocations or suspensions of a license.

- OAR 812-003-0040 to 812-003-0400, which sets out criteria for restoration of a bond after payment on a claim has been made.

Repeal 812-003-0000, 812-003-0012, 812-003-0015, 812-003-0020, 812-003-0025, and 812-003-0050; and the text contained in those rules has been amended and moved into new proposed rules numbers to make the rules user friendly and to better organize the rules.

The following rules are adopted to amend and reorganize Division 3:

- 812-003-0100 sets out the various entity types for a license and explains that a license and its identifying number will be issued to one entity only.

- 812-003-0110 sets out the standards of behavior for a licensee.

- 812-003-0120 explains that a license is required to advertise.

- 812-003-0130 lists the licensing categories.

- 812-003-0140 sets out the license, renewal and reissue fees for a license.

- 812-003-0150 sets out rules for bonds generally.

- 812-003-0160 requires entity name on bond and explains what names must be included on the bond.

- 812-003-0170 sets out the bond amounts required for each license category.

- 812-003-0180 sets out the effective dates of a bond, cancellations, and when an emergency suspension will be used.

- 812-003-0190 explains that a new bond is required for an entity change.

- 812-003-0200 sets out the rules for insurance generally.

- 812-003-0210 explains that the entity name is required on insurance certificates.

- 812-003-0220 sets out the insurance amounts required for each category of licensure.

- 812-003-0230 sets out the effective dates of insurance and explains if insurance is canceled, then the license will be emergency suspended.

- 812-003-0240 sets out the independent contractor requirements for licensure.

- 812-003-0260 sets out the requirements for an application for a new license.

- 812-003-0270 explains the effective dates of a new license.

- 812-003-0280 explains renewal and reissue of a license.

- 812-003-0290 explains the effective dates of a renewal or reissue of a license.

- 812-003-0300 describes a lapse in license.

- 812-003-0310 describes the license cards.

- 812-003-0330 sets out rules for inactive status generally.

- 812-003-0340 sets out criteria for inactive status requests at renewal time.

- 812-003-0350 sets out criteria for inactive status requests at interim renewal periods.

- 812-003-0360 sets out criteria for inactive status requests after a lapse in license.

- 812-003-0370 describes renewal of inactive status.

- 812-003-0380 sets out criteria to convert from inactive back to active status.

- 812-003-0410 sets out agency actions regarding social security numbers.

- 812-003-0420 sets out Davis Bacon Act requirements.

- 812-003-0430 sets out time period for perfecting a lien or claim.

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

812-001-0015

Information Requests

(1) The agency will provide the following information in response to telephone and web site requests for license information relating to a specific entity:

(a) Whether or not the entity is or has ever been licensed.

(b) The license number(s).

(c) The business names used by the entity of record with the agency.

(d) Type of business organization (sole proprietorship, partnership, limited liability partnership, limited liability company, or corporation).

(e) Personal names of owners, partners, members or corporate officers.

(f) Last known address.

(g) Category of license (General Contractor — All-Structures, Specialty Contractor — All-Structures, General Contractor — Residential-Only, Specialty Contractor — Residential-Only, Limited Contractor, and Inspector).

(h) Employer status (exempt or nonexempt).

(i) Expiration date or date upon which the license became inactive or lapsed and the reason it became inactive or lapsed.

(j) The date the entity first became licensed.

(k) The number and type of inquiries and pending claims and claims closed during the past three years where the agency issued Final Orders requiring the contractor to pay the claimant.

(2) If more information is required than that listed in section (1) of this rule, the request for information should be made in writing.

(3) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

(a) License number(s).

(b) Name of licensed entity and any assumed business names on file with the agency.

(c) Type of business (sole proprietorship, partnership, limited liability partnership, limited liability company, or corporation).

(d) Category of license (General Contractor — All-Structures, Specialty Contractor — All-Structures, General Contractor — Residential-Only, Specialty Contractor — Residential-Only, Limited Contractor, and Inspector).

(e) Employer status (exempt or nonexempt).

(f) Personal names of owner, partners, members, or corporate officers.

(g) The important dates in the license history and the action that took place on those dates.

(4) In response to telephone requests from consumers for claims information relating to a specific licensee, the agency will provide by mail a brief explanation of the claims process and the following information for each claim filed in the previous seven years:

(a) Type of each claim.

(b) Date on which the claim was filed.

(c) The status of the claim filed.

ADMINISTRATIVE RULES

- (d) Alleged amount of the claim, if known, or amount awarded.
- (5) If more information is required than that listed in section (4) of this rule, the request for information should be specified in writing.
- (6) The agency may make the following charges for records:
 - (a) \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board.
 - (b) \$20 for certified copies of documents.
 - (c) \$5 for the first 20 copies made and 25 cents per page thereafter.
 - (d) \$20 for duplicate tape recordings of, Board meetings and Appeal Committee meetings.
 - (e) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for duplicate tape recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration.
 - (f) Charge as determined by preparation time and production cost for mailing labels of licensees.
 - (g) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time.

(7) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445

Stats. Implemented: ORS 183.310, 183.500, 192.430, 701.235, 701.250, 701.252

Hist.: 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1998, f. & cert. ef. 4-30-98; Administrative correction 7-28-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 14-2000, f. & cert. ef. 12-4-00; 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 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-001-0040

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has 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)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(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; or

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a claim or arbitration filed under ORS 701.139 to 701.145, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [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 section (9) of this rule 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 oth-

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erwise 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 mediation 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 that the agency administrator 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.]

Stat. Auth.: ORS 36.224, 670.310 & 701.235

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

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04

812-002-0260

Dishonest or Fraudulent Conduct

"Dishonest or fraudulent conduct", as used in ORS 701.135(1)(L) includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or

(7) Failing to pay minimum wages or overtime wages as required under state or federal law; or

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279.348 to 279.380; or

(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.

(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.

(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.135

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; CCB 14-2000, f. & cert. ef. 12-4-00; 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 9-2004, f. & cert. ef. 12-10-04

812-002-0555

Owner or Holder of a Direct or Indirect Interest in a Person

(1) "Owner or holder of a direct or indirect interest in a person", as used in ORS 701.102, includes:

(a) An officer of the corporation if the person is a corporation;

(b) A partner of the partnership, limited liability partnership or foreign limited liability partnership if the person is a partnership, limited liability partnership or foreign limited liability partnership as those business entities are defined in ORS 67.005;

(c) A general partner of the limited partnership if the person is a limited partnership as that entity is defined in ORS 70.005;

(d) A manager of the manager-managed limited liability company if the person is a manager-managed limited liability company as that entity is defined in ORS 63.001;

(e) A member of the member-managed limited liability company if the person is a member-managed limited liability company as that entity is defined in ORS 63.001;

(f) A responsible managing individual of the person under OAR 812-006-0010;

(g) An individual who has a financial interest in the person and exercises authority and control over the person; and

(h) An individual who has a financial interest in a business and exercises authority and control over the business if the business owns more than fifty percent of the person.

(2) "Owner or holder of a direct or indirect interest in a person", as used in ORS 701.102, does not include the interest of an investor who has no right to manage a business as defined under ORS 701.102(3).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.102

Hist.: CCB 5-2001(Temp), f. & cert. ef. 8-15-01 thru 2-10-02; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 9-2004, f. & cert. ef. 12-10-04

812-002-0800

Work Period

"Work Period" as used in, OAR 812-003-0150, 812-004-0320 and 812-004-0600 means the time period from the date a contractor accepts a

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payment, offers a written proposal, enters into a contract or begins construction, whichever occurs first, until the date the contractual work is substantially completed by the contractor, or if not substantially completed, the date the work by the contractor ceased.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0100

Licensing Generally

(1) A license and its identifying license number will be issued to one entity only. Other entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS Chapter 701 through the use of another entity's license.

(2) Entities shall include but not be limited to the following:

(a) Sole proprietorship;

(b) Partnership, Limited Liability Partnership, Limited Partnership or

Joint Venture;

(A) All partners listed in subsection (2)(b) of this rule shall be on record with the agency.

(B) Partnerships consisting of spouses shall be treated the same as partnerships consisting of unrelated persons.

(c) Corporation;

(d) Limited Liability Company; or

(e) Trust. For purposes of licensing, a trust will be treated the same as a corporation.

(3) If an entity listed in section (2) of this rule seeks to change to another entity, the former license may be terminated. The new entity must license a new.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.055

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0110

Standards of Behavior

(1) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(2) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.135 & 701.225

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0120

License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS Chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS Chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) Except as set forth in subsection (2)(e) of this rule all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. This rule is effective upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

(e) Subsection (2)(d) of this rule does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.055

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0130

License Categories

The following are license categories as provided in ORS 701.005:

(1) General Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on all types of structures, and

(b) Bid or perform the work of a Specialty Contractor — All Structures.

(2) General Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on residential structures or small commercial properties only; and

(b) Bid or perform the work of a Specialty Contractor — Residential-Only.

(3) Special Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all types of structures.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(4) Specialty Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all residential structures or small commercial properties only.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(5) Limited Contractor. A person licensed in this category may:

(a) Bid or perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, as long as all of the following conditions are met:

(A) The licensee's annual gross business sales do not exceed \$40,000.

(B) The licensee does not enter into a contract in which the contract price exceeds \$5,000.

(C) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.

(D) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (5)(a)(A) of this rule.

(E) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(6) Inspector. A person licensed in this category may:

(a) Bid or perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(7) Licensed Developer. A person licensed in this category may arrange for construction work on property they own or have an interest in as long as they meet the conditions in ORS 701.005(7).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.055, 701.058, & 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0140

License, Renewal, and Reissue Fees

(1) The fee for all categories for new license, renewal, or reissue applications is:

(a) \$295 for two years; or

(b) \$590 for four years

(2) Fees will not be prorated.

(3) Except as provided in sections (4) and (5) of this rule, licensing, renewal, or reissue fees are non-refundable and nontransferable.

(4) When an applicant withdraws their application for a new license or renewal prior to issuance or fails to complete the licensing or renewal process, the agency may refund the licensing fee, but will retain a processing fee of \$40.

(5) If a licensee paid for a four-year license at their own discretion as authorized by ORS 701.115(1) and voluntarily terminates their license within the first two-year license period, the agency may refund the unused two-year renewal fee only if the following conditions are met:

(a) The licensee will submit a written request for a voluntary termination of the license and a refund of the unused two-year fee;

(b) The licensee will return the original license card(s) to the agency; and

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(c) The agency will retain a \$40 processing fee.
Stat. Auth.: ORS 670.310, 701.130 & 701.235
Stats. Implemented: ORS 701.115, 701.125 & 701.130
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0150

Bonds Generally

(1) A properly executed bond must be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(2) A properly executed bond shall include the following:
"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

This bond shall not be valid for purposes of licensing in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below."

(3) If a claim is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security shall be held until final disposition of the claim.

(4) Bond documents received at the agency office from a surety company or agent via electronic facsimile shall be accepted as original documents. The surety shall provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0160

Entity Name Required on Bond

(1) The name of the entity as it appears on the bond must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the bond;

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

(3) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a licensed and bonded entity will be processed regardless of business names used by such entity.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0170

Bond Amounts

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

- (a) General Contractor — All Structures: \$15,000
- (b) General Contractor — Residential: \$15,000

- (c) Specialty Contractor — All Structures: \$10,000
- (d) Specialty Contractor — Residential: \$10,000
- (e) Limited Contractor: \$5,000
- (f) Inspector: \$10,000
- (g) Licensed Developer: \$15,000

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

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

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

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

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

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0180

Effective and Cancellation Dates of the Bond

(1) The surety bond's effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency. The bond shall remain in effect and be continuous until cancelled by the surety or until the licensee no longer meets the requirements for licensing as determined by the agency, whichever comes first.

(2) A surety bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective 30 days after receipt of the cancellation notice.

(3) Immediately upon cancellation of the bond, the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.135(2)(a)(A), informing the contractor that the license has been suspended.

(4) The bond shall be subject to final orders as described in OAR 812-004-0600.

(5) The surety will be responsible for ascertaining the bond's effective date.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085 & 701.135
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0190

New Bond Required for Change in Entity

(1) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types, the application must be accompanied by a new bond.

(2) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0200

Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:

(a) Has procured insurance as required by ORS 701.105 and as provided in OAR 812-002-0380(3) from an insurer transacting insurance in Oregon; and

(b) Will continue to meet those insurance requirements for as long as the applicant is licensed.

(2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.

(3) A certificate of insurance must include:

- (a) The name of the insurer;
- (b) Policy or binder number;

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- (c) Effective dates of coverage;
- (d) Coverage amount per occurrence;
- (e) The agent's name, and agent's telephone number; and
- (f) The CCB listed as the certificate holder.

(4) If the licensee, in performance of work subject to ORS chapter 701, through failure to comply with this rule, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.135.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.105
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0210

Entity Name Required on Insurance Certification

(1) The name of the entity as it appears on the certificate of insurance or other evidence of insurance must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate of insurance or other evidence of insurance must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate of insurance or other evidence of insurance must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate of insurance or other evidence of insurance;

(e) If the entity is a corporation or trust, the certificate of insurance or other evidence of insurance must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the certificate of insurance or other evidence of insurance must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.105
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0220

Insurance Amounts

The following general liability insurance amounts are required under ORS 701.105:

- (1) General Contractor — All Structures: \$500,000
- (2) General Contractor — Residential: \$500,000
- (3) Specialty Contractor — All Structures: \$500,000
- (4) Specialty Contractor — Residential: \$300,000
- (5) Limited Contractor: \$100,000
- (6) Inspector: \$300,000
- (7) Licensed Developer: \$500,000

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.105
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0230

Effective and Cancellation Dates of the Insurance

(1) For purposes of licensing, the effective date of the insurance required under ORS 701.105 is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The insurance described in section (1) of this rule shall remain in effect until the license is suspended, terminated, revoked, expired, lapsed, or inactive, or until the insurance expires or a cancellation notice is provided by the insurer.

(3) Immediately upon cancellation or expiration of the insurance described in section (1) of this rule, the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.135(2)(a)(B), informing the contractor that the license has been suspended.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.105 & 701.135
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0240

Independent Contractor

(1) This rule has been adopted jointly by the Construction Contractors Board, Employment Department, Department of Insurance and Finance (Workers' Compensation Division), and Department of Revenue of the State of Oregon under the authority of ORS 670.605.

(2) As used in the various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 and this rule are met:

(a) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(b) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(c) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(d) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(e) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodical retainer;

(f) The individual or business entity providing labor or services is licensed under ORS Chapter 701, if the individual or business entity provides labor or services for which such license is required;

(g) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(h) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(A) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(B) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(C) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(D) Labor or services are performed only pursuant to written contracts;

(E) Labor or services are performed for two or more different persons within a period of one year; or

(F) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

(3) For the purposes of subsection (2)(b) of this rule, "assumed business registrations or professional occupation licenses" do not include certificates or permits required pursuant to ORS Chapter 767.

(4) For the purposes of subsection (2)(e) of this rule, "periodical retainer" includes but is not limited to partial payments made periodically during the term of the contract.

(5) For the purposes of paragraph (2)(h)(F) of this rule, evidence that "the individual or business entity assumes financial responsibility for defective workmanship or for services not provided" is not limited to the ownership of performance bond, warranties, errors and omission insurance, or liability insurance relating to the labor or services to be provided.

(6) The Board adopts the form "Independent Contractor Certification Statement" as approved October 24, 1989, as required by ORS 701.075(3).

Stat. Auth.: ORS 670.310, 701.035, 701.075, 701.235 & 701.280
Stats. Implemented: ORS 670.605 & 701.075
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

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812-003-0250

Exempt and Nonexempt Class of Independent Contractor Licenses

Contractors shall license as either nonexempt (employer with employees) or exempt (no employees) as provided in ORS 701.035, as modified by chapter 216 Oregon Laws 1995.

(1) The nonexempt class is composed of the following entities:

(a) Sole proprietors, partnerships, limited liability partnerships, corporations, limited liability companies with one or more employees; and

(b) Partnerships, limited liability partnerships, corporations, and limited liability companies with more than two partners, corporate officers, or members, if any of the partners, corporate officers, or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

(2) The exempt class is composed of sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies that do not qualify as nonexempt.

(3) The maximum number of exempt individuals in an entity without employees other than same-family partners, members, or corporate officers shall be:

(a) Two partners in a partnership, limited liability partnerships;

(b) Two members in a limited liability company; and

(c) Two corporate officers in a corporation.

(4) An exempt contractor may work with the assistance of individuals who are employees of a nonexempt contractor so long as the nonexempt contractor:

(a) Is in compliance with ORS Chapters 316, 656, and 657 and is providing the employee(s) with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(5) Nonexempt entities shall supply employer account numbers for workers' compensation, unemployment, state Department of Revenue, and IRS identification, as specified in ORS 701.075.

(6) Exempt entities need supply no employer account numbers except as stated below.

(7) Partnerships and limited liability partnerships without employees other than the partners may be classed as "nonexempt-no construction work" when the entity certifies that all partners qualify as nonsubject workers as provided in ORS 656.027, by virtue of their not being directly involved in construction work. Such partnerships need supply no employer account numbers except the IRS account number.

(8) Corporations qualifying as exempt as provided by ORS 656.027(10) shall supply Employment Division and Department of Revenue account numbers unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation. Exempt corporations shall supply IRS account numbers. Limited liability companies shall supply IRS account numbers unless the limited liability company has one member only and has no employees.

(9) Out-of-state contractors with no Oregon employees shall supply their home state account numbers, and need not supply an Oregon workers' compensation account number, as provided in OAR 436-050-0055, if they certify that their employees will not work at any job site involving a public contract.

Stat. Auth.: ORS 183.310-183.500, 670.310, 701.235, 701.280 & 701.992

Stats. Implemented: ORS 701.035 & 701.135

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; Renumbered from 812-003-0002

812-003-0260

Application for New License

(1) Each entity shall complete an application form prescribed by the agency. Information provided on the form shall include, but not be limited to:

(a) Name of business entity and Corporation Division registry number (if applicable);

(b) Mailing and location address of the business entity;

(c) Names, social security number, date of birth and driver license number of all owners, partners, officers, trustees, members, and members of members;

(d) All assumed business names under which business as a contractor is conducted. All assumed business names listed shall be on record with the Corporation Division;

(e) Class of independent contract license and employer account numbers as required under OAR 812-003-0250;

(f) Category of license requested as required under OAR 812-003-0130;

(g) Name and identification number of the responsible managing individual who has completed the education required under ORS 701.280 and passed the examination required under ORS 701.075 and division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Name(s) and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) Litigation, claim, and licensing history;

(k) Criminal background;

(l) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee; and

(m) Signature of owner, partner, officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond as required under OAR 812-003-0150; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.075, 701.085, 701.105, 701.125 & 701.280

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0270

Effective Dates of New License

(1) Except as provided in sections (2) and (3) of this rule, a completed application as required under OAR 812-003-0260 shall be on file with the agency before a new license may be issued.

(2) The effective date of a license may be prior to the date of receipt of all documents and fees required by law and by these rules if the agency determines that delays in receipt of required documents or fees were caused by agency error.

(3) If the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and fees if the surety concurs with the decision of the agency to predate the bond.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0280

Renewal and Reissue of License

(1) A license may be renewed or reissued upon:

(a) The applicant's completion of the renewal form or application form prescribed by the agency;

(b) Payment of the fee or fees;

(c) Receipt of the required certification of insurance coverage; and

(d) A non-cancelled bond on file. If it appears to the agency that the required surety bond has been cancelled, the applicant must submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond.

(2) A licensee may qualify for Limited Contractor license and reduce the bond to \$5,000 upon certification that:

(a) The licensee will not enter into contracts that exceed \$5,000;

(b) The licensee's gross business sales of work subject to ORS chapter 701 was less than \$40,000 in the previous twelve months and is expected to be less than \$40,000 during the next twelve months; and

(c) The licensee agrees that if the licensee's gross construction business volume exceeds \$40,000 during the coming year the licensee will immediately increase the bond amount to the amount required under OAR

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812-003-0170, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category.

(3) A bond may be reduced under section (2) of this rule by submitting a decrease rider to an existing bond or submitting a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after.

(4) The agency may refuse to authorize a reduced bond amount under section (2) of this rule until any pending claim(s) against the licensee are resolved.

(5) If a licensee provides a decrease rider to an existing bond under section (3) of this rule prior to the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

Stat. Auth.: ORS 670.310, 701.235 & 701.280
Stats. Implemented: ORS 701.085, 701.105, 701.115, 701.125 & 701.280
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0290

Effective Dates of Renewal or Reissue of License

(1)(a) Except as provided in subsections (1)(b) and (c) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(b) The effective date of a license may be prior to the date of receipt of all documents and fees required by law and by these rules if the agency determines that delays in receipt of required documents or fees were caused by agency error.

(c) If the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and fees if the surety concurs with the decision of the agency to pre-date the bond.

(2) The effective date of renewal shall be the previous license expiration date when:

(a) All requirements for renewal are met prior to the previous license expiration date; or

(b) All requirements for renewal, including submission of either a valid continuous until canceled bond or back-dated new bond, certification of insurance coverage, and payment of renewal fee are met, providing the contractor applies for renewal not more than one year after the license lapses.

(3) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, a new application form, payment of the new license fee, a newly issued continuous until canceled bond or reinstatement of an existing continuous until canceled bond, and certification of insurance coverage.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0300

Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is backdated and renewed, reissued, or reinstated. During a period of lapse, the entity shall not perform the work of a contractor.

(2) A period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse. This includes, but is not limited to, a new bond or a notice of reinstatement for the existing bond or on the effective date of a backdated bond or backdated reinstatement for the existing bond.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.055, 701.115 & 701.135
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0310

License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0-290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.105 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0320

Record Changes

(1) Except as provided in section (3) of this rule, requests for record changes that require a new license card shall be accompanied by a \$20 fee.

(2) Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

(3) No charge will be made for an address change on the record.

(4) With the exception of record changes due to agency error, a record change request shall be submitted in writing.

Stat. Auth.: ORS 670.310, 701.130 & 701.235
Stats. Implemented: ORS 701.085, 701.125 & 701.130

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0015; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 10-2000, f. & cert. ef. 8-24-00; CCB 9-2004, f. & cert. ef. 12-10-04; Renumbered from 812-003-0005

812-003-0330

Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status:

(a) A licensee must have a current active license or a license that lapsed no more than two years prior to the application for inactive status;

(b) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(c) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(d) The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0340

Inactive Status Request at Renewal

(1) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 812-003-0140.

(2) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0350

Inactive Status Request at Interim Renewal Period

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

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0360

Inactive Status Request after Lapse

(1) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by fees required under OAR 812-003-0140.

(2) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. The renewed license shall expire two or four years after its effective date, at the discretion of the licensee.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0370

Renewal of Inactive Status

To renew an inactive license in an inactive status:

(1) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(2) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and

(3) The licensee must submit the fees required under OAR 812-003-0140.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0380

Converting From Inactive Back to Active Status

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Comply with all licensing requirements prescribed by the Board;

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

(d) Submit all fees required under OAR 812-003-0140.

(5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0390

Revocation or Suspension of License

(1) Except as provided in section (2) of this rule, if the agency issues a final order or arbitration award ordering a licensee to pay monetary damages and the licensee or the licensee's surety fails to pay the order or award in full, the agency will revoke, suspend, or refuse to issue or reissue a license.

(2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:

(a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or

(b) The order or award described in section (1) of this rule arises from a debt that:

(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or

(B) Is included in a Chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.

(3) The agency shall revoke, suspend, or refuse to issue or reissue a license under section (1) of this rule if:

(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and

(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.

Stat. Auth.: ORS 183.310 to 183.545, 670.310, 701.235 & 701.280
Stats. Implemented: ORS 701.100 & 701.135

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 5-1981(Temp), f. 12-30-81, ef. 1-1-82; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0040; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0030

812-003-0400

Restoration of Bond after Payment on Claim

If a surety company pays all or part of a claim against a licensed contractor from the contractor's surety bond, the agency shall suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond in the amount required under ORS 701.085(2) through (5) unless the agency requires a higher amount under ORS 701.085(7) or (8); or

(2) A certificate from the contractor's surety company that the surety company remains liable for the full original penal sum of the bond notwithstanding the payment from the surety bond.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0040

812-003-0410

Social Security Number

(1) The agency will not issue or renew a license unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to the agency and is in the record.

(2) If an applicant has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the applicant to fulfill the requirements of section (1) of this rule. The applicant may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(a) Be signed by the applicant;

(b) Attest to the fact that no social security number has been issued to the applicant by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this rule is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

Stat. Auth.: ORS 25.990, 183.310, 670.310 & 701.235
Stats. Implemented: ORS 25.270, 25.785, 25.990, 183.310 & 701.075
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0420

Davis Bacon Act

(1) On all construction projects regulated under the state Prevailing Wage Law, ORS 279.348 to 279.365 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland OR 97232.

(2) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified

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Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(3) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 279.348 to 279.365, 701.055 & 701.075
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-003-0430

Time Period for Perfecting a Lien or Claim

For liens perfected and claims commenced on or after January 1, 1998:

(1) The time period under ORS 701.065(2)(a)(A) and ORS 701.065(2)(c)(B) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS 701.065(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.065
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0001

Application of Rules

(1) The rules in division 4 of OAR chapter 812 apply to a claim involving work on a residential structure or an appurtenance to the structure and any other claim filed under ORS 701.145.

(2) Except as provided in section (4) of this rule, the following rules apply to a claim involving work on a large commercial structure or an appurtenance to the structure and any other claim filed under ORS 701.146:

- (a) OAR 812-004-0001 through 812-004-0240;
- (b) OAR 812-004-0260 through 812-004-0320;
- (c) OAR 812-004-0340, except 812-004-0340(2)(c), (2)(i) and (8);
- (d) OAR 812-004-0420;
- (e) OAR 812-004-0520; and
- (f) OAR 812-004-0550 through 812-004-0600.

(3)(a) Except as provided in subsection (3)(b) of this rule, the rules that apply to a claim involving work on a residential structure under section (1) of this rule apply to a claim involving work on a small commercial structure or an appurtenance to the structure.

(b) The rules that apply to the claim involving work on a large commercial structure under section (2) of this rule apply to a claim involving work on a small commercial structure or an appurtenance to the structure if the claimant files the claim under ORS 701.146.

(4) The rules that apply to a claim involving work on a residential structure under section (1) of this rule apply to a claim involving work on a large commercial structure or an appurtenance to the structure if:

- (a) The claim is filed by the owner of the structure;
- (b) The total contract for the work is \$25,000 or less; and
- (c) The claimant files the claim under ORS 701.145.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.139, 701.140, 701.145 & 701.146
Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-27-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0240

Exhaustion of Surety Bond

At any time during the processing of a claim, if the agency becomes aware of partial or full exhaustion of the surety bond by prior claims, it may notify the claimant and close the claim file, or it may process the claim to a final order and close the claim file.

Stat. Auth.: ORS 670.310, 701.235 & 701.145
Stats. Implemented: ORS 813.415, 183.460, 701.085, 701.145 & 701.150
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0260

Order Closing a Claim

(1) If the agency closes a claim because the claimant failed to act in response to a request from the agency, the closure of the claim is an order that is not an order in a contested case. An order to close a claim is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a claim under this rule only if it complies with the following:

(a) The agency must include notification in its request to claimant that failure to act as requested may result in closure of the claim and that closure of the claim will prevent access to the bond.

(b) The agency may not close the claim sooner than 14 days after giving the notification required in subsection (2)(a) of this rule.

(c) The agency shall notify the parties to the claim that the claim is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a claim closed under this rule if the record of the claim contains evidence that shows that the cause of the failure of claimant to act as requested by the agency was due to excusable neglect by the claimant. The agency may reopen the claim:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the claim.

(4) At the agency's discretion, the agency may refer a claim to the Office of Administrative Hearings for a contested case hearing on whether closure of the claim under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a claim under this rule before seeking judicial review of the order.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.480, 701.140 & 701.145
Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0320

Jurisdictional Requirements

(1) A claim must be of a type described under ORS 701.140.

(2) A claim must be filed with the agency within the time allowed under ORS 701.143.

(3) A claim will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section shall be determined as follows:

(a) For an owner claim, primary contractor claim or subcontractor claim, respondent will be considered licensed if respondent was licensed during all or part of the work period.

(b) For a material claim, respondent will be considered licensed if one or more invoices involve material delivered while respondent was licensed. Damages will be awarded only for material delivered within the period of time that respondent was licensed.

(c) For an employee or employee trust claim, respondent will be considered licensed if respondent was licensed on one or more days that claimant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which respondent was licensed.

(4)(a) Claimant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the claim requires that claimant be licensed under ORS 701.055 in order to perform the work; and

(B) Claimant files a claim arising out of a contract to construct the work at issue and the claim is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the claimant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the claim;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to claimant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on claimant's license.

(5) Claims will be accepted only when one or more of the following relationships exists between the claimant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the claimant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between claimant and respondent providing that claimant is a trustee authorized to receive employee benefit payments from respondent for employees of respondent; or

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(d) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(6) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7)(a) A claim will be dismissed if the claimant fails to establish that the claimant gave a pre-claim notice to the respondent as required under ORS 701.147.

(b) Except as provided in subsection (7)(c) of this rule, proof of this notice must be in the form required under OAR 812-004-0340.

(c) A claim may not be dismissed under section (7) of this rule if claimant submits written evidence that respondent actually received written notice of claimant's intent to file a claim at least 30 days before claimant filed the claim. Written evidence that respondent received the notice under section (7) of this rule includes a return receipt signed by respondent or a letter admitting receipt signed by respondent. Written evidence under section (7) of this rule does not include a statement signed by claimant.

(d) Nothing in section (7) of this rule prevents closing a claim under OAR 812-004-0350 if the claimant fails to provide documentation required under OAR 812-004-0340(2)(m).

(8)(a) Except as provided in subsection (8)(b) of this rule, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a claim previously filed by the same claimant against the same respondent.

(b) The agency may process a claim that would otherwise be dismissed under subsection (8)(a) of this rule if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in section (8) of this rule extends the time limitation for filing a claim under ORS 701.143.

(9) A claim by a person furnishing material, or renting or supplying equipment to a contractor may not include a claim for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Claims by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount.

(11) The agency may process a claim against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; 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 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0470

Challenge to Investigation Report

Claimant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at an arbitration or contested case hearing.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0580; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0530

Construction Lien Claims

(1) Upon acceptance of a construction lien claim, the agency shall send a copy of the claim to the respondent and shall initiate an investigation to determine the validity of the claim.

(2) For a construction lien claim to be valid, the following conditions must be met:

(a) The claimant must have paid the respondent for work performed or materials supplied or equipment rented subject to ORS chapter 701 and the primary contractor must have failed to pay the subcontractor or material or equipment supplier, thereby causing the subcontractor or material or equipment supplier to file a lien against the claimant's property;

(b) The lienor must have delivered to the claimant a "Notice of the Right to Lien" as specified in ORS 87.018, 87.021, and 87.025; and

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035.

(3) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a claim processed under this rule.

(4) If at any time prior to the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency shall dismiss the claim. Prior to such dismissal, the lienor shall be notified, by certified mail, of the lienor's opportunity to become a party, as that term is defined in ORS 183.310, to the claim and to request an arbitration or hearing.

(5)(a) A construction lien claim may include attorney fees, court costs, interest and service charges if these items are included as part of the construction lien or incurred as costs to discharge the lien. An award to claimant for attorney fees incurred to discharge the lien shall not exceed the amount of the lien.

(b) A construction lien claim may not include excess interest paid as a result of the inability of the claimant to refinance at a lower interest rate due to the existence of the lien.

(6) The agency may reduce the amount awarded to the claimant by:

(a) Any amount the claimant owes the primary contractor; and

(b) Any amount included for tools or equipment not fabricated into the structure.

(7) If a claimant files two or more claims against the respondent relating to work performed under the same contract and if the claimant has not paid the respondent the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order may not be issued on a claim until all claims involving the claimant and the respondent filed within the same 90-day period are ready for an order.

(8) If an action is filed to enforce a lien that is the subject of a claim, the agency shall send notice to the claimant that:

(a) The claimant has the right to request a stay of the proceedings until the agency's processing of the claim is complete;

(b) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the claim under section (11) of this rule if the agency does not receive evidence within 60 days from the date of the notice:

(A) That claimant obtained a stay; or

(B) That claimant filed the claim as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that claimant obtained a stay, the agency will resume processing the claim.

(b) Upon timely receipt of evidence that claimant filed a counter-suit or complaint in the court under paragraph (8)(c)(B) of this rule, the agency shall suspend process the claim and send notice to the claimant of the requirements of OAR 812-004-0520(3). Further processing of the claim shall be under OAR 812-004-0520.

(10) Time limitations in this rule supersede conflicting time limitations in OAR 812-004-0520.

(11) The agency may close a construction lien claim under OAR 812-004-0260 if the agency does not receive evidence that claimant obtained a stay or filed a counter-suit or complaint required under subsection (8)(c) of this rule within the time limitation in the notice required under section (8) of this rule.

(12) If a construction lien claim involves the same facts and issues as any other open claim, the agency shall process the claims together.

Stat. Auth.: ORS 87.057, 87.058, 670.310, 701.145 & 701.235

Stats. Implemented: ORS 87.058 & 701.145

Hist.: IBB 6-1980, f. & ef. 11-4-80; IBB 1-1981, f. & ef. 3-11-81; IBB 1-1982, f. 3-31-82, ef. 4-1-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0069; IBB 1-1985(Temp), f. & ef. 2-7-85; IBB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0046; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0220; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02, cert. ef. 7-1-02; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0540

Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

(a) The claimant disagrees with the resolution recommended by the agency;

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(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed the settlement agreement proposed by the agency but, through no fault of the claimant, the terms of the settlement agreement have not been fulfilled by the respondent, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim and those claim items added up to and through any initial on-site meeting. The agency may require the claimant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost of correction of the claim items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for an arbitration or contested case hearing under section (4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule, except that the declaration of damages shall be limited to claim items listed in the Statement of Claim.

(4) After documentation required under sections (2) or (3) of this rule is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 812-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant only if the record of the claim supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsection (5)(a) of this rule only if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0560

General Requirements for Proposed Default Order or Referral to Hearing Officer Panel, Hearing Request

(1) A proposed default order on a claim issued by the agency shall include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, which regulates whether the claim will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 prior to the agency's referral of the claim to the Office of Administrative Hearings.

(3) If the agency refers a claim to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the claimant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings shall identify by date the declaration of damages or the Statement of Claim that limits the amount that the respondent may be ordered to pay the claimant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency shall serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a claimant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new declaration of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date a proposed default order is mailed by the agency.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (6)(b) of this rule, a contested case notice issued under this rule shall include a statement that the agency's file on the claim is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 812-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a claim, a contested case notice issued under this rule shall include a statement that the agency's file on the claim is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 812-009-0140.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470 & 701.145, 701.147

Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0590

Referral of Claim to Arbitration or Contested Case Hearing or Removal to Court

(1) If a hearing on a claim is conducted by the Office of Administrative Hearings:

(a) The hearing shall be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing shall be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the claim makes a timely written request under section (4) of this rule that the claim be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the claim be heard as a contested case.

(2) Subject to section (3) of this rule, a claim shall be decided in court if:

(a) The claimant files a complaint in court that alleges the elements of the claim in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the claim and that allows the claimant to file a response alleging the elements of the claim.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limitation in this rule constitutes waiver of the right to have the claim decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a claim be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-0030-520 or 812-010-0085, whichever is applicable.

(b) A referral of a claim to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the claim be heard as a contested case under subsection (1)(b) of this rule.

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(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the claim.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the claim being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the claimant in a claim does not seek \$1,000 or more, a hearing on the claim may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the claim under ORS 701.139 to 701.180 is at issue; or

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the claim.

(8) The amendments to this rule that became effective on or after July 1, 2002 apply to a claim that is referred to the Office of Administrative Hearings after July 1, 2002.

Stat. Auth.: ORS 670.310, 145 & 701.235

Stats. Implemented: ORS 701.145, 701.147

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-004-0600

Payment from Surety Bonds

(1) The agency may notify the surety company of claims pending.

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

(a) An arbitration award has been issued and is ready for payment under OAR 812-010-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

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

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

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

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

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

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

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

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

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

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

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

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

(6) If more than one claim must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from

those surety bonds, payment on a claim shall be made in the same proportion that the amount due on that claim bears to the total due on all claims that must be paid.

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

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

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

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

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

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

812-005-0005

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

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(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(2), issuance of a \$1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(7), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, \$1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035 or 701.075, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279.354; or

(e) Failing to comply with the posting requirements of ORS 279.350: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0080(1)-(14): \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0080(15)(b)-(h): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0080(1)(d): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279.323:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235, 701.280 & 701.992
Stats. Implemented: ORS 701.135, 701.175, 701.227, 701.992, & 279.323
Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-006-0020 Exemptions

(1) In lieu of the education courses required under ORS 701.280, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

(a) Has completed the licensing requirements of ORS 446.395 for manufactured dwelling installers;

(b) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(2) In lieu of the test required under ORS 701.075, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

(a) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, or trustee prior to July 1, 2000, and that the business has been lapsed with the agency for 12 months or less; or

(b) Effective January 1, 2002, is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(3) Education and testing that was completed prior to the 12-month lapse in OAR 812-006-0020(1)(b) shall not be used to fulfill this requirement.

(4) Effective January 1, 2002, education and testing that was completed prior to the 24-month lapse in OAR 812-006-0020(1)(b) shall not be used to fulfill this requirement.

Stat. Auth.: ORS 670.310, 701.235 & 701.280
Stats. Implemented: ORS 701.075 & 701.280
Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f.

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6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; 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 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-008-0020

Definitions

The following definitions apply to Division 8 of OAR chapter 812:

- (1) "Administrator" means the Administrator of the agency.
- (2) "Agency" means the Oregon Construction Contractors Board.
- (3) "Automatic safety controls" means the devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel, leaks, fire, freezing, or other unsafe conditions.
- (4) "Central air conditioning" means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (5) "Certified individual" means an individual who successfully passes a test accredited by the agency, completes the education required for renewal, and satisfies any other requirements established by OAR chapter 812.
- (6) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.
- (7) "Conspicuous" as used in these regulations shall mean a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.
- (8) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- (9) "Dangerous or adverse situations" means situations that pose a threat of injury to the Oregon certified home inspector, or damage to the property.
- (10) "Describe" means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components or system used for the same purpose.
- (11) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.
- (12) "Enter" means to go into an area and observe all visible components.
- (13) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time.
- (14) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (15) "Home inspection" means an inspection of more than one inspection category as set forth in 812-008-0080(4) through (14). A home inspection is not a re-inspection of isolated repairs made as part of a real estate transaction.
- (16) "Installed" means attached or connected such that the installed item requires tools for removal.
- (17) "Normal operating controls" means homeowner-operated devices such as but not limited to thermostat, wall switch, or safety switch.
- (18) "Observe" means the act of making a visual examination.
- (19) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.
- (20) "On-site water supply quantity" means the water quantity based on the rate of flow of water.
- (21) "Operate" means to cause systems or equipment to function.
- (22) "Oregon certified home inspector" means a person certified pursuant to chapter 814, 1997 Oregon Laws and OAR chapter 812.
- (23) "Readily accessible panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted into place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (24) "Representative number" for multiple identical components such as windows and electrical outlets means one such component per room; for

multiple identical exterior components, one such component on each side of the building.

(25) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(26) "Shut down" means a piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it or detached from a plug source. If its safety switch or circuit is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

(27) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

(28) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

(29) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

(30) "Technically exhaustive" means an inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

(31) "Test" means a test administered by the agency.

(32) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

Stat. Auth.: ORS 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 9-2004, f. & cert. ef. 12-10-04

812-008-0070

Requirements for Renewal of Certification

(1) The Oregon certified home inspector shall submit the following to the agency for renewal of certification:

- (a) A properly completed renewal application on an agency form; and
- (b) The renewal fee of \$150 (listed in OAR 812-008-0110); and
- (c) A statement of completed continuing education on an agency form.

(2) The statement of completed continuing education referred to in subsection (1)(c) of this rule shall contain the following:

- (a) A listing of no less than 30 approved continuing education units (CEUs) completed by Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought on an agency form; and
- (b) A signed declaration by the Oregon certified home inspector that the statement of completed continuing education units is true.

Stat. Auth.: ORS 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-008-0110

Prescribed Fees

The following prescribed fees are established:

- (1) Application to become certified, \$50.
- (2) Test, first attempt, \$50.
- (3) Test, each sitting to retake one or more sections, \$25.
- (4) Certification, \$75 per year.
- (5) Certification renewal (two years), \$150.
- (6) Reinstatement fee, \$15.
- (7) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (7)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of \$40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

ADMINISTRATIVE RULES

Stats. Implemented: ORS 293.445, 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-009-0400

Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or respondent may file written exceptions if they believe that the administrative law judge has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2)(a) To be considered, the first exceptions must be received by the agency within 21 days of the date of mailing the proposed order.

(b) If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days before the Committee meeting date if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party shall include in the exceptions:

(A) A notice of the intention to rely on oral testimony; and

(B) A request for a copy of the tape of the hearing with the fee required under OAR 812-001-0015.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency shall send a copy of the tape of the hearing to the party that did not file the exceptions without charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony shall prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions. The party must deliver the transcript to the agency 21 days after the date the agency mails the tape of the hearing to the party.

(d) The agency shall mail a copy of the transcript to the other party to the claim.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency 21 days after the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency shall mail a copy of the transcript prepared under section (7) of this rule to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party fails to comply with the requirements of sections (6) and (7) of this rule.

(9) Claimant and respondent may appear before the members of the Committee to argue for or against the proposed order.

(10) The agency may waive or extend the time limitations in sections (5) through (7) of this rule on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0040

Arbitration of Disputes Outside Jurisdictional Requirements

Construction disputes which do not meet timeliness filing under ORS 701.143 or other jurisdictional requirements for claims may be arbitrated by the agency if both parties agree in writing to submit the dispute to the Construction Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for arbitration under this rule.

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

Stats. Implemented: ORS 701.143, 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0050

Application for Judicial Relief

An application to the court for judicial relief under the rules in division 10 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 36.600 - 36.740

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0200

Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of any witness who is not a party during the testimony of other witnesses. The arbitrator shall determine whether any other person may attend the hearing.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0220

Postponement, Recess and Continuance

An arbitrator may postpone or recess and later continue an arbitration. A party requesting a postponement or continuance must show good cause. The arbitrator will determine whether to grant a postponement or continuance. That determination shall be final.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0260

Recording of Hearing

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator shall make a tape recording of the hearing.

(2) The agency may dispose of tape recordings of hearings when 90 days have passed after the arbitrator issues an award in the matter. However, if a party timely files exceptions to the award, the agency will not dispose of the tape recording of the hearing until the court makes final determination of the matter.

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

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0300

Arbitration in the Absence of a Party

(1) Except as provided in section (2) of this rule, an arbitration may proceed in the absence of any party who, after due notice, fails to appear. An award shall not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a claim without an evidentiary hearing if the party making the claim fails to appear after due notice and without good cause.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0320

Discovery

(1) Parties to an arbitration are encouraged to exchange information informally, prior to the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

(a) Production of documents, objects, or other information relevant to the dispute;

(b) Permission to enter upon private property to inspect improvements relevant to the dispute; or

(c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance.

This rule does not require discovery. If the arbitrator does order discovery, the arbitrator shall control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

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

Stats. Implemented: ORS 701.148

ADMINISTRATIVE RULES

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0340

Subpoenas; Evidence

(1) The arbitrator or an attorney for a party to the arbitration may issue subpoenas for witnesses and documents for the arbitration hearing.

(2) The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed with the agency prior to or at the hearing.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0360

Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator shall close the hearing.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0380

Waiver of Right to Object to Noncompliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections prior to the close of the hearing shall be deemed to have waived the right to object.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04

812-010-0420

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

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

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

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

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

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

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

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

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

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

(8) Except as provided in OAR 812-010-0440 and 812-010-0460, an arbitration award is effective as an order to pay under OAR 812-004-0600 or an award that may be filed with the court with a petition to confirm the award under section 22, chapter 598, Oregon Laws 2003:

(a) Only after the 21st day after service on the parties; and

(b) Only if no party files a timely petition to modify or correct the award under OAR 812-010-0425.

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

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

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

(10) If a limitation on damages under section (4) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

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

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

Stats. Implemented: ORS 701.145 & 701.148

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

812-010-0480

Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules shall be interpreted and applied by the agency administrator or a person designated by the agency administrator.

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

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 9-2004, f. & cert. ef. 12-10-04

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 4-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 3-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 125-246-0100, 125-246-0110, 125-246-0120, 125-246-0130, 125-246-0140, 125-246-0150, 125-246-0170, 125-246-0200, 125-246-0210, 125-246-0220, 125-246-0300, 125-246-0310, 125-246-0320, 125-246-0321, 125-246-0322, 125-246-0323, 125-246-0324, 125-246-0330, 125-246-0335, 125-246-0345, 125-246-0350, 125-246-0351, 125-246-0352, 125-246-0353, 125-246-0355, 125-246-0360, 125-246-0400, 125-246-0410, 125-246-0420, 125-246-0430, 125-246-0440, 125-246-0450, 125-246-0460, 125-246-0470, 125-246-0500, 125-246-0550, 125-246-0555, 125-246-0560, 125-246-0570, 125-246-0575, 125-246-0580, 125-246-0600, 125-246-0605, 125-246-0610, 125-246-0615, 125-246-0620, 125-246-0625, 125-246-0630, 125-246-0635, 125-246-0700, 125-246-0710, 125-246-0720, 125-246-0730, 125-246-0800, 125-246-0900, 125-247-0005, 125-247-0010, 125-247-0100, 125-247-0165, 125-247-0170, 125-247-0200, 125-247-0255, 125-247-0256, 125-247-0260, 125-247-0261, 125-247-0265, 125-247-0270, 125-247-0275, 125-247-0280, 125-247-0285, 125-247-0286, 125-247-0287, 125-247-0288, 125-247-0296, 125-247-0300, 125-247-0305, 125-247-0310, 125-247-0320, 125-247-0330, 125-247-0400, 125-247-0410, 125-247-0420, 125-247-0430, 125-247-0440, 125-247-0450, 125-247-0460, 125-247-0470, 125-247-0480, 125-247-0490, 125-247-0500, 125-247-0525, 125-247-0550, 125-247-0575, 125-247-0600, 125-247-0610, 125-247-0620, 125-247-0630, 125-247-0640, 125-247-0650, 125-247-0660, 125-247-0670, 125-247-0700, 125-247-0710, 125-247-0720, 125-247-0730, 125-247-0740, 125-247-0750, 125-247-0760, 125-247-0770, 125-247-0800, 125-248-0100, 125-

ADMINISTRATIVE RULES

248-0110, 125-248-0120, 125-248-0130, 125-248-0200, 125-248-0210, 125-248-0220, 125-248-0230, 125-248-0240, 125-248-0250, 125-248-0260, 125-248-0300, 125-248-0310, 125-248-0330, 125-248-0340, 125-249-0100, 125-249-0110, 125-249-0120, 125-249-0130, 125-249-0140, 125-249-0150, 125-249-0160, 125-249-0200, 125-249-0210, 125-249-0220, 125-249-0230, 125-249-0240, 125-249-0250, 125-249-0260, 125-249-0270, 125-249-0280, 125-249-0290, 125-249-0300, 125-249-0310, 125-249-0320, 125-249-0330, 125-249-0340, 125-249-0350, 125-249-0360, 125-249-0370, 125-249-0380, 125-249-0390, 125-249-0400, 125-249-0410, 125-249-0420, 125-249-0430, 125-249-0440, 125-249-0450, 125-249-0460, 125-249-0470, 125-249-0490, 125-249-0600, 125-249-0610, 125-249-0620, 125-249-0630, 125-249-0640, 125-249-0650, 125-249-0660, 125-249-0670, 125-249-0680, 125-249-0690, 125-249-0800, 125-249-0810, 125-249-0820, 125-249-0830, 125-249-0840, 125-249-0850, 125-249-0860, 125-249-0870, 125-249-0880, 125-249-0890, 125-249-0900, 125-249-0910

Subject: The Department of Administrative Services (Department) has a mandate under House Bill 2341 to develop and adopt Public Contracting Rules for state agencies subject to DAS procurement authority (Agencies). These new Public Contracting Rules will replace the current Oregon Administrative Rules in Chapter 125, divisions 20, 25, 30, 300, 310, 320, 330 and 360, to be repealed by House Bill 2341 on March 1, 2005. The Department's new Public Contracting Rules implement the Public Contracting Code, ORS 279ABC, for the Agencies and will apply to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. The effective date of these new Rules is March 1, 2005.

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

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) set forth policy and procedure for the Public Contracting of Agencies subject to these Rules. Pursuant to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering and Land Surveying Services and Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(3) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and notwithstanding other provisions of the Public Contracting Code, under these conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, and 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670.

(4) These Division 246 Rules apply to Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.020, 279A.030, 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0110

Definitions

As used in the Public Contracting Code and these Rules, unless the context or a specifically applicable definition requires otherwise:

(1) "Addendum" or "Addenda" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business" means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses pursuant to ORS 200.025.

(5) "Administering Agency" means an Agency that solicits and establishes the Original Contract for Procurement of Supplies and Services or Public Improvements in a Cooperative Procurement.

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely impaired by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Nothing in this definition or the use of this term in these Rules conveys any authority to an Agency. An Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.

(9) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect.

(10) "Architectural, Engineering and Land Surveying Services" is defined in ORS 279C.100 and collectively means professional services that are required to be performed by an architect, engineer or land surveyor. "Architectural, Engineering and Land Surveying Services" includes "Architectural, Engineering or Land Surveying Services," separately or any combination thereof, as appropriate within the context of a Rule.

(11) "Architectural, Engineering and Land Surveying Services and Related Services" is defined in ORS 279C.100 and 279C.100(6) and collectively means professional services that are required to be performed by an architect, engineer or land surveyor and Related Services. "Related Services" means services that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. "Architectural, Engineering and Land Surveying Services and Related Services" includes "Architectural, Engineering or Land Surveying Services or Related Services, separately or in any combination thereof, as appropriate within the context of a Rule.

(12) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

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(13) "Authorized Agency" means those Agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term includes the Department when the Department is engaged in Public Contracting. Nothing in this definition or the use of this term in these Rules conveys any authority to an Agency. An Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.

(14) "Award" means, as the context requires, either the act or occurrence of the Agency's identification of the Person with whom the Agency will enter into a Contract following the resolution of any protest of the Agency's selection of that Person, and the completion of all Contract Negotiations.

(15) "Bid" means a response to an Invitation to Bid.

(16) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(17) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(18) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(19) "Chief Procurement Officer" of the State Procurement Office means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(20) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(21) "Client" means any individual or family:

(a) For whom an Agency must provide Supplies and Services according to state, federal law, rule, and policy. Those Supplies and Services include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit; or

(c) Who is under the custody, care, or both of the Agency.

(22) "Client Services" means any Supplies and Services or programs that either directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory services. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription; and

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses and

(n) Religious practices, traditions and services, separately or in any combination thereof. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(23) "Closing" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(24) "Code" or "Public Contracting Code" is defined in ORS 279A.010 and means ORS Chapters 279A, 279B and 279C.

(25) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0261 or 125-249-0650. The size of the Competitive Range must be stated in the Solicitation Document. The size of the Competitive Range will be decreased if the number of Proposers that submit Proposals is less than the specified number and may be increased by the Agency in accordance with OAR 125-247-0261 or 125-249-0650.

(26) "Competitive Sealed Bidding" means the sourcing method pursuant to ORS 279B.055.

(27) "Competitive Sealed Proposals" means the sourcing method pursuant to ORS 279B.060.

(28) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering and Land Surveying Services and Related Services as defined in ORS 279C.115 and information technology Consultants.

(29) "Contract" for the purposes of these Rules means "Public Contract."

(30) "Contract Administration" means all functions related to a given Contract between an Agency and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made, and disputes have been resolved.

(31) "Contractor" means the Person with whom an Agency enters into a Contract and is interchangeable with "Consultant" and "Provider."

(32) "Contract Price" means, as the context requires, (i) the maximum payments that an Agency will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Supplies and Services set forth in the Contract.

(33) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(34) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(35) "Contracting Agency" is defined in ORS 279A.010(1)(b) and for purposes of these Rules, "Contracting Agency" means the Department pursuant to ORS 279A.140, except where otherwise indicated within the Rules.

(36) "Cooperative Procurement" is defined in ORS 279A.200 and means a Procurement conducted by the State Procurement Office or an Authorized Agency on behalf of one or more Agencies. "Cooperative Procurement" includes but is not limited to multiparty contracts and Price Agreements.

(37) "Cooperative Procurement Group" means a group of Authorized Contracting Agencies or other governmental body, domestic or foreign, approved by the State Procurement Office, joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements pursuant to ORS 279A.200.

(38) "Days" means calendar days.

(39) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210.

(40) "Department" means the Oregon Department of Administrative Services.

(41) "Department Price Agreement" means a Price Agreement issued by the Department's State Procurement Office on behalf of all Agencies subject to the Department's Procurement authority. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. See e.g., OAR 125-246-0360 (Purchases through Federal Programs).

(42) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also

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means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(43) "Descriptive Literature" means the Offeror's materials submitted to provide information concerning the Supplies and Services available in response to a Solicitation.

(44) "Director" is defined in ORS 279A.010(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(45) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer. This typically occurs before the issuance of a Notice of Intent to award, or in the absence of such Notice, during the Procurement Process and prior to award.

(46) "Donee" is defined in ORS 279A.250 and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(47) "Electronic Advertisement" means notice of an Agency's request for Offers or request for Quotes, request for information or other document inviting participation in the Agency's Procurements available over the Internet via:

- (a) The World Wide Web;
- (b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the State Procurement Office. An Electronic Advertisement may or may not include a Solicitation Document.

(48) "Electronic Offer" means a response to an Agency's request for Offers, or request for quotes submitted to an Agency via e-mail or through ORPIN.

(49) "Electronic Procurement System" means ORPIN or other system approved by the State Procurement Office, constituting an information system that Persons may access through the Internet, using HTTP (i.e., the World Wide Web), Telnet or some other Internet protocol, or that Persons may otherwise remotely access using a computer. An Electronic Procurement System enables an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(50) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(51) "Emergency" means circumstances that:

- (a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

- (c) Require prompt execution of a Contract to remedy the condition.

An "Emergency Procurement" means a sourcing method pursuant to ORS 279B.080, 279C.335(5), 125-248-0200, or related rules.

(52) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(53) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2).

(54) "Established Catalog Price" is defined in ORS 279C.100 and means the price included in a catalog, price list, schedule or other form that:

- (a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(55) "Executive Department" is defined in ORS 174.112 and subject to ORS 174.108, means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in section 1, Article III of the Oregon Constitution, and that are not:

- (a) In the judicial department or the legislative department;
- (b) Local governments; or

- (c) Special government bodies.

(d) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(A) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(B) Any entity created by the Executive Department other than an entity described in Subsection (c), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(56) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(57) "Fire Protection Equipment" is defined in ORS 279A.190 and 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(58) "Flagger" is defined in ORS 279C.810 and means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(59) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(60) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305.

(61) "Good Faith Dispute" is defined in ORS 279C.580 and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective Work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(62) "Goods" is defined in ORS 279B.005(b) and means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(63) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services."

(64) "Grant" is defined in ORS 279A.010(i) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity

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of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(65) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-Working oil or refrigeration oil.

(66) "Intermediate Procurement" means a sourcing method pursuant to ORS 279B.070 or OAR 125-249-0160.

(67) "Interstate Cooperative Procurement" is defined in ORS 279A.200 and means a Permissive Cooperative Procurement in which the Administering Authorized Agency is a governmental body, domestic or foreign, approved by the State Procurement Office, that is authorized under the governmental body's laws, rules or regulations to enter into Public Contracts and in which one or more of the participating Authorized Agencies are located outside of their state.

(68) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, and any Addenda thereto, used for soliciting Bids in accordance with either ORS 279B.055 or 279C.335.

(69) "Joint Cooperative Procurement" is defined in ORS 279A.200 and means a Cooperative Procurement that identifies:

(a) The participating Authorized Agencies or the Cooperative Procurement group;

(b) The contract requirements or estimated contract requirements.

(70) "Judicial Department" is defined in ORS 174.113 and means

(a) The Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(c) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Judicial Department other than an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(71) "Labor Dispute" is defined in ORS 662.010 and means any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(72) "Land Surveyor" is defined in ORS 279C.100. and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(4).

(73) "Legally Flawed" is defined in ORS 279B.405 and means that a Solicitation Document contains terms or conditions that are contrary to law.

(74) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means:

(a) The Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(c) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(75) "Locality" is defined in ORS 279C.800 and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(76) "Lowest Responsible Bidder" means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(77) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(78) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(79) "Multiple-tiered" or "Multisteped" means the type of process used in Competitive Sealed Bidding and Competitive Sealed Proposals pursuant to ORS 279B and OAR division 247, where the process is staged in phases. For example, a multisteped proposal process includes more than one opportunity to submit proposals for the same project.

(80) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter. Pursuant to ORS 279B and OAR division 247 Negotiations typically occur after issuance of a Notice of Intent to award, or in the absence of such Notice, preceding an award of a Contract.

(81) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(82) "Nonresident Bidder" is defined in ORS 279A.120 and means a Bidder who is not a resident Bidder.

(83) "Not-for-Profit Organization" is defined in ORS 307.130 and means a Nonprofit Corporation.

(84) "OAR" means the Oregon Administrative Rules.

(85) "Offer" means collectively or in the alternative: a Bid, Proposal, Quote or similar response to a Solicitation.

(86) "Offeror" means collectively or in the alternative: a Bidder or Proposer.

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(87) "Offering" means collectively or in the alternative: the Bid or Proposal.

(88) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(89) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the State Procurement Office.

(90) "Opening" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(91) "Original Contract" means the initial Contract or Price Agreement as solicited and awarded by the State Procurement Office or an Authorized Agency. See OAR 125-246-0400(3)(h) for the definition of "Original Contract" applied to Cooperative Procurements only.

(92) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

(93) "ORS" means the Oregon Revised Statutes.

(94) "Participating Authorized Agency" or "Purchasing Authorized Agency" means an Authorized Agency that procures Supplies and Services or Public Improvements from a Provider based on the Original Contract established by an Administering Authorized Agency in a Cooperative Procurement.

(95) "Permissive Cooperative Procurement" is defined in ORS 279A.200 and means a Cooperative Procurement in which the Participating Authorized Agencies are not identified.

(96) "Person" means an individual, organization, or representative of an organization. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(97) "Personal Services" means the services or type of services performed under a Personal Services Contract. "Personal Services" is also defined in the Public Contracting Code in ORS 279C.100, and that definition in ORS 279C.100 is applicable only to Architect, Engineer, Land Surveyor or Provider of Related Services.

(98) "Personal Services Contract" or "Contract for Personal Services" means a Contract, or a member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), or Consultant. Contracts for Architectural, Engineering and Land Surveying Services and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(99) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(100) "Price Agreement" means a Public Contract for the Procurement of Supplies and Services at a set price with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(101) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring: Supplies and Services; Architectural, Engineering, and Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(102) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods pursuant to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or ORS 279C.300 through 279C.450.

(103) "Product Sample" means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample must be the exact product or a representative portion of that product offered by the Offeror.

(104) "Property" is defined in ORS 279A.250 and means personal property.

(105) "Proposal" means a response to a Request for Proposals.

(106) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0110(4), whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(107) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(108) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(109) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(110) "Public Body," is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(111) "Public Contract" is defined in ORS 279A.010(x) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants.

(112) "Public Contracting" is defined in ORS 279A.010(y) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(113) "Public Contracting Code" or "Code" is defined in ORS 279A.010(z) and means 279A, 279B and 279C.

(114) "Public Improvement" means a project for construction, reconstruction or major renovation on real property by or for an Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(115) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(116) "Public Improvement" is defined in ORS 279A.010(aa) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(117) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for, by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(118) "Purchase Order" means an Authorized Agency's document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. An Authorized Agency's use of a Purchase Order must comply with the Public Contracting Code and these Rules.

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(119) "Purchasing Authorized Agency" means an Authorized Agency that procures Supplies and Services or Public Improvements from a Provider based on the Original Contract established by an Administering Authorized Agency in a Cooperative Procurement.

(120) "QBS" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering and Land Surveying Services and Related Services Contracts.

(121) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement.

(122) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(123) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(124) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(125) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(126) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(127) "Related Services" is defined in ORS 279C.100(6) and means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(128) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(129) "Request for Qualifications" or "(RFQ)" means a Written document describing the Authorized Agency's circumstances and the type of service(s) desired; setting forth all significant evaluation factors and their relative importance and, if appropriate, price; and soliciting competitive Written qualifications. The RFQ will not result in a Contract, but is intended to establish an open, inclusive list of qualified Contractors from which to seek Proposals and select a Contractor in accordance with OAR 125-247-0550. See the definition for a Request for Qualifications pursuant to OAR 125-248-0110(5), applicable only to Architectural, Engineering and Land Surveying Services and Related Services Contracts.

(130) "Resident bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder".

(131) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(132) "Responsible Offeror", (also "Responsible Bidder" or "Responsible Proposer" as applicable) means a Person who has submitted an Offer and met the standards set forth in OAR 125-247-0500 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.

(133) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(134) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(135) "Responsive Offer" (also, "Responsive Bid" or "Responsive Proposal," as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable Solicitation procedure and requirements and the Solicitation Document.

(136) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(137) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(138) "Rules" mean these Public Contracting Rules of the Department including divisions 246 through 249, unless otherwise indicated.

(139) "Scope" means the range and attributes of the Supplies and Services; Public Improvements; or Architectural, Engineering and Land Surveying Services and Related Services, described in the applicable Procurement Document.

(140) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(141) "Signed" or "Signature" means any mark, word or symbol, including electronic signature, attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.

(142) "Small Procurement" means a sourcing method pursuant to ORS 279B.065.

(143) "Sole-Source Procurement" means a sourcing method pursuant to ORS 279B.075.

(144) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself. A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); ORS 279B.055 through 085 (seven methods for Supplies and Services); ORS 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements).

(145) "Solicitation Document," means an Invitation to Bid, a Request for Proposals, or a Special Procurement Solicitation, and all other documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement.

(146) "Special Government Body" is defined in ORS 174.117 and means any of the following:

(a) A public corporation created under a statute of this State and specifically designated as a public corporation.

(b) A school district.

(c) A public charter school established under ORS chapter 338.

(d) An education service district.

(e) A community college district or community college service district established under ORS chapter 341.

(f) An intergovernmental body formed by two or more public bodies.

(g) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(h) Any entity that is not otherwise described in this section that is:

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(A) Not part of state government or local government;
(B) Created pursuant to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(C) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(i) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(147) "Special Procurement" means a sourcing method pursuant to ORS 279B.085 and a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(148) "Specifications" means any description of the physical or functional characteristics, or of the nature of a Supplies and Services or a construction item, including any requirement for inspecting, testing, or preparing a Supplies and Services or a construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. See ORS 279B.200(3).

(149) "State" means the State of Oregon.

(150) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(151) "State Procurement Office" means that office of the State Services Division of the Department designated by the Director to carry out the authority of the Department under the Public Contracting Code and these Rules.

(152) "Substantial Completion" is defined in 279C.465 and pursuant to ORS 12.135 and HB 3022 means the date when the Contractor accepts in Writing the Construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the Contractor.

(153) "Supplies and Services" includes "Supplies or Services," and collectively means Goods, trade services, and personal services, separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and B. This term does not include Construction Services or Architectural, Engineering and Land Surveying Services and Related Services, governed under ORS 279C.

(154) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof.

(155) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(156) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or

marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(157) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(158) "Unnecessarily Restrictive" is defined in ORS 279B.405 and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(159) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(160) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(161) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

(162) "Written" or "Writing" means conventional paper documents, whether hand Written, manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required or permitted by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005, 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0120

Policies

(1) These Rules simplify, clarify and modernize Public Contracting pursuant to ORS 279A.015(1).

(2) These Rules provide a foundation for ethical and fair dealing in Public Contracting, designed to instill public confidence pursuant to ORS 279A.015(2).

(3) The promotion of efficient use of resources pursuant to ORS 279A.015(3) includes but is not limited to Sustainability. Pursuant to ORS 184.421, "Sustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives. ORS 184.421(1) sets forth the goals for the State of Oregon regarding Sustainability and provides that in conducting internal operations, Agencies must, in cooperation with the Department, seek to achieve the following objectives:

(a) State purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being.

(b) Investments in facilities, equipment and durable goods should reflect the highest feasible efficiency and lowest life cycle costs.

(c) Investments and expenditures should help promote improvements in the efficient use of energy, water and resources.

(d) State operations should be located in diverse locations, including rural and distressed communities.

(e) State operations and purchases should help maintain vital and active downtown and main street communities.

(f) State purchases should help support opportunities for economically distressed communities and historically underemployed people.

(g) State operations should reflect partnerships with communities and businesses.

(h) State operations should help reduce adverse impacts on native habitats and species and help restore ecological processes.

(i) State operations should be conducted in ways that significantly increase the efficient use of energy, water and resources.

(j) State operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.

(4) These Rules clearly identify and implement each of the legislatively mandated socioeconomic programs identified pursuant to ORS 279A.015(4).

(5) "Arriving at best value" pursuant to ORS 279A.015(5) means selecting a Provider based on a determination of which Providers' proposals offer the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:

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(a) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting Supply and Services, Public Improvements, and Architectural, Engineering and Land Surveying and Related Services, or any combination thereof, over its projected lifetime;

(b) The technical merit of the Proposer's proposal; and

(c) The probability of the Proposer performing the requirements stated in the Solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.

Authorized Agencies must conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.015
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0130

Application of the Code and Rules; Exceptions

(1) Except as set forth in this Section, an Authorized Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code and these Rules.

(2) Neither the Code nor these Rules apply to contracts between Agencies or between Agencies and the federal government. If the contract is for Cooperative Procurement, the Code and these Rules do not apply to the contractual relationship between the Agencies or Agencies and federal government pursuant to ORS 190.003 through 190.800, but the Code and these Rules apply to the contractual relationships between the Agencies and Providers arising out of the Cooperative Procurement pursuant to ORS 279A.200 through 279A.225.

(3) Neither the Code nor these Rules apply to the Public Contracting activities of the Contracting Authorized Agencies listed in ORS 279A.025(3).

(4) Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and pursuant to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0650.

(5) Authorized Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related rules when the Authorized Agencies procure Supplies and Services pursuant to ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 (Acquisition of Supplies and Services from Qualified Rehabilitation Facilities). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(6) Authorized Agencies otherwise subject to the Code and these Rules must enter into contracts with correctional industries pursuant to the Oregon Constitution, Article I, Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.025, 279A.050, 279A.055, 279A.180
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0140

Procurement Authority

Pursuant to ORS 279A.050, except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Department has all of the rights, powers and authority necessary to carry out the provisions of the Public Contracting Code, and the Department must exercise all rights, powers and authority in accordance with the Public Contracting Code. The Department is the Contracting Agency described in the Public Contracting Code with respect to the Authorized Agencies, except as delegated pursuant to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050(1)(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0150

Applicability of These Rules to Agencies

Agencies subject to the authority of the Director of the Department must follow these Rules. If an Agency is partially independent and subject to the authority of the Department, the Agency is responsible for obtaining any legal determination related to these Rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0170

Delegation of Authority

(1) Policy. Pursuant to ORS 279A.140, the Director of the Department represents the Authorized Agencies in Procurement and is ultimately responsible for the Procurement of the Authorized Agencies. These Rules express this authority, clarifying responsibilities, instilling public confidence, promoting efficient use of resources, implementing the Code and socioeconomic programs, allowing meaningful competition, and providing a structure that supports evolving procurement methods, all pursuant to the policy of ORS 279A.015. The expenditure of public funds and other Public Contracting impacting State assets require individual representation of the State's interests. The Director and delegates may delegate or revoke authority by any of the following forms:

(a) A Written Policy issued by the Department;

(b) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(c) by this Rule. All delegations pursuant to this Rule, either to any Authorized Agency or the State Procurement Office, may be changed by policy or letter issued from the Director or the Director's delegatee.

(2) Delegation to Authorized Agency Heads and Designated Procurement Officers. Pursuant to ORS 279A.075, the Director of the Department may delegate and subdelegate the Director's authority under ORS 279A.050 in whole or in part. By and subject to this Rule, the Director delegates authority to the heads of Authorized Agencies on the condition that the heads of Authorized Agencies subdelegate such authority to the Agencies' Designated Procurement Officers, who may further subdelegate such authority in accordance with policies of the Agencies (chain of delegation). Each individual in the chain of delegation remains responsible for the exercise of authority by the subdelegates, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, will be responsible for all procurement activity under delegated authority for the Authorized Agency.

(3) Delegation to the State Procurement Office. The Director of the Department delegates to the Chief Procurement Officer of the State Procurement Office of the Department the rights, powers and authority invested in the Director to:

(a) Delegate and subdelegate these authorities in whole or in part pursuant to ORS 279A.075;

(b) Approve Special Procurement requests, pursuant to ORS 279B.085 and related rules;

(c) Approve and issue exemption orders, pursuant to ORS 279C.335 and related rules;

(d) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(e) Receive, maintain, and act upon information contained in reports, required by the Public Contracting Code and these Rules;

(f) Receive, hear, and resolve protests pursuant to ORS 279B.400 to 279B.420;

(g) Review and hear prequalifications, debarments, and DBE Disqualifications pursuant to ORS 279B.425, 200.065(5), 200.075(1) and 279A.110;

(h) Approve Unanticipated Amendments pursuant to OAR 125-246-0560(2);

(i) Approve expedited notices for Sole-Source Procurements pursuant to OAR 125-247-0275;

(j) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, pursuant to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470;

(k) Approve Brand Name Specifications pursuant to OAR 125-247-0288(3);

(l) Determine authorization for purchases through federal programs pursuant to ORS 279A.180 and OAR 125-246-0360; and

(m) Other actions of the State Procurement Office specifically required by these Rules.

(4) Duties and responsibilities of the State Procurement Office. The duties and responsibilities of the State Procurement Office are as follows:

(a) Conduct Procurements, including administration of Contracts, for Agencies.

(b) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(c) Subdelegate authority in whole or part, based upon consideration and documentation of the following factors in making this decision:

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(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(d) Revoke authority delegated by the State Procurement Office in whole or part, based upon consideration and documentation of the following factors in making this decision:

(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(e) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(f) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(g) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy;

(h) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all delegations and sub-delegations;

(i) Based upon monitoring described in Subsection (4)(h), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(j) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

(5) Duties and Responsibilities of Designated Procurement Officers and Delegates. Pursuant to Section (1) of this Rule, every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency. If none is appointed, the agency head assumes the authority, duties and responsibilities of the Designated Procurement Officer. Unless otherwise provided in this Rule or by the head of the respective Authorized Agency, the authority, duties and responsibilities of the Designated Procurement Officer are as follows:

(a) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(b) Conduct, supervise and manage Procurement for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated procurement authority;

(c) Prepare or monitor the use of Specifications for all Procurements of the Authorized Agency;

(d) Issue Solicitations and implement other non-Solicitation methods, only as authorized pursuant to this Rule, for all Procurements of the Authorized Agency;

(e) Award and execute Contracts only as authorized pursuant to this Rule;

(f) Comply with the reporting requirements of the Code, these Rules, and Department policies.

(g) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all delegations and subdelegations;

(h) Based upon the monitoring described in Subsection (5)(h), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(6) Delegation by Rule Based Upon Thresholds.

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies

for the following Procurements, including Contract Administration. This delegation requires the heads of the Authorized Agencies to subdelegate authority for the following Procurements to the Designated Procurement Officers of the respective Authorized Agencies:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, pursuant to ORS 279B.065 and related rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, pursuant to ORS 279B.070 and OAR 125-247-0270, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(D) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services pursuant to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(E) Intermediate Procurements of Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to OAR 125-249-0160, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and pursuant to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, on behalf of Agencies and pursuant to ORS 279B.070, OAR 125-247-0270, and the policy of the Department;

(C) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and pursuant to ORS 279C.110, OAR 125-248-0210, and the policy of the Department;

(D) Intermediate Procurements of Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to ORS 279C.410 notes, OAR 125-249-0160 and the Policy of the Department;

(E) All Procurements exceeding the Thresholds for Intermediate Procurements or Informal Procurements pursuant to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 notes and OAR 125-249-0210 (Public Improvements), respectively; and

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (6) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (6).

(7) Delegation by Rule Based Upon Type:

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies for the following Procurements, including Contract Administration. This delegation by rule requires that the heads of the Authorized Agencies subdelegate the authority for such Procurements to the Designated Procurement Officers of the respective Authorized Agencies. If any head of an Authorized Agency does not subdelegate to an individual as a Designated Procurement Officer, then by definition, the nondelegating head of the Authorized Agency acts in the place of the Designated Procurement Officer.

(A) Sole-Source Procurements within the delegated Threshold authority pursuant to this Rule, Section (6) above or pursuant to a delegation agreement with the State Procurement Office, and in accordance with ORS 279B.075 and OAR 125-247-0275;

(B) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related rules;

(C) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in a Price Agreement;

(ii) Procurements of Supplies and Services do not exceed the Threshold of \$150,000, including all Amendments, pursuant to OAR 125-246-0560 and the Authorized Agency follows the requirements as set forth in the policy of the Department; or

(iii) Procurements of Public Improvements do not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways,

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bridges and other transportation projects, including Amendments pursuant to OAR 125-246-0560, and the Authorized Agency follows the requirements as set forth in the Policy of the Department.

(D) Federal program Procurements within delegated Threshold authority pursuant to Section (6) above or to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related rules;

(E) Client Services Special Procurements pursuant to OAR 125-247-0288; and

(F) As otherwise expressly delegated in OAR 125-247-0288, Special Procurements By Rule.

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the Policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact other Contracts;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements pursuant to ORS 279B.085 and related Rules, except as expressly delegated to the Authorized Agencies pursuant to OAR 125-247,0288;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (7) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (7).

(8) Supplemental Delegations by the State Procurement Office:

(a) Any Authorized Agency may submit a request for delegation to the State Procurement Office for Procurement authority in accordance with the requirements of the Public Contracting Code, this Rule, and the policy of the Department.

(b) The Department will identify in policy the necessary requirements for requesting and obtaining delegated authority pursuant to this Rule.

(c) The State Procurement Office may delegate and revoke its Procurement authority, in whole or in part, to an Authorized Agency, in accordance with this Rule and the policy of the Department. All delegations must be approved in Writing by the Chief Procurement Officer of the State Procurement Office and based upon a determination, considering relevant factors set forth in the Policy of the Department The State Procurement Office may delegate its authority to meet short-term demands upon its staff and resources, arising from unusual circumstances.

(9) Other Requirements:

(a) Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code and related rules. Delegation of authority does not exempt an individual or an Authorized Agency from the requirements of the Public Contracting Code, related rules, and policies of the Department. To the extent applicable, an individual or Authorized Agency receiving any delegated authority is responsible for following the Public Contracting Code and related rules, unless otherwise indicated.

(b) Any delegation of authority pursuant to this Rule may be revoked by the delegator, provided the revocation is in Writing and the delegatee receives reasonable notice of the revocation. The revocation must be based upon a determination, as set forth in the policy of the Department.

(c) The Authorized Agency must maintain copies of letters or agreements granting delegation of authority.

(d) When an Authorized Agency has delegated authority pursuant to this Rule, the Authorized Agency's signature must be deemed both the execution and approval of the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.075, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0200

Affirmative Action; Limited Competition Permitted

Pursuant to ORS 279A.100, an Authorized Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with any policies and procedures established by the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.100

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) As set forth in ORS 279A.105, an Authorized Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its Workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in Writing to the Authorized Agency that a substantial number of the subcontractor's employees, or subcontractors that will manufacture the Goods or complete the services under the Contract, reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Authorized Agency must determine in each particular instance what proportion of a Contractor's or subcontractor's employees or subcontractors constitute a substantial number.

(3) Authorized Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Authorized Agency, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

(4) DBE Disqualification:

(a) An Authorized Agency may disqualify a Person from consideration of award of the Authorized Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) As provided in ORS 200.065 and 200.075 an Authorized Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Authorized Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Authorized Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) An Authorized Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

(d) The Authorized Agency must notify the Person in Writing of a proposed DBE Disqualification pursuant to this section, served personally or by registered or certified mail, return receipt requested. This notice must:

(A) State that the Authorized Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Authorized

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Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(e) Hearing. The State Procurement Office must schedule a hearing upon the Authorized Agency's receipt of the Person's timely request. The State Procurement Office must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.200.065, 200.075, 105 ,279A.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0220

Advocate's Office and OMWESB

(1) The "Governor's Advocate's Office for Minority, Women and Emerging Small Business (Advocate's Office)" was created in the Office of the Governor, and the "Advocate for Minority, Women and Emerging Small Business" is the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Authorized Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses pursuant to ORS 200.025.

(2) The "Office of Minority, Women and Emerging Small Business (OMWESB), located in the Department of Consumer and Business Services, administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBEWBE), and Emerging Small Business (ESB) Programs. As the sole certification authority in Oregon for disadvantaged, minority- and woman-owned businesses, and emerging small businesses, the Office of Minority, Women and Emerging Small Business (OMWESB) provides certification services for disadvantaged, minority, woman and emerging small businesses, pursuant to ORS 200.025 and 200.055.

(3) A "Disadvantaged Business Enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(4) An "Emerging Small Business" is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms business which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A "Minority or Women Business Enterprise" is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, pursuant to ORS 200.005.

(6) The general policy of the Department and these Rules is to expand economic opportunities for Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, pursuant to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(7) The Agency must support the participation of Minority, Women owned and Emerging Small Businesses in its purchasing processes by notifying the Advocate for Minority, Women and Emerging Small Business as required under ORS 200.035.

(8) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging

Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the Authorized Agency may let the Contract without formal competitive sourcing methods after a good faith effort to obtain a minimum of three competitive Quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care must be taken to obtain Quotes from different firms each time the list is used. The Authorized Agency must keep a Written record of the source and amount of the Quotes received and comply with the requirements, as applicable, of this Rule.

(9) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or rule, an Authorized Agency may limit competition for a Public Contract for Supplies and Services, or for any other Public Contract estimated to cost \$50,000 or less, to businesses owned by Certified Minority, Women and Emerging Small Businesses through the Office of Minority, Women and Emerging Small Business, pursuant to ORS 279A.100(3).

(10) No Special Procurement pursuant to ORS 279B.085 and no exemption pursuant to ORS 279C.335 approved by the Chief Procurement Officer of the State Procurement Office waives or excepts the requirement of ORS 200.035, that "All state agencies must provide timely notice of all contract and bid request Solicitations in excess of \$5,000 to the Advocate for Minority, Women and Emerging Small Business." All Agencies must comply with ORS 200.035, notwithstanding the Public Contracting Code.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.100, 279A.105

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0300

Preference for Oregon Supplies and Services; Nonresident Bidders

(1) Award When Offers Identical. When an Authorized Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Authorized Agency must award the Contract based on the following order of precedence:

(a) The Authorized Agency must award the Contract to the Offeror among those submitting identical offers that is offering Supplies and Services that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Supplies and Services or Personal Services manufactured or produced in Oregon, the Authorized Agency must award the Contract by drawing lots among the identical Offers offering Supplies and Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots must be given notice and an opportunity to be present when the lots are drawn.

(c) If the Authorized Agency receives identical Offers, and none of the identical Offers offer Supplies and Services manufactured or produced in Oregon, then the Authorized Agency must award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots must be given notice and an opportunity to be present when the lots are drawn.

(2) Determining if Offers are Identical. An Authorized Agency must consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Supplies and Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the State Procurement Office, the Authorized Agency determines, in Writing, that two or more Proposals are equally Advantageous to the Authorized Agency.

(3) Determining if Supplies and Services or Personal Services are Manufactured or Produced in Oregon. For the purposes of complying with section 1 of this Rule, Authorized Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Authorized Agency, any information the Authorized Agency determines is appropriate and necessary to allow the Authorized Agency to determine if the Supplies and Services are manufactured or produced in Oregon. An Authorized Agency may use any reasonable criteria to determine if Supplies and Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination,

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and provided that the Authorized Agency applies those criteria equally to each Offeror.

(4) Procedure for Drawing Lots. In any instance when this Section calls for the drawing of lots, the Authorized Agency must draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.120
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0310

Reciprocal Preferences

When evaluating Bids pursuant to OAR 125-247-0255 through 125-247-0264, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. An Authorized Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine both:

(1) Whether the Nonresident Bidder's state gives preference to in-state bidders; and

(2) The amount of such preference.
Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.120
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0320

Recycling; Definitions

(1) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer Waste" does not include manufacturing waste.

(2) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(3) "Recycled PETE Product" means a product containing post-consumer polyethylene terephthalate material.

(4) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270, 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0321

Recycling Policy

(1) The Department promotes the Procurement by all Authorized Agencies of products made from Recycled Materials in accordance with ORS 279A.125 and 279A.270.

(2) When purchasing supplies, materials, equipment, or pursuant to Subsection (2)(c), personal services, Authorized Agencies must:

(a) Review the procurement Specifications currently utilized in order to eliminate, wherever economically feasible, discrimination against the Procurement of recovered resources or Recycled Materials;

(b) Develop purchasing practices that, to the maximum extent economically feasible, assure purchase of materials which are recycled or which may be recycled or reused when discarded. The Department will make Recycled Products and materials available to Authorized Agencies whenever they can be obtained;

(c) For Goods, provide incentives for the maximum possible use of recovered resources and Recycled Materials, wherever economically feasible, in all procurement Specifications issued.

(3) Pursuant to ORS 279A.125, notwithstanding provisions of law requiring the Department to award a Contract to the lowest or best Offeror, the State Procurement Office must give preference to the procurement of Goods manufactured from Recycled Materials, if the Recycled Product's costs do not exceed the costs of nonrecycled products by more than 5%, or a higher percentage if a Written determination is made by the State

Procurement Office. The requirements of ORS 279A.125 may be applied to Authorized Agencies by agreement or policy of the Department.

(4) The Offeror must indicate in the Offer, the materials considered relevant to the 5% preference. The 5% preference will only apply to the value of that portion of the Offer that offers non-paper products containing verifiable recycled contents.

(5) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, Recycled Paper;

(a) All Contracts must require Contractors to use, in the performance of the Contract Work, to the maximum extent economically feasible, recycled PETE products, as well as other recycled plastic resin products. "Recycled PETE products" means a product containing post-consumer polyethylene terephthalate material. The Department must provide guidelines to Authorized Agencies and Contractors on the availability of necessary Goods that contain recycled PETE, as well as other recycled plastic resin supplies and materials; the Department must also identify suppliers able to provide necessary Goods containing recycled PETE, as well as other recycled plastic resin supplies and materials, pursuant to ORS 279A.150.

(b) All Authorized Agencies must include the following language in any Invitation to Bid or Request for Proposal: "Vendors must use recyclable products to the maximum extent economically feasible in the performance of the contract Work set forth in this document," pursuant to ORS 279B.270(2); and

(c) The Department must include Recycled Product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance, pursuant to ORS 279A.145.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.125, 279A.145, 279A.150, 279B.270, 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0322

Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring an Authorized Agency to award a Contract to the lowest or best Offeror, and in accordance with Subsection (2) of this Section, an Authorized Agency charged with the Procurement of Goods for any public use must give preference to the Procurement of Goods manufactured from Recycled Materials whenever the Authorized Agency uses Competitive Sealed Bidding or Competitive Sealed Proposals pursuant to ORS 279B.055 or 279B.060, respectively, and as set forth in this Rule.

(2) In comparing Goods from two or more Offerors, if at least one Offeror offers Goods manufactured from Recycled Materials and at least one Offeror does not, an Authorized Agency must select the Offeror offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

(a) The Recycled Product is available;

(b) The Recycled Product meets applicable standards;

(c) The Recycled Product can be substituted for a comparable non-recycled product; and

(d) The Recycled Product's costs do not exceed the costs of non-recycled products by more than five percent (5%), or a higher percentage if a Written determination is made by the Authorized Agency and set forth in the Solicitation Document. For purposes of making the foregoing determination, the Authorized Agency must consider the costs of the Goods following any adjustments the Authorized Agency makes to the price of the Goods for purposes of evaluation pursuant to OAR 125-246-0310.

(3) For the purposes of this Section, an Authorized Agency must determine if Goods are manufactured from Recycled Materials in accordance with standards established by the State Procurement Office.

(4) Offerors must certify in their Offers:

(a) The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and

(b) Both the post-consumer and secondary waste content thereof. Offerors may certify a zero percent Recycled Product content. This certification applies to Public Improvement products and all other Procurements.

(5) To be eligible for a preference under ORS 279A.125 and this Rule:

(a) The Offeror must indicate which materials and supplies contain verifiable recycled content; and

(b) Such products must meet the requirements of ORS 279A.125 and this Rule.

(6) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(7) Offers that contain false information about (i) the percentage of Recycled Product, post-consumer and secondary waste content, or (ii) ver-

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ifiable recycled content, must be rejected as nonresponsive, and the Offeror offering false information may be deemed non-responsive.

(8) Contracts awarded as a result of a preference under ORS 279A.125 are subject to such investigation, including but not limited to, audits, plant visitations, examination of invoices, laboratory analysis, and other documents, etc., as the Department deems necessary to confirm that the products supplied therein contain the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer.

(9) Failure to provide products containing the percentages of Recycled Product, post-consumer and secondary waste stated in the Offer may result in:

(a) The Contractor reimbursing the State for the portion of the Contract Price that is attributable to the preference applied under ORS 279A.125;

(b) Contract termination; or

(c) Both (a) and (b), or such other remedies as the Department deems appropriate.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0323

Recycled Paper and Paper Products

(1) The Department promotes the use of Recycled Paper and paper products, and no less than 35% of Authorized Agency Procurements of paper products may be from Recycled Paper Products, pursuant to ORS 279A.155.

(2) Paper and paper products that contain significant quantities of Recycled Materials will be made available to Authorized Agencies in all grades where it can be obtained. Purchase of Recycled Paper and paper products is mandatory when the cost of such Recycled Paper or paper products is no more than five (5%) higher than the cost of the same quality paper or paper products containing little or no Recycled Paper. The State Procurement Office must give a preference of up to five percent (5%) pursuant to ORS 279A.125(2), to suppliers of Recycled Paper and paper products, over the lowest price of non Recycled Paper and paper products if the fitness and quality of the Recycled Paper content paper meet Specification requirements and the type of Recycled Paper content is equivalent to the same type of virgin material.

(3) Except as provided in this rule, Recycled Paper and paper products, regardless of cost, will be available to Authorized Agencies on a Recycled Paper agreement. Authorized Agencies that find it economically feasible to exceed the incentive in Section (2) of this Rule for Recycled Paper may do so either by use of agreements for Recycled Paper or by indicating on their purchase request the percentage of Recycled Paper incentive which is economically feasible for them.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.125, 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0324

Recycling: Food Service and Food Packaging

(1) The Department promotes the use of recyclable or biodegradable products for food service and packaging.

(2) The five percent (5%) preference in ORS 279A.125(2) must apply to purchases of Recycled Products for food service and packaging that are not paper products. The minimum purchase in ORS 279A.155 of at least thirty-five percent (35%) must apply to purchases of Recycled Products for food service and food packaging that are 100% paper or paper products.

(3) Recyclable or Biodegradable Products for food service and packaging will be made available for purchase by Authorized Agencies.

(4) Authorized Agencies are required to purchase recyclable or biodegradable food service and packaging products when purchasing supplies.

(5) The Department must include a provision in all food service Contracts and extensions to such Contracts, requiring the use of recyclable or biodegradable food service products when such products are readily available, meaning deliverable within 30 days of placement of an order by the food service Contractor to its supplier. This period of time may be less or more, as industry standards for various commodities indicate.

(6) The Department must encourage its suppliers to provide biodegradable or Recycled Products as substitutes.

(7) The Department must use best efforts to obtain and use biodegradable or Recyclable Products as substitutes for products that are non-biodegradable or non-recyclable.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.125, 270A.155

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0330

State Procurement

(1) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engineering and Land Surveying Services; and Public Improvements for the Agencies, pursuant to ORS 279A.140 and 279C.105(1). Delegations of authority in accordance with OAR 125-246-0170 do not relieve the Department of this responsibility. To advance the conduct of Procurements including administration of Contracts, the State Procurement Office provides leadership and services for innovative, responsive, and accountable public Procurement. The following Sections (2) through (4) of this Rule applies only to Trade Services, Personal Services, and Architectural, Engineering and Land Surveying and Related Services (for the purposes of this Rule only, "services").

(2) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. The Authorized Agency and Contractor(s) must complete the Independent Contractor Certification, whether by form or an Architectural, Engineering and Land Surveying Services and Related Services Contract provision (Contract Provision). If the individual cannot certify Independent Contractor status, the Authorized Agency may not contract with the individual using a Personal Services Contract, including Architectural, Engineering and Land Surveying Services and Related Services, except as otherwise allowed in Subsection (2)(f) of this Rule:

(a) An Independent Contractor Certification by form or Contract Provision, must be part of each contract;

(b) A corporation is not considered an employee of the Authorized Agency. If the Contractor is a corporation, the Independent Contractor Certification is not required. However, if the Contractor is a professional corporation, the Independent Contractor certification is required. A professional corporation is a corporation organized under ORS chapter 58, or a similar statute in another state, and is used by certain professions. The corporation representative's certification of corporation status or a certification by the Authorized Agency verifying the Contractor's status with the Corporation Division of the Secretary of State's Office, must be submitted upon Contract approval.

(c) If the nature of the services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name, address, and Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When an individual cannot certify that he or she satisfies four or more of the Independent Contractor criteria of the Independent Contractor Certification, the Authorized Agency may contract with the individual only if the State Procurement Office, in consultation with the Department of Justice, approves the Contract upon a determination by the State Procurement Office that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

(3) Tax Compliance. No Contract or other agreement for more than \$1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6)(7).

(4) Requirements to Transact Business in Oregon:

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office as required by ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070; Sec.335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.140, 279C.105(1)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0335

Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Identification of Personal Services Contracts.

(a) Pursuant to ORS 279A.140(2)(h), the State Procurement Office may designate Contracts or classes of Contracts as Personal Services

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Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.140 and identifying the appropriate required procedures in accordance with ORS 279A.070 and 270A.140. In the event of uncertainty or disagreement as to the status of any particular contract or class of contracts, the State Procurement Office may determine whether the Work calls for the performance of Personal Services.

(b) The Authorized Agency must identify within the contract that the Authorized Agency is contracting for personal services. A failure to adequately describe personal services within the contract will not invalidate the procurement or contract if the Authorized Agency properly used a sourcing method pursuant to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules regarding screening, selection, evaluation, award, and approval in accordance with these Rules, OAR 125-246-0345 through 125-246-0355 or 125-246-0100 through 125-246-0320.

(3) Independent Contractor. An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively-approved budget, contract for Personal Services with Providers who are Independent Contractors. "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(4) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after meeting any collective bargaining agreements, an Authorized Agency may contract for Personal Services when:

(a) The Authorized Agency has complied with any labor-related agreements;

(b) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(c) An independent and impartial evaluation is required; or

(d) It will be less expensive to contract for the Work.

(5) The Authorized Agency may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Personal Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(6) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0345

Procedures for Personal Services Contracts.

(1) Contract Forms for Architectural, Engineering and Land Surveying Services and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Contract Forms for other Personal Services Contracts. Authorized Agencies must use the forms provided by the State Procurement Office for Contracts for Personal Services.

(a) If an Authorized Agency obtains approval in accordance with this Rule, it may enter into a Personal Services Contract containing terms and conditions other than those in the approved form for one-time acquisitions of Personal Services. The Authorized Agency must provide the State Procurement Office with a copy of the proposed Personal Services Contract that shows the specific terms or conditions that the Authorized Agency wishes to revise. The Authorized Agency must obtain State Procurement Office approval of any revisions to the terms and conditions of the form, other than revisions to exhibits included with the form before it enters into the Personal Services Contract. The State Procurement Office may approve such a revision to its form Contract for Personal Services by facsimile, email, letter or any other method that provides an objective means to verify State Procurement Office approval.

(b) Upon an Authorized Agency's request, the State Procurement Office may approve a revised form Contract for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Contract form at least every two years. If upon review the Authorized Agency revises the Contract form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering and Land Surveying Services and Related Services. For all other Personal Services Contracts, an Authorized Agency must select a sourcing method from the seven methods available pursuant to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-246-0560 and 125-246-0565, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering and Land Surveying Services and Related Services are found in OAR 125-248-0320 and 125-248-0300, respectively.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.70, 279A.140(h)(B)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) State Procurement Office Approval. Except as provided in OAR 125-246-0170, the State Procurement Office must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless the Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(4) Legal Sufficiency Review. The State Procurement Office may not approve a Personal Services Contract calling for payment of more than \$75,000 before the Attorney General approves this Personal Services Contract, if the review and approval of the Attorney General is required under ORS 291.047 or 291.049.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the State Procurement Office. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Division for providing tort liability coverage.

(B) Department, Information Resource Management Division (IRMD), Publishing and Distribution for printing services;

(C) Department, State Controller's Division for accounting services;

(D) Office of the Treasurer, Debt Management Division for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Information Resources Management Division for information-system related and telecommunications services. The Authorized Agency is also encouraged to use this Division's Enterprise Planning and Policy Section as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

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(d) The State Procurement Office approval, when required, is last. The State Procurement Office must use its best efforts to approve all Personal Services Contracts within five (5) business days. A longer period might be necessary for Contracts that are incomplete or Contracts where additional information must be acquired.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in Writing on a case-by-case basis only by the Attorney General;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in Writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0351

Acquiring Services Before Obtaining Requisite Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6). The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(3) The State Procurement Office may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the State Procurement Office's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The State Procurement Office will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The State Procurement Office's authorization pursuant to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(4) The Authorized Agency seeking the State Procurement Office's authorization to acquire services before obtaining all requisite approvals must provide:

(a) Written findings to The State Procurement Office that describe the specific recurring circumstances that require the Authorized Agency to take prompt action to protect the interests of the State because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Authorized Agency must also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Authorized Agency will use for the Contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Authorized Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(5) The State Procurement Office after review of the material required by Section (4) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (4)(a) above before obtaining all requisite approvals. If the State Procurement Office provides authorization, the State Procurement Office will do so in Writing, subject to any conditions or limitations the State Procurement Office deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the State Procurement Office may determine are appropriate.

(6) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the State Procurement Office, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the form submitted by the Authorized Agency and approved by the State Procurement Office. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the State Procurement Office's approval.

(7) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(8) The State Procurement Office authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(9) An Authorized Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0352

Retroactive Approval of Public Contracts

Authorized Agencies must comply with OAR 125-246-0575.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0353

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) The State Procurement Office maintains an electronic reporting system within ORPIN for the Authorized Agency and a report form for reporting Personal Services Contracts. The Authorized Agency must submit this report form to the State Procurement Office for each Contract and subsequent Contract Amendment. The report form must include the Authorized Agency name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, and its basic purpose. The State Procurement Office will provide a copy of the report form for an Authorized Agency without access to the ORPIN. Whenever an Authorized Agency pays more in a calendar year under a Personal Services Contract for services historically performed by state employees than the Authorized Agency would have paid to the Authorized Agency's employees performing the same Work, the Authorized Agency must so report to the Department and include in the report a statement of justification for the greater costs, pursuant to ORS 279A.140(2)(h)(A)(i).

(3) The State Procurement Office must submit a report to the Legislature concerning Authorized Agency use of Personal Services Contracts. The report, by statute, must include the name of the Authorized Agency, the not-to-exceed amount of the Contracts, the name(s) of Contractor(s), the duration of Contract(s) and the basic purpose of the Contract(s). The report must also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(4) The State Procurement Office maintains an electronic file of Personal Services Contracts report forms for public review. The electronic file includes a justification statement, when applicable, and documentation of the selection process for each Contract.

(5) The Authorized Agency must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms as follows: (a) for ten (10) years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services; and (b) for six (6) years beyond each Contract's expiration date for all other Personal Services Contracts. All such files may be destroyed after ten (10) years or six (6) years, respectively, or in accordance with another provision of law.

(6) Personal Services Contracts submitted to the State Procurement Office for approval or filing must include the report form. The Authorized Agency's Procurement File should include detailed documentation of the process.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0355

Procurement Files

(1) This Rule applies only to Procurements exceeding the Intermediate Procurement Threshold for Supplies and Services; the Informal Selection Threshold for Architectural, Engineering, and Land Surveying Services; and the Intermediate Procurement Threshold for Public Improvements pursuant to OAR 125-247-0270, 125-248-0210, and 125-249-0160, respectively, unless a policy established by the Department provides otherwise.

(2) Each Authorized Agency's Procurement File must contain:

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- (a) An executed Contract, if awarded;
 - (b) The record of the actions used to develop the Contract;
 - (c) A copy of the Solicitation, if any;
 - (d) Any required findings or statement of justification for the selection of the Provider and sourcing method pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements); and
 - (e) Documentation of Contract Administration pursuant to OAR 125-246-0555.
- (3) Each Authorized Agency's Procurement File may also contain, if required by the Code or these Rules:
- (a) A list of prospective Providers notified of any Solicitation;
 - (b) The method used to advertise or notify prospective Providers;
 - (c) A copy of each Offer that resulted in the Award of a Contract;
 - (d) The method of evaluating Offers, the results of the evaluation, and basis of selection;
 - (e) The record of any Negotiation of the Statement of Work and results;
 - (f) A record of all material Communications regarding the Solicitation by interested Providers pursuant to OAR 125-246-0635;
 - (g) All information describing how the Provider was selected, including the basis for awarding the Contract;
 - (h) A copy of the Request for Special Procurement, if any;
 - (i) Documentation for a Federal Program purchase pursuant to OAR 125-246-0360; and
 - (j) Documentation related to Cooperative Procurements pursuant to OAR 125-246-0410 et. seq.
- (4) The Authorized Agency must maintain Procurement Files, including all documentation, for a period not less than six (6) years, except for ten (10) years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services or in for another period of time in accordance with another provision of law. Procurement Files must be made immediately available for review upon the request of the State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0360

Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization:

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination pursuant to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the State Procurement Office's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

(B) The Authorized Agency has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to the Authorized Agency; and

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, in lieu of the formal notice requirements for Solicitations in excess of \$5,000 pursuant to ORS 200.035.

(f) State and local preference programs, including but not limited to the Inmate Work Program of ORS 279.015, the Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency has complied with OAR 125-045-0010 to 125-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(i) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-day period of receipt of that order;

(A) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(B) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference;

(C) Additional Terms and conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070; Sec.335, Ch. 794, OL 2003 (HB 2341)
Stats. Implemented: ORS 279A.180
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0400

Purpose, Policy, and Definitions

(1) Purpose. The purpose of these Rules for Cooperative Procurement is to specify the policy and procedures of the State Procurement Office or Authorized Agency for Procurement, using one of the three Cooperative Procurement Methods; Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements. An Administering Authorized Agency's Original Contract or a Participating Authorized Agency's Contract with a Provider in a Cooperative

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Procurement is subject to ORS 279A and these Rules, unlike agreements solely between Authorized Agencies pursuant to ORS 190 et seq. and excepted from the Code pursuant to OR 279A.025.

(2) Policy. It is the policy of the Department that Authorized Agencies will collaborate to leverage their purchases for Supplies and Services to achieve efficiency in state government by optimizing the benefits from these Cooperative Procurements.

(3) Definitions. The following definitions apply to Cooperative Procurement:

(a) "Administering Authorized Agency" means the State Procurement Office; another governmental body, domestic or foreign, approved by State Procurement Office; or an Authorized Agency with delegated authority pursuant to OAR 125-246-0170(6)(c), that solicits and establishes the Original Contract for Procurement of Supplies and Services or Public Improvements in a Cooperative Procurement.

(b) "Contract" for purposes of these Cooperative Procurement Rules means a Public Contract or Price Agreement arising from an Original Contract that was solicited and awarded during a Cooperative Procurement by an Administering Authorized Agency.

(c) "Cooperative Procurement" means a Procurement conducted by the State Procurement Office or an Authorized Agency or on behalf of one or more Agencies. Cooperative Procurement includes but is not limited to multiparty Contracts and Price Agreements.

(d) "Cooperative Procurement Group" means a group of Authorized Agencies or another governmental body, domestic or foreign, approved by State Procurement Office, joined through an intergovernmental agreement pursuant to ORS 190 for the purposes of facilitating a Cooperative Procurement pursuant to ORS 279A.200.

(e) "Interstate Cooperative Procurement" means a Permissive Cooperative Procurement in which the Administering Authorized Agency is a governmental body, domestic or foreign, approved by the State Procurement Office, that is authorized under that governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the Participating Authorized Agencies are located outside of the State of Oregon.

(f) "Joint Cooperative Procurement" means a Cooperative Procurement that identifies:

(A) The Participating Authorized Agencies or the Cooperative Procurement Group; and

(B) The contract requirements or estimated contract requirements for the Original Contract.

(g) "Material Change" or "Material Alteration" means an alteration in a Public Contract or Solicitation that is different in effect from the original meaning or Scope. This includes changes in quality, price or type of Supplies and Services or Public Improvements.

(h) "Original Contract" means the initial Contract or Price Agreement as solicited and awarded during a Cooperative Procurement by an Administering Authorized Agency.

(i) "Participating Authorized Agency" or "Purchasing Authorized Agency" means the State Procurement Office; another governmental body, domestic or foreign, approved by State Procurement Office; or an Authorized Agency having delegated authority pursuant to OAR 125-246-0170(6)(c), which procures Supplies and Services or Public Improvements from a Provider based on an Original Contract established by an Administering Authorized Agency in a Cooperative Procurement.

(j) "Permissive Cooperative Procurement" means a Cooperative Procurement in which the Participating Authorized Agencies are not identified.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.205, 279A.210, 279A.215, 279A.220
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0410

Authority for Cooperative Procurements

(1) The State Procurement Office will enter into Cooperative Procurements on behalf of Authorized Agencies, unless an Authorized Agency receives a delegation of authority pursuant to OAR 125-246-0170(6)(c) to act as an Administering Authorized Agency or Participating Authorized Agency.

(2) An Administering Authorized Agency or Participating Authorized Agency may participate in, sponsor, conduct or administer any of the following:

(a) Joint Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Supplies and Services, using a source selection method substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Original Contracts or Contracts for

Public Improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.

(b) Permissive Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Supplies and Services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(c) Interstate Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Supplies and Services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(3) Each Participating Authorized Agency must determine, in Writing, whether the Solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 in accordance with 279A.200(2). This Written documentation must be maintained in the Participating Authorized Agency's Procurement File.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.205, 279A.210, 279A.215, 279A.220
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0420

Responsibilities

(1) The Administering Authorized Agency of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups, of which the Participating Authorized Agency is a member (hereinafter collectively known as "Participating Authorized Agency"), to participate in a Cooperative Procurement. The Administering Authorized Agency may require Participating Authorized Agencies to enter into a Written agreement which establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to, the establishment of any administrative fees for the Administering Authorized Agency or any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract.

(2) In administering or applying these Rules, the Administering Authorized Agency must collaboratively review and compare the procurement needs and requirements of both the Administering Authorized Agency and the respective Participating Authorized Agency(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment calculation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(3) If a Participating Authorized Agency enters into a Contract through a Cooperative Procurement, the Participating Authorized Agency must comply with the Code, these Rules, and any terms and conditions set out by the Administering Authorized Agency without limitation.

(4) An Administering Authorized Agency must use a Solicitation and award process that is substantially equivalent to a source selection method identified in ORS 279B.055, 279B.060, 279B.085, or 279C.005 through 279C.870 when it has the characteristics set forth in ORS 279A.200(2).

(5) Interstate Procurement Solicitations must substantially comply with the public notice requirements for advertising pursuant to OAR 125-247-0305.

(6) The interval between the first date of notice of a Joint or Permissive Procurement Solicitation must be not less than fourteen (14) Days for an ITB and thirty (30) Days for an RFP. A Joint or Permissive Procurement Solicitation must comply with the requirements of OAR 125-247-0305.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.205
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0430

Joint Cooperative Procurements

(1) Applicability. An Administering Authorized Agency or Participating Authorized Agency may participate in, sponsor, conduct or administer this type of Procurement for the purchase of Supplies and Services or Public Improvements. The Administering Authorized Agency and Participating Authorized Agency must comply with the procedures set out in OAR 279A.210 and these Rules to procure Supplies and Services or Public Improvement using a Joint Cooperative Procurement. Only the Participating Authorized Agency(s) listed in the Solicitation and Original Contract documents may enter into Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement is not a Permissive Cooperative Procurement.

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(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Joint Cooperative Procurement must include, but is not limited to:

(a) A list of the Participating Authorized Agency(s) that may enter into a Contract under the terms and conditions of the Original Contract;

(b) The Original Contract requirements, which may include, but are not limited to:

- (A) The Original Contract's not-to-exceed value;
- (B) The term of the Original Contract;
- (C) The quantity or quantity range of purchases to be made;
- (D) The minimum level of quality or quality range requirements for the Supplies and Services;
- (E) The minimum Provider qualifications;
- (F) The scope of the Supplies and Services or Public Improvements to be purchased;

(G) Terms and conditions;

(H) Any special considerations; and

(I) Any insurance or bonding requirements.

(c) A Written requirement that the Participating Authorized Agency will not Materially Change or alter the terms, conditions, and prices from the Original Contract between the Provider and the Administering Authorized Agency.

(d) A Written requirement that Anticipated Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.210
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0440

Permissive Cooperative Procurements

(1) Applicability. An Administering Authorized Agency or Participating Authorized Agency may only participate in, sponsor, conduct or administer this type of Cooperative Procurement for the purchase of Supplies and Services. The Administering Authorized Agency and Participating Authorized Agency must comply with the procedures set out in ORS 279A.215 and these Rules to procure Supplies and Services using a Permissive Cooperative Procurement. A Permissive Cooperative Procurement is not a Joint Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Permissive Cooperative Procurement must include, but is not limited to:

(a) A Written requirement that other Participating Authorized Agencies may establish Contracts to purchase the Supplies or Service;

(b) A Written requirement that the Provider will extend the terms, conditions and prices to any Participating Authorized Agency that establishes a Contract through a Permissive Cooperative Procurement;

(c) The Original Contract requirements, which may include, but is not limited to:

- (A) The Original Contract's not-to-exceed value;
- (B) The term of the Original Contract;
- (C) The quantity or quantity range of purchases to be made;
- (D) The minimum level of quality or quality range requirements for the Supplies and Services;
- (E) The minimum Provider qualifications;
- (F) The scope of the Supplies and Services to be purchased;
- (G) Terms and conditions;
- (H) Any special considerations; and
- (I) Any insurance or bonding requirements.

(d) A Written requirement that the Participating Authorized Agency will not Materially Change or Alter the terms, conditions, and prices from the Original Contract between the Provider and the Administering Authorized Agency.

(e) A Written requirement that Anticipated Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(3) Public Notice of Intent to establish a Contract; Comment Period.

(a) A Participating Authorized Agency that intends to enter into a Contract through a Permissive Cooperative Procurement must publish a notice of its intent to do so if the Participating Authorized Agency estimates that it will spend in excess of \$250,000 for the purchase of the Supplies and Services to be acquired under the Contract;

(b) For purposes of determining if a Participating Authorized Agency must give a Notice of Intent, the Participating Authorized Agency will spend in excess of \$250,000 for Supplies and Services procured under the Contract if:

(A) The Participating Authorized Agency intends to make payments, in aggregate, over the term of the Contract, in excess of \$250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;

(B) The Participating Authorized Agency's Contract expressly provides for a guaranteed maximum price, or a maximum not-to-exceed amount is in excess of \$250,000; or,

(C) At the time the Participating Authorized Agency enters into the Contract, the Participating Authorized Agency reasonably contemplates, based on historical or other data available to the Participating Authorized Agency, that the total payments it will make for the Supplies and Services under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.

(c) The Notice of Intent must contain the following information:

- (A) A description of the purchases to be made;
- (B) An estimated amount of the purchases;
- (C) The name of the Administering Authorized Agency; and,
- (D) A time, place and date by which comments must be submitted to the Participating Authorized Agency regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

- (i) The Contract's not-to-exceed value;
- (ii) The term of the Contract;
- (iii) The quantity or quantity range of purchases to be made;
- (iv) The minimum level of quality or quality range requirements for the Supplies and Services;
- (v) The minimum Provider qualifications;
- (vi) The scope of the Supplies and Services to be purchased;
- (v) Any special considerations;
- (vi) Terms and conditions; and
- (vii) Any insurance or bonding requirements.

(d) A Written requirement that Anticipated Amendments will be generally stated, in Writing, in the Contract pursuant to OAR 125-246-0560.

(e) Any Notice of Intent for a Permissive Cooperative Procurement must be published for no fewer than seven (7) calendar days before the deadline for submission of comments regarding the Notice of Intent to establish a Contract.

(f) Providers must submit comments within seven (7) calendar days after the Notice of Intent is published. If the Participating Authorized Agency receives comments on its intent to establish a Contract, the Participating Authorized Agency must respond to any comments on its intent, to include:

(A) The governing body of the Participating Authorized Agency, its chief executive or another officer authorized by the Participating Authorized Agency must make a Written determination that establishing a Contract is in the best interest of the Participating Authorized Agency.

(B) The Participating Authorized Agency must provide a copy of the Written determination to all Providers that submitted comments.

(g) The Notice of Intent must appear in the ORPIN system and, at the Participating Authorized Agency's option, an additional Notice of Intent may be placed in at least one newspaper of general circulation, and in as many additional issues and publications as may be necessary or desirable to ensure Providers, who would otherwise be prospective Offerors on the Contract, are given an opportunity to comment.

(h) The Participating Authorized Agency's Notice of Intent described in this Section and the Administering Authorized Agency's Permissive Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.215
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0450

Interstate Cooperative Procurements

(1) Applicability. An Administering Authorized Agency or Participating Authorized Agency may only participate in this type of Cooperative Procurement for the purchase of Supplies and Services if the Solicitation was advertised in Oregon by the Administering Authorized Agency or Participating Authorized Agency pursuant to OAR 125-247-0305. The Administering Authorized Agency or Participating Authorized Agency must comply with the procedures set out in ORS 279A.220 and these Rules to procure Supplies and Services using an Interstate Cooperative Procurement.

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(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for an Interstate Cooperative Procurement must include, but is not limited to:

(a) A Written requirement that other governmental bodies may establish Contracts to purchase the Supplies and Services;

(b) A list of the Participating Authorized Agency(s) that may enter into Contracts under the terms and conditions of the Original Contract;

(c) A Written requirement that the Provider will extend the terms, conditions and prices to any Participating Authorized Agency that establishes a Contract through the Interstate Cooperative Procurement; and,

(d) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies or Service;

(E) The minimum Provider qualifications;

(F) The scope of the Supplies and Services to be purchased;

(G) Any special considerations;

(H) Terms and conditions; and

(I) Any insurance and bonding requirements.

(d) A Written requirement that a Participating Authorized Agency will not Materially Change or Alter the terms, conditions, and prices from the Original Contract between the Provider and the Administering Authorized Agency.

(e) A Written requirement that Anticipated Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract pursuant to OAR 125-246-0560.

(3) Public Notice of Intent to establish a Contract; Comment Period.

(a) A Participating Authorized Agency that intends to enter into a Contract through an Interstate Cooperative Procurement must publish a Notice of Intent to do so in Oregon.

(b) Notice of Intent must appear in the ORPIN system and, at the Participating Authorized Agency's option, an additional Notice of Intent may be placed in at least one newspaper of general circulation, and in as many additional issues and publications as may be necessary or desirable to ensure Providers, who would otherwise be prospective Offeror on the Contract, are given an opportunity to comment.

(c) The Notice of Intent must contain the following information:

(A) A description of the purchases to be made;

(B) An estimated amount of the purchases;

(C) The name of the Administering Authorized Agency; and,

(D) A time, place and date by which comments must be submitted to the Participating Authorized Agency regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

(i) The Contract's not-to-exceed value;

(ii) The term of the Contract;

(iii) The quantity or quantity range of purchases to be made;

(iv) The minimum level of quality or quality range requirements for the Supplies and Services;

(v) The minimum Provider qualifications;

(vi) The scope of the Supplies and Services to be purchased;

(vii) Any special considerations;

(viii) Terms and conditions; and

(ix) Any insurance and bonding requirements.

(d) A Written requirement that Anticipated Amendments will be generally stated, in Writing, in the Contract pursuant to OAR 125-246-0560.

(e) The Notice of Intent for an Interstate Cooperative Procurement must be published for no fewer than seven (7) calendar days before the deadline for submission of comments regarding the intent to establish a Contract.

(f) Providers must submit comments within seven (7) calendar days after the Notice of Intent is published. If the Participating Authorized Agency receives comments on its intent to establish a Contract, the Participating Authorized Agency must respond to any comments on its intent, including:

(A) The governing body of the Participating Authorized Agency, its chief executive or another officer authorized by the Participating Authorized Agency must make a Written determination that establishing a Contract is in the best interest of the Participating Authorized Agency; and

(B) The Participating Authorized Agency must provide a copy of the Written determination to any Provider that submitted comments.

(g) The Participating Authorized Agency's Notice of Intent described in this Section and the Administering Authorized Agency's Interstate Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.220

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0460

Protest and Disputes

(1) Protests to an Administering Authorized Agency. If an Offeror wishes to protest the contents of the original Solicitation or the award or proposed award of an Original Contract, the Offeror must direct the protest to the Administering Authorized Agency, and the Offeror must make such protest pursuant to ORS 279B.400 to 279B.425.

(2) Protests to a Participating Authorized Agency. If an Offeror wishes to protest the use by a Participating Authorized Agency of a Cooperative Procurement after the execution of an Original Contract, the potential Offeror must direct the protest to the Participating Authorized Agency, and the potential Offeror must make such protest pursuant to ORS 279B.400 to 279B.425. The protest to the Participating Authorized Agency is limited in scope to the Participating Authorized Agency's authority to enter into a Cooperative Procurement Contract.

(3) Preservation of Rights and Remedies. Failure of an Administering Authorized Agency or Participating Authorized Agency to exercise any rights or remedies it has under the Original Contract or Contract entered into through a Cooperative Procurement must not affect the rights or remedies of the any other Participating Authorized Agency that participates in the Cooperative Procurement, including the Administering Authorized Agency, and must not prevent any other Participating Authorized Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

(4) Other Protests or Disputes. Any other protests related to a Cooperative Procurement, or disputes related to an Original Contract or Contract arising out of a Cooperative Procurement, must be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0470

Amendments of Cooperative Procurements

Agencies must comply with OAR 125-246-0560(7).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0500

Oregon Procurement Information Network (ORPIN)

The State Procurement Office recognizes the Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, as the official publication forum for state Procurement notices and advertisements by the Department and all Agencies subject to the Procurement authority of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0550

General Definitions

(1) "Contract Administration" means all functions related to a given Contract between the Authorized Agency and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made and disputes have been resolved.

(2) "Contract terms and conditions" means the entire Contract document including but not limited to: the Contract; a Solicitation Document incorporated by reference in the Contract; and all attachments, exhibits or other requirements specifically referenced in the Contract.

(3) For definitions related to the Rule on Amendments, see OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0555

Contract Administration; General Provisions

(1) Authority. The State Procurement Office must conduct all Procurements, including Contract Administration, for Supplies and

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Services, including Architectural, Engineering and Land Surveying Services and Related Services, and Public Improvements for Agencies, pursuant to ORS 279A.140, unless this authority is delegated pursuant to ORS 279A.075 and OAR 125-246-0170. The State Procurement Office may delegate Contract Administration to an Authorized Agency. The State Procurement Office may revoke a delegation to administer a Contract or class of Contracts for reasons set forth in OAR 125-246-0170, including but not limited to substantial mismanagement.

(2) Contract Administrator. The Authorized Agency must appoint, in Writing, a Contract Administrator to represent the Authorized Agency for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

(3) Documentation of Contract Administration.

(a) Applicability. This Section (3) applies only to Procurements exceeding the Intermediate Procurement Threshold for Supplies and Services; the Informal Selection Threshold for Architectural, Engineering, and Land Surveying Services and Related Services; and the Intermediate Procurement Threshold for Public Improvements pursuant to OAR 125-247-0270, 125-248-0210, and 125-249-0160, respectively, unless the policy established by the Department provides otherwise.

(b) Requirements. Documentation of Contract Administration is a part of the Procurement File in accordance with OAR 125-246-0355, and this documentation must include:

(A) An executed Contract;

(B) The record of the actions used to administer the Contract; and

(C) The Contract Administrator and any technical representative delegates, together with a description of their delegated duties.

(c) Documentation of Contract Administration may also include, if any:

(A) Amendments, including but not limited to the approval of Amendments and the bases for determinations of the Designated Procurement Officer, as required in OAR 125-246-0560(c)(B);

(B) Claims related to the Contract;

(C) Release of claims documents;

(D) Contract close-out documents; and

(E) Other documents related to Contract Administration.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0560

Amendments

(1) Generally. This Rule on Amendments sets forth:

(a) A General Rule for Amendments in Section (2) applicable to Contracts for Supplies and Services pursuant to the Code and these Rules; and

(b) Special Rules for Amendments in Section (3), applicable to different types of Contracts. These Special Rules supplement the General Rule, unless expressly stated otherwise.

(c) The General Rule for Amendments under Section (2) of this Rule may not increase the Contract beyond the limit of any Threshold established in the Public Contracting Code or Rules.

(d) Definition of "Amendment." "Amendment" means a Written modification to a Public Contract, other than by Changes to the Work pursuant to Section (5)(b), that is reasonably related to the Scope of the original Procurement and requires the mutual agreement between the Authorized Agency and the Contractor. This definition applies to Amendments in this Rule.

(2) General Rule for Amendments.

(a) Definitions.

(A) "Anticipated Amendment" means:

(i) The Authorized Agency has stated in Writing in any Solicitation Document and the Original Contract that the Authorized Agency may amend that Contract;

(ii) This required language in any Solicitation Document and the Original Contract includes:

(I) The possibility of one or more Amendments;

(II) The general circumstances that might require an Anticipated Amendment to be issued under the Contract;

(III) The method that the Authorized Agency will use to finalize the details and costs of an Amendment; and

(IV) A general description of certain or known changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as:

(a) Extra Work;

(b) Additional Work;

(c) Work to be done if certain situations are encountered; or

(d) Changes in terms, conditions, price, or type of Work.

(iii) The Authorized Agency is not required to designate an Amendment in any Solicitation Document and Original Contract as an "Anticipated Amendment," if Subsections (a)(B)(i) and (ii) are followed.

(B) "Unanticipated Amendment" means:

(i) An Amendment that is not described in one or more of any Solicitation Document and Original Contract pursuant to Subsection (a)(B)(i), or

(ii) An Amendment that does not fall within the limitations of Subsection (a)(B)(ii).

(b) Anticipated Amendments. An Authorized Agency may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(A) Scope. The Anticipated Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract, in accordance with the definition of an Amendment under Subsection (1)(d). If the Original Contract was awarded pursuant to a Special Procurement by Rule pursuant to OAR 125-247-0288, the Anticipated Amendment is reasonably related to the Scope of that respective Section of OAR 125-247-0288;

(B) Disclosure. In accordance with the definition of an Anticipated Amendment, the Anticipated Amendment's circumstances, method, and changes were described in any Solicitation Document and the Original Contract, pursuant to Subsection (2)(a)(B).

(C) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(D) Legal Requirements. The Amendment is made consistent with applicable legal requirements;

(E) Writing. All Amendments to Contracts must be in Writing;

(F) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts and must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review pursuant to OAR 125-045-0070.

(c) Unanticipated Amendments.

(A) Limited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided:

(i) Scope. The Unanticipated Amendment satisfies the definition of an Amendment under Subsection (1)(d), including but not limited to the requirement that the Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract;

(ii) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(iii) Limit. The cumulative amounts of one or more Unanticipated Amendments to a Contract must not exceed 20% of the Original Contract amount.

(B) Unlimited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(i) Scope. The Unanticipated Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract, in accordance with the definition of an Amendment under Subsection (1)(d). If the Original Contract was awarded pursuant to a Special Procurement by Rule pursuant to OAR 125-247-0288, the Unanticipated Amendment is reasonably related to the Scope of that respective Section of OAR 125-247-0288;

(ii) Approval. Pursuant to an Authorized Agency's delegated authority under OAR 125-246-0170, the Authorized Agency's Designated Procurement Officer gives Written approval of the Unanticipated Amendment, based upon a determination of the best interests of the State, including but not limited to:

(I) Whether the change is legitimate and due to unforeseen circumstances which occurred as Work progressed, and whether the reasons for the change were unforeseen at the time the Original Contract was established, as opposed to an effort to evade Procurement requirements;

(II) Whether the Unanticipated Amendment is within the Scope of the Original Contract pursuant to Subsection (2)(c)(B)(i);

(III) Whether the Original Contract contains clauses authorizing modification; and

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(IV) Whether the Unanticipated Amendment represents any important general change, which alters the essential identity or main purpose of the Original Contract, or is of such importance as to constitute a new undertaking. The approval of the Designated Procurement Officer and the basis of this determination must be documented in the Procurement File pursuant to OAR 125-246-0355.

(iii) Legal Requirements. The Amendment is made consistent with applicable legal requirements;

(iv) Writing. All Amendments to Contracts must be in Writing;

(v) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts and must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review pursuant to OAR 125-045-0070.

(3) Special Rules for Amendments of Contracts for Supplies and Services

(a) Small Procurements. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance with OAR 125-247-0265, but the cumulative Amendments must not increase the total Contract Price to greater than \$6,000. The Contract and all cumulative Amendments must not exceed a total amount of \$6,000. In addition, the General Rule on Amendments applies to Small Procurements.

(b) Intermediate Procurements. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-247-0270, and the General Rule on Amendments applies to Intermediate Procurements not exceeding the Threshold of \$150,000. If the Contract and all cumulative Amendments would result in an amended Contract amount exceeding \$150,000, then the Authorized Agency may only amend that Contract, providing:

(A) The Authorized Agency conducts a Renegotiation of an Existing Contract with an Incumbent Contractor in accordance with the Special Procurement of OAR 125-247-0288(2); or

(B) The Authorized Agency requests and obtains prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(c) Formal Procurements. The General Rule on Amendments applies to Procurements pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement), ORS 279B.055 through 279B.060 (Competitively Sealed Bidding and Proposals) and ORS 279B.085 (Special Procurements), if applicable, (for purposes of this Subsection only, "Formal" Procurements), and except as provided in this Rule.

(d) Special Procurement for Renegotiated Contracts. Notwithstanding the General Rule on Amendments in Section (2) and pursuant to OAR 125-247-0288(2), an Authorized Agency may renegotiate the terms and conditions, including the Contract Price, of a Contract without any additional competitive process and amend a Contract if the Authorized Agency determines that it is in the best interest of the Authorized Agency and subject to the following conditions:

(A) An Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Authorized Agency as the Original Contract; and

(B) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than any one of the prior Contracts.

(C) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original Solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(D) If the Contract to be renegotiated is the result of a Cooperative Procurement, the amended Contract must be within the Scope of the Original Contract and may not materially change the terms, conditions, and prices of the Original Contract.

(e) Payment Authorization of Cost Overruns for Trade and Personal Services Contracts.

(A) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration require approval from the State Procurement Office and may also require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if:

(i) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(ii) The Original Contract has not expired or been terminated as of the date Written approval to increase the Contract amount is granted;

(iii) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(iv) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: to address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, to comply with official or judicial commands or directives issued during contract performance or to ensure that the purpose of the Contract will be realized;

(v) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(vi) Except for the cost overrun, the Contract and its objective are within the statutory authority of the Authorized Agency and the Authorized Agency currently has funds available for payment under the Contract;

(vii) An officer or employee of the Authorized Agency has presented a Written report to the State Procurement Office within 60 days of the Authorized Agency's discovery of the overrun that states the reasons for the cost overrun and demonstrates to the State Procurement Office's satisfaction that the Original Contract and the circumstances of the overrun satisfy the conditions stated above; and

(viii) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the overrun amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(B) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any overrun payment.

(4) Special Rules for Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services is found at OAR 125-248-0320 and duplicated in this Section:

(a) An Authorized Agency may amend any Contract for Architectural, Engineering or Land Surveying Services or Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the Scope of services contemplated under the Request for Proposals and that the Amendment would not materially impact the field of competition for the services described in the Request for Proposals. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Request for Proposals if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the Request for Proposals were re-issued to include the additional services.

(b) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local Authorized Agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(c) Effect of Material Alteration or Delay of Project. Pursuant to OAR 125-248-0310, if an Authorized Agency delays, or delays and then materially alters, a Project for which the Authorized Agency has entered a Contract, and the Contract has expired or been terminated, Authorized Agency may enter a Contract with the same Consultant to perform either the same Architectural, Engineering and Land Surveying Services and Related Services described in the Contract or Architectural, Engineering and Land Surveying Services and Related Services as amended to reflect Authorized Agency's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the Authorized Agency makes Written findings that entering a Contract with Consultant:

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(A) Will promote efficient use of public funds and resources and result in substantial cost savings;

(B) Will not encourage favoritism in the contracting process; and

(C) Will not substantially diminish competition for future Contracts with Consultants.

(5) Special Rules for Amendments of Contracts for Public Improvements:

(a) Intermediate Procurements.

(A) Price Increases. Notwithstanding the General Rule on Amendments in Section (2), Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of the Award by the Authorized Agency issuance of a Change to the Work or Amendment, pursuant to OAR 125-249-0910, within the following limitations:

(i) Up to an aggregate Contract Price increase of 25% over the Original Contract amount when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work, and;

(ii) Up to an aggregate Contract Price increase of 50% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work and the Designated Procurement Officer approves the increase in Writing.

(B) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the Thresholds stated in OAR 125-249-0200(1) are specifically authorized by the Code, when made in accordance with this Rule. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from competitive bidding.

(C) This Subsection (5)(a) is also found in OAR 125-249-0160.

(b) Changes to the Work and Amendments. Notwithstanding the General Rule on Amendments in Section (2):

(A) Definitions. As used in Subsection 5(b) of this Rule:

(i) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general Scope of the original Procurement that requires mutual agreement between the Authorized Agency and the Contractor.

(ii) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Authorized Agency or its authorized representatives to the Contractor requiring a change in the Work within the general Scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(B) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Authorized Agencies must include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Authorized Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Authorized Agencies.

(C) Change Order Authority. Authorized Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(D) Contract Amendments. Contract Amendments reasonably related to the scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(i) They are reasonably related to the scope of the original Procurement;

(ii) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency Contract;

(iii) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably

implied within the findings supporting the competitive bidding exemption; and

(iv) The Amendment is made consistent with applicable legal requirements.

(E) This Subsection (5)(b) is also found in OAR 125-249-0910.

(6) Special Rule for Amendments of Price Agreements. Notwithstanding the General Rule on Amendments in Section (2), the State Procurement Office or its delegatee may amend a Price Agreement as follows:

(i) As permitted by the Price Agreement;

(ii) As permitted by any applicable Special Rule for Amendments, Sections (3) through (9); or

(iii) As permitted by applicable law.

(7) Special Rule for Amendments of Cooperative Procurements.

(a) An Administering Authorized Agency may amend an Original Contract in a manner that is substantially equivalent to this Rule.

(b) A Participating Authorized Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.

(8) Special Rule for Sole-Source Procurements. The General Rule on Amendments in Section (2) applies to Sole-Source Procurements pursuant to ORS 279B.075 and OAR 125-247-0275, unless as otherwise provided in the terms of any delegation agreement between the Authorized Agency and the State Procurement Office pursuant to OAR 125-246-0170.

(9) Special Rule for Amendments of Contracts for Emergencies. Notwithstanding Sections (2) through (8) of this Rule, an Authorized Agency may amend a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0570

Reinstatements

(1) "Reinstatement of Expired Contracts" means the action of reinstatement of an expired Contract that was previously properly executed containing all the required approval signatures,

(2) The State Procurement Office may approve reinstatement of an expired Contract if the following conditions are met:

(a) The Authorized Agency demonstrates to the State Procurement Office, concisely and in Writing, that the failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions;

(b) Except as provided under OAR 125-246-0170, the Written reinstatement is presented to the State Procurement Office and the Attorney General for approval within ninety (90) after expiration of the Original Contract; and

(c) The Authorized Agency provides the State Procurement Office a concise Written statement justifying the Contractor's completion of the Work after expiration of the Contract, there is no change in the Statement of Work, and either:

(A) The reinstatement is exclusively for the purpose of permitting completion of the Work or services for no additional compensation; or

(B) When the services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:

(i) Does not increase the rate of compensation; or

(ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the Original Contract was established with the same Index published immediately prior to the date of the reinstatement and extension.

(3) When a Contract is reinstated pursuant to this Section, the Authorized Agency may compensate the Contractor, at the rate of compensation established in the Original Contract, for Work performed in the interim between the expiration of the Original Contract and the execution and approval(s) of the extension or Amendment.

(4) This Rule authorizes only one reinstatement of a Contract.

(5) No reinstatement of a Contract must modify the Original Contract except with respect to the time for performance.

(6) If the reinstatement of a Contract pursuant to this Rule raises the aggregate amount of compensation to a level that requires Attorney General approval under ORS 291.047 and 291.047, the Authorized Agency must

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obtain such approval before the extension becomes binding and before any services may be performed under the reinstated Contract.

(7) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.

(8) For Architectural, Engineering and Land Surveying and Related Services, the Authorized Agency must follow the Reinstatement Rule set forth in OAR 125-248-0300.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0575

Retroactive Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Retroactive Approval of a Contract means the action of the State Procurement Office retroactively approving a Contract that was not previously properly executed containing all the required approval signatures. This Rule applies to Contracts that must have the approval of the State Procurement Office pursuant to ORS 279ABC or these Rules, including but not limited to Personal Services Contracts and Contracts for Architectural, Engineering, and Land Surveying Services and Related Services.

(3) Before the State Procurement Office may consider retroactive approval of a Contract, an Authorized Agency must do all of the following:

(a) Submit to the State Procurement Office a copy of the Contract document to be reviewed and a Written request for contract retroactive approval consideration to be executed by an executive officer, or Designated Procurement Officer of the Authorized Agency who is responsible for oversight of the Contract, that contains:

(A) An explanation of why the Contract was not submitted to the State Procurement Office before performance began;

(B) A description of the steps being taken to prevent similar occurrences in the future; and

(C) A proposed retroactive approval of the Contract.

(b) Obtain all other approvals required for the Public Contract, including the Department of Justice's Legal Sufficiency Ratification of a Public Contract pursuant to OAR 137-045-0090 for Contracts that exceed \$75,000.

(c) Obtain approval from the State Procurement Office.

(4) The Authorized Agency must provide a copy of the retroactively approved Contract and the Authorized Agency's retroactive approval documentation to the Authorized Agency within thirty (30) days after the Contract is approved or fully executed, whichever is later.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0580

Dispute Resolution

Pursuant to ORS 183.502, Authorized Agencies are authorized and encouraged to use alternative dispute resolution (ADR), including collaborative forms of dispute resolution such as mediation, facilitation and collaborative rulemaking. The Attorney General's Model Rules on ADR are designed to assist Authorized Agencies in the assessment and appropriate use of collaborative ADR, as set forth in the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act, October 3, 2001.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0600

Policy

These Rules supplement and do not replace ORS 244.010 through 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Public Contracting under the Public Contracting Code and these Rules. Oregon Public Contracting is a public trust. The Agencies and Contractors involved in Public Contracting must safeguard this public trust.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0605

Selection and Award of Public Contracts

(1) Agency officers, employees or agents involved in the process of the selection and award of Public Contracts must carefully review the provisions of ORS 244.040.

(2) Agency officers, employees and agents are prohibited from soliciting or receiving Gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) Agency officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Agency officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0610

Appointments to Advisory Committees

The Director, Chief Procurement Officer, Designated Procurement Officer or a delegatee may appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0615

Nonretaliation

This Rule prohibits retaliation against anyone who complies with the Public Contracting Code and these Rules. Any officer, employee or agent of an Agency or Provider who engages in retaliation action will be subject to Penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any Provider who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0620

Specifications

(1) Agencies and Providers must not develop Specifications that primarily benefit a Provider, directly or indirectly, to the detriment of an Agency or the best interest of the State.

(2) Agencies must not develop Specifications that inhibit or tend to discourage Public Contracting with Qualified Rehabilitation Facilities under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Supplies and Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of the Agency.

(3) Agencies and Providers must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0625

Sole-Source

Authorized Agencies may not select a Sole-Source Procurement pursuant to ORS 279B.075 and avoid a competitive Procurement if the purpose of the selection is to primarily benefit the Provider, directly or indirectly, to the detriment of an Authorized Agency or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0630

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

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125-246-0635

Authorized Agency and Provider Communications

(1) Research Phase. Authorized Agencies are encouraged to conduct research with Providers who can meet the State's needs. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any Providers that, in the Agency's discretion, may be able to meet an Agency's need. Authorized Agencies must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote pursuant to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(2) Solicitation and Contracting Phase. Any communication between an Authorized Agency and Providers regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements (Communication). This Communication may allow for Discussions, Negotiations, Addenda, Providers' questions, and the Agency's answers to Providers' questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by the Authorized Agency in Writing. A record of all material Communications regarding the Solicitation by interested Providers must be made a part of the Procurement File pursuant to OAR 125-246-0355.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0700

State Surplus Property Definitions

In addition to the definitions contained in ORS 279A.250 and OAR 125-246-0110, the following definitions apply to these Rules on State Surplus Property:

(1) "Bid" means a competitive Offer to purchase advertised Surplus Property at a price specified by the bidder.

(2) "Cash" includes U.S. currency, cashier's checks, certified checks, traveler's checks, money orders made payable to the State of Oregon, or approved credit cards.

(3) "Direct Labor" includes all Work required for preparation, production, processing and packing, but does not include supervision, administration, inspection and shipping.

(4) "Employee's Household" means all persons residing with employee.

(5) "Employee's Immediate Family" means the children, step-children, parents, step-parents, grandparents and spouse of employee, separately or in any combination thereof.

(6) "Invitation to Bid" means a competitive Offer to bid on Surplus Property available for public sale and is also known as a bid advertisement.

(7) "Not-for-profit organization" is defined in ORS 279A.250(2) and means a nonprofit corporation as defined in ORS 307.130.

(8) "Photographic Identification" means a document that shows the bearer's current name, address, and photographic portrait.

(9) "Political Subdivision" includes divisions or units of Oregon local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.

(10) "Private Not-for-Profit Agencies" means those Agencies meeting the criteria specified in the Oregon Administrative Rules.

(11) "Property" is defined in ORS 279A.250(3) and means personal property.

(12) "State agency" is defined in ORS 279A.250(4) and means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(13) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.250
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0710

Eligibility of State Agencies, Political Subdivisions and Non-Profit Organizations

Prior to offering Surplus Property for public sale, the State Surplus Property Program must make Surplus Property available to the following:

- (1) State Agencies;
- (2) Political subdivisions of the State; and
- (3) Any non-profit organization qualified to acquire federal donation

property pursuant to OAR 125-035-0045 or determined by the Department to be eligible under criteria established by the Department.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.260
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0720

State Surplus Property Acquisition

(1) Recipients of state Surplus Property must have funds available at the time property is acquired, and pay all costs and charges incidental to the acquisition within 30 calendar days from the date of invoice. Invoices outstanding in excess of 90 days may result in suspension of purchasing privileges until such invoices have been paid in full.

(2) Surplus state property must be available for warehouse floor sale or direct transfer to state Agencies, political subdivisions and qualified non-profit organizations prior to public sale. Non-qualifying private entities and private citizens, separately or combined, must not be eligible to acquire surplus state property except at public sales.

(3) State Surplus Property acquired by state agencies, political subdivisions, or qualified not-for-profit organizations through warehouse floor sales or direct transfers must be used only in the conduct of their official public programs. State Surplus Property must not be acquired through warehouse floor sales or direct transfer for any use or purpose other than conduct of their official public programs, and not for resale or distribution unless otherwise pre-approved by the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.260, 279A.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0730

Public Sales for Disposal of State Surplus Personal Property

(1) Conduct. The Department must conduct public sales for the disposal of state Surplus Property. Methods of disposal may include, but not be limited to: internet auctions, oral auctions, sealed bid sales and fixed price retail sales, separately or in any combination thereof.

(2) Eligibility. Members of the general public may participate as buyers at public sales. No employee whether full-time, part-time, temporary or unpaid volunteer, of the Department, member of the employee's household, the employee's immediate family, or any person acting on the employee's behalf may participate in public sales if the employee has had any role in declaring the item surplus, processing the item or related paperwork, or offering it for sale. No employee of the Property Distribution Center's programs, or members of the employee's immediate family, or any person acting on the employee's behalf, may purchase items offered through any public sales regardless of whether such employee had a role in declaring the item surplus, in processing the item, or in offering it for sale.

(3) Conduct of Internet Auctions:

(a) The Department may offer Surplus Property for public sale through an internet auction provider. Public bidding terminals must be made available during posted public hours at the Department's Property Distribution Center. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;

(b) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(c) All items must be sold to the highest bidder. All Property must be offered "As-Is, Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose. Terms and conditions of the sale must be made a part of the Internet posting. A purchaser or disappointed bidder must have no recourse against the Department, Agency or any of their respective officers, employees or agents. All sales must be final.

(4) Payment:

(a) Full payment must be made within ten (10) calendar days from the date of auctions close unless otherwise specified in the public Invitation to Bid.

(5) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions must be canceled;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions must be considered abandoned and ownership

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must default to the State, unless prior approval is obtained from the Department;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits must be required to drive unlicensed motor vehicles and must be available at the Property Distribution Center. A purchaser of a vehicle must certify that the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued.

(6) Failure to Comply. The Department may establish criteria to debar participants from internet auctions and other state sales pursuant to this Rule. Such criteria must be based on:

- (a) Conviction of fraud;
- (b) Unsatisfactory Internet auction service ratings;
- (c) Failure to claim purchases; or
- (d) Other documented activities determined by the Department to warrant debarment. Based upon these criteria, the Department may debar participants from internet auctions and participation in other state sales.

(7) Conduct of Auctions and Sealed Bid Sales:

(a) The Department must advertise the date, time and location of public auction or sealed bid sales. A public Invitation to Bid must be available at the Property Distribution Center or auction site one week before an auction or sealed bid sale. The public may inspect property offered for sale at the time and place specified in the public Invitation to Bid;

(b) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(c) All items must be sold to the highest Bidder. All Property must be offered "As-Is, Where-Is" with no warranty or other guarantee as to its condition or fitness for use. A purchaser or disappointed Bidder must have no recourse against the State, the Department, its Property Distribution Center or any of their respective officers, employees or agents. All sales must be final.

(d) A bid security check (payable to the "Department of Administrative Services") for \$10 or at least ten (10) percent of the bid (whichever is greater), must accompany all sealed bids. Cash must not be acceptable. A bid security of less than \$10 or ten (10) percent (whichever is greater) of the total bid must disqualify a Bid. The bid security of unsuccessful bidders must be returned within 30 days following a Bid Opening. The successful Bidder's bid security must be applied as partial payment on property purchased.

(8) Payment:

(a) Full payment must be made on the day of the sale for all purchases except vehicles, boats or other titled equipment. For titled equipment, a ten (10) percent down payment is required on the day of the sale. The time limit for making full payment, and the place where payment must be made will be specified in public Invitation to Bid;

(b) Payment by personal check for amounts of \$1,000 or less may be accepted, at the absolute discretion of the Department, when presented with two (2) pieces of acceptable identification, one of which must be a photo identification ("photo I.D."). Other acceptable identification may include major credit cards, a valid driver's license, or valid voter's registration card. The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier's check or money order.

(c) Payment by personal check for amounts exceeding \$1,000 may be accepted, at the absolute discretion of the Department, when presented with two (2) pieces of acceptable identification, one of which must be a photo I.D. The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier's check or money order.

(9) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions must be canceled and bid security forfeited;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions must be considered abandoned and ownership must default to the State, unless prior approval is obtained from the Department Surplus Property Manager;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehi-

cles must be transferred upon receipt of full payment. If payment is made by personal check, the title must be released to the vehicle purchaser in 21 calendar days, or when the check clears the bank. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits must be required to drive unlicensed motor vehicles and must be available at the sale site. A purchaser of a vehicle must certify that the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued.

(10) Failure to Comply. In addition to Section (6) of this Rule, the Department may debar participants from state sales based upon the following criteria:

(a) Failure to observe the procedures set forth in the sales terms and conditions; or

(b) Payment for purchase or bid security with a personal check, which is dishonored by a payer's financial institution.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0800

Policy; Applicability; Methods

(1) Policy. A sound and responsive Public Contracting system, pursuant to ORS 279A.015, may include both purchasing and selling activities. By definition, a Public Contract includes sales by Agencies pursuant to ORS 279.010(x). The policies of ORS 279A.015 apply to public selling activities.

(2) Applicability. This Rule applies to the sales of Supplies and Services. This Rule does not apply to residential property or the public selling activity of Agencies specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling activity by another provision of law. The sale of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. Agencies must use a method, as feasible for selling, pursuant to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.010(x), 279A.015, 279A.050(1)(2) 279A.065(5)(a)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-246-0900

Penalties

(1) Any violation of ORS 279A.140, 279A.280, or 279B.270 must be punished as described in ORS 291.990, pursuant to ORS 279A.990(1).

(2) Upon notice to the Department of an alleged violation pursuant to ORS 279A.990(1), the Department, at its own discretion, may provide to an individual of an Agency or an Agency an optional administrative process with an opportunity for remedy prior or parallel to a legal process leading to conviction or a Department certification leading to other penalties provided by ORS 291.990. This Rule and administrative process may address related considerations, including but not limited to:

(a) What specific actions are interpreted as violations giving rise to penalties;

(b) Applicability to individuals of Agencies and Agencies, regardless of whether delegated authority existed pursuant to OAR 125-246-0170; and

(c) The placement of responsibility for violations along the chain of delegated responsibility.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0005

Definitions

The definitions for this division 247 are found in OAR 125-246-0110.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.005

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0010

Policies

(1) ORS 279B and this division 247 apply the policies of ORS 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS 279B and this division 247 provide a Public Contracting structure that can take

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full advantage of evolving procurement methods as they emerge within various industries, pursuant to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 247 take precedence over the more general requirements of the Rules in division 246.

(4) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(5) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency's and the State's needs.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.010
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0100

Applicability

(1) In addition to the general requirements set forth in division 246 of these Rules, the Rules in this division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 247 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 247 of the Rules specifically addresses matters covered in ORS chapter 279B.

(3) These Division 247 Rules become effective on March 1, 2005 and apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.015
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0165

Practices Regarding Electronic Goods Procurement

(1) ORS 279B.025 requires the Department to establish procurement practices that ensure, to the maximum extent economically feasible, Procurement of Goods that may be recycled or reused when discarded.

(2) The State Procurement Office and Authorized Agencies must procure electronic goods in a manner that includes consideration of the impact of the electronic goods upon the environment and public health, in addition to consideration of economic and community interests, in accordance with goals of sustainability pursuant to ORS 184.423. The State Procurement Office and Authorized Agencies, separately or together, may:

(a) Consult with stakeholders to develop procedures or guidelines for this Procurement; and

(b) Address policy and procedure decisions including but not limited to: recycling, Energy Star certifications, promote toxic use reduction, and the use of certain components such as mercury or lead that have detrimental impacts.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.025, 279B.270, 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0170

Life Cycle Costing

(1) Policy. Life Cycle Costing provides an acquisition method that is consistent with the concept of sustainability and also drives the concept of lowest cost of ownership and best value of the equipment purchased. When planning the award method of an Invitation to Bid or Request for Proposal for products or equipment, an Agency must consider using Life Cycle Costing whenever the costs of system operation, support, and disposal, and other quantifiable costs are significant in comparison with the cost of acquisition.

(2) Definitions:

(a) "Life-Cycle Cost" means the total cost to the State of acquiring, operating, supporting and (if applicable) disposing of the items being acquired.

(b) "Life Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of Supplies and Services (also referred to in this Rule as "product, equipment, and service, separately or in any combination thereof").

(3) Concept. Insofar as this Rule is concerned, the concept of Life Cycle Costing will be limited to begin with the acquisition of the product or service, include all the associated cost(s) of ownership, such as purchase price, shipping, maintenance and repair, longevity, and include disposition cost(s) at the end of life. The initial acquisition price is adjusted with additional cost streams expected to occur over the anticipated life of the product or equipment. These additional cost streams must be clearly thought out costs or adjustments, and must be based upon reasonable assumptions. Cost streams are discrete elements of costs that relate to the particular purchase considered for Life Cycle Costing. In some cases cost streams may include negative costs or savings that are expected to result in a particular cost stream.

(a) Acquisition costs are costs associated with acquiring an item for State use. For complex items, several Contracts may be required and costs may involve research and development as well as production, delivery, and installation of the item.

(b) Typical cost streams may include:

(A) Switching cost are costs associated with changing from current equipment or products to another model or brand of equipment or products. Typically such costs may include: removal, shipping, training, and replacement of supporting supplies. They may also consider increased project management or additional transition time.

(B) Operating and support costs are all costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(C) Disposal costs are costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life-Cycle Cost should also consider any significant salvage or resale value at the time of disposal. Oregon Property Services may help with estimating values, and with adherence to current Rules regarding disposition of State property.

(4) Solicitation Requirements. Life Cycle Cost methodology is permitted under this Rule for use in either an ITB or an RFP. When conducting a Life Cycle Costing-based award, the Solicitation must:

(a) Advise prospective offerors how Life Cycle Costing will be considered in an award decision.

(A) Awards may be made based on lowest evaluated cost resulting from Life Cycle Costing. Under this approach the evaluation includes Life Cycle Costs in the Solicitation issued by the Agency.

(B) Awards of Invitations to Bid to the lowest Bidder include the total Life Cycle Costs as a part of the bid evaluation methodology and award. The lowest total Life Cycle Cost is considered the low Bid.

(C) Awards of RFPs may include a Life Cycle Costing award factor in two ways:

(i) The RFP may include Life Cycle Costs as a part of the total points awarded for costs. In this method, all Life Cycle Costs are calculated and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the RFP; or

(ii) The RFP may include a separate Life Cycle Cost Factor that is assessed a weight or points and is considered in addition to other factors in the proposal evaluation methodology. As a separate evaluation factor, it may be used in addition to costs, when the cost factor does not consider Life Cycle Costing elements.

(b) When Life Cycle Costs continue over a period of years, Solicitations may provide for adjustments to the cost stream for one or more of the following:

(A) Time value of money;

(B) Cost uncertainty; or

(C) Inflation factors.

(5) Factors in the Solicitation. To the extent the Authorized Agency considers practical, the Solicitation must provide relevant information (e.g., projected item usage, operating environment, the operating period, and other information that will be considered in the evaluation of the offer.) An Agency may include projections and estimates of life and cycle times from independent third party sources. The Solicitation must describe how Life Cycle Cost will be applied in the award process. Factors not described in the Solicitation may not be used in the evaluation.

(6) Elements that may be used in Awards. Solicitations must describe what relevant costs, along with appropriate information to support life costs, the Offer must provide. Typical elements used in Life Cycle Costing Awards may include:

(a) Average unit price, including (when appropriate) recurring and nonrecurring production costs;

(b) Delivery, shipping and transportation costs;

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(c) Switching costs prepared by the State that include a reasonable estimate of what it will cost to switch from a current product or brand to another;

(d) Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training);

(e) Unit disposal costs (e.g., the cost of removing equipment from the State facility);

(f) Unit salvage or residual value; and

(g) Related information as requested to support costs such as testing and operational data.

(7) Award Decision. Award of an Invitation to Bid using Life Cycle Cost methods must be made to the responsible firm whose responsive offer provides the lowest overall cost of ownership in accordance with the Life Cycle Cost evaluation factors listed in the solicitation document. In the case of a Life Cycle Cost request for proposal, award must be made to the responsible firm whose responsive offer, after consideration of Life Cycle Cost factors as a part of price evaluation, and other factors listed in the Solicitation Document are determined to be the most Advantageous or best Proposal for the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.025, 279B.270, 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0200

Methods of Source Selection

An Authorized Agency must award a Public Contract for Supplies and Services by one of the seven sourcing methods, as follows:

(1) Competitive Sealed Bidding (also known as Bidding or ITB) pursuant to ORS 279B.055;

(2) Competitive Sealed Proposals (also known as Proposals or RFP) pursuant to ORS 279B.060;

(3) Small Procurement pursuant to ORS 279B.065;

(4) Intermediate Procurement pursuant to ORS 279B.070;

(5) Sole-Source Procurement pursuant to ORS 279B.075;

(6) Emergency Procurement pursuant to ORS 279B.080;

(7) Special Procurement pursuant to ORS 279B.085; and related rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0255

Competitive Sealed Bidding; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding Solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3));

(G) How the Authorized Agency will notify Bidders of Addenda, and how the Authorized Agency will make Addenda available (See OAR 125-247-0430); and

(H) The requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a); and

(C) If the Authorized Agency intends to award Contracts to more than one Bidder pursuant to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b):

(A) Preference for Oregon Supplies and Services, pursuant to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, pursuant to ORS 282.210.

(e) Certification if required. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and Conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Supplies and Services without prior Written approval from the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.055
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0256

Competitive Sealed Bidding; Multistep Solicitations.

(1) Generally. An Authorized Agency may procure Supplies and Services by using one of the following methods of selection for Multistep Competitive Sealed Bidding pursuant to ORS 279.055(12):

(a) Multistep Invitation to Bid; or

(b) Multistep Revised Bidding. A "Phase" may include one or more "steps" as referenced in the Code. All of the methods described in ORS 279B.055(12) and this Rule may also be collectively referred to in division 247 as a "Multi-tiered Sealed Bidding" or "Multistep Sealed Bidding."

(2)(a) Multistep Invitation to Bid. A Multistep Invitation to Bid is a phased process that seeks necessary information or unpriced submittals in Phase One, followed by a Phase Two of Competitive Sealed Bidding, inviting Bidders who submitted eligible unpriced submittals in Phase One to submit competitive sealed price Bids on the unpriced submittals in Phase Two. The Authorized Agency initially issues a Multistep Invitation to Bid, requesting the submission of unpriced submittals. This Phase One may include multiple steps, at the discretion of the Authorized Agency, in order to obtain necessary information or unpriced submittals. At the conclusion of Phase One, the Authorized Agency evaluates those unpriced submittals to determine the eligibility of the Bidders to submit priced Bids. After this determination, the Authorized Agency may begin Phase Two by issuing subsequent Invitations to Bid, limited to those Bidders eligible to submit priced Bids. The Contract must be awarded to the lowest Responsible Bidder or to multiple Responsible Bidders in accordance with ORS 279B.055(10). If time is a factor, the Authorized Agency may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the evaluation of the unpriced submittals. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) Public Notice. Whenever a Multistep Invitation to Bid is used, Public Notice for Phase One must be given in accordance with OAR 125-247-0305. Public Notice is not required for subsequent steps in Phase One, unless a step in Phase One expands the number of Bidders, and then Public Notice is required. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Bidders of subsequent steps in Phase One and Phase Two, inform Bidders of the right to protest Addenda issued after the initial Closing pursuant to OAR 125-247-0430, and further inform Bidders excluded from subsequent steps or Phase of the right, if any, to protest exclusion pursuant to OAR 125-247-0720. If an Authorized Agency elects to provide a protest period during this Procurement Process for Addenda issued after the initial Closing pursuant

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to OAR 125-247-0430, then the Authorized Agency must give notice to the Bidders of this right to protest such Addenda.

(c) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through OAR 125-247-0490, an Authorized Agency must employ the following procedures:

(A) Solicitation Protest. Prior to the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation and under ORS 279B.405 and OAR 125-247-0730.

(B) Addenda Protest. Pursuant OAR 125-247-0430(4), an Authorized Agency may provide an opportunity in accordance with OAR 125-247-0730 to protest any Addenda, but an Authorized Agency is not required to provide this opportunity. An Authorized Agency may, provide an opportunity to protest any Addenda issued during Phase Two pursuant to OAR 125-247-0430(3)(b).

(C) Exclusion Protest. An Authorized Agency may, but is not required, to provide an opportunity for a Bidder to protest exclusion from a subsequent step or Phase as set forth in OAR 125-247-0720.

(D) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from a subsequent step or Phase of bidding to the extent such protests are provided for in the Solicitation Document or required by this Section. Failure to so protest must be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the Authorized Agency.

(E) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and OAR 125-247-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from a subsequent Step or Phase of a Multistep Invitation to Bid, or an Addendum issued following initial Closing, if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(d) Procedure for Phase One.

(A) Form. A Multistep Invitation to Bid must be initiated by the issuance of an Invitation to Bid in the form and manner required for Competitive Sealed Bidding, except as hereinafter provided. In addition to the requirements set forth in OAR 125-247-0255(2), the Invitation to Bid must state:

(i) That unpriced submittals are requested;

(ii) Whether price Bids are to be submitted at the same time as unpriced submittals; if they are, that such price Bids must be submitted in a separate sealed envelope;

(iii) That the Solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in Phase Two and only from those Bidders whose unpriced submittals are found eligible in Phase One;

(iv) The criteria to be used in the evaluation of unpriced submittals;

(v) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(vi) That the Supplies and Services being procured must be furnished generally in accordance with the Bidder's unpriced submittal as found to be finally eligible and must meet the requirements of the Invitation to Bid; and

(vii) Whether Bidders excluded from subsequent steps or Phase have a right to protest the exclusion before the notice of intent to award. Such information must be given in the Bid Solicitation or changed by Addenda.

(B) Addenda to the Invitation to Bid. After receipt of unpriced submittals in Phase One, Addenda to the Invitation to Bid must be distributed only to Bidders who submitted unpriced submittals.

(C) Receipt and Handling of Unpriced Submittals. Unpriced submittals in Phase One need not be opened publicly.

(D) Evaluation of Unpriced Submittals. Unpriced submittals submitted by Bidders in Phase One must be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced submittals must be categorized as:

(i) Eligible;

(ii) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(iii) Ineligible. The Authorized Agency must record in Writing the basis for determining an unpriced submittal ineligible and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate the Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient eligible unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Invitation to Bid or engage in Discussions as set forth in Subsection (5)(e) of this Rule.

(E) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of an unpriced submittal by any eligible or potentially eligible Bidder. During the course of such Discussions, the Authorized Agency must not disclose any information derived from one unpriced submittal to any other Bidder. Once Discussions have begun, any Bidder who has not been notified that its unpriced submittal has been finally found ineligible, may submit supplemental information amending its unpriced submittal, at any time until the Closing of the final step established by the Authorized Agency in the Solicitation Document. Such submission may be made at the request of the Authorized Agency or upon the Bidder's own initiative.

(F) Notice of Ineligible Unpriced Submittal. When the Authorized Agency determines a Bidder's unpriced submittal to be ineligible, such Bidder must not be afforded an additional opportunity to supplement its unpriced submittal.

(G) Mistakes During a Multistep Invitation to Bid. Mistakes may be corrected or unpriced submittals may be withdrawn prior to the Closing of Phase One:

(i) Before unpriced submittals are considered;

(ii) After any Discussions have commenced under Subsection (5)(e);

(iii) When responding to any Addenda of the Invitation to Bid; or

(iv) In accord with OAR 125-247-0470.

(e) Procedure for Phase Two.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must either:

(i) Open price Bids submitted in Phase One (if price Bids were required to be submitted) from Bidders whose unpriced submittals were found to be eligible; or

(ii) If price Bids have not been submitted, Discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.

(B) Conduct. Phase Two must be conducted as any other Competitive Sealed Bidding Procurement except:

(i) As specifically set forth in this Rule; and

(ii) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

(3)(a) Multistep Revised Bidding. Revised Bidding means a multistep process that begins with an initial Round of Competitive Sealed Bidding pursuant to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive steps of Bidding in order for the Authorized Agency to gain the best and final offer for purposes of Award. An Authorized Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive steps to best meet the State's needs. Bidders will be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive step, Authorized Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) Revisions. An Authorized Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. An Authorized Agency may then proceed with a subsequent step that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by an Authorized Agency in any subsequent step, the Authorized Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies.

(c) Public Notice. An Authorized Agency must give public notice pursuant to OAR 125-247-0305. The initial Solicitation Document must disclose that a Multistep Revised Bidding process will or may be used. An Authorized Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof. If an Authorized Agency discloses any prices, terms or conditions offered by other Bidders, the Authorized Agency will give notice of these disclosures to the initial Bidders. At the end of the process, the Authorized Agency must give a Notice of Intent to award at least seven (7) calendar days prior to making the Award. Following clarifications and additional investigations, an Offeror may be reinstated or disqualified at any stage of the evaluation process.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

ADMINISTRATIVE RULES

125-247-0260

Competitive Sealed Proposals; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by Competitive Sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a Competitive Sealed Proposals Solicitation and must contain the information required by ORS 279B.060(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Proposals as set forth in OAR 125-247-0305.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3)); and

(F) How the Authorized Agency will notify Proposers of Addenda and how the Authorized Agency will make Addenda available. (See OAR 125-247-0430).

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing, including if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates of actual future costs based on information available to the Authorized Agency; and

(C) If the Authorized Agency intends to award Contracts to more than one Proposer pursuant to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable Preferences described in ORS 279A.120, 279A.125(2) and 282.210:

(A) Preference for Oregon Supplies and Services, pursuant to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, pursuant to ORS 282.210.

(e) Certification if requested. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Supplies and Services without prior Written approval from the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0261

Competitive Sealed Proposals; Multistep Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490 for methods of Contractor selection that call for the establishment of a Competitive Range

or include Discussions or Negotiations, an Authorized Agency must employ the procedures set forth in this Rule for:

(a) Competitive Range;

(b) Best and Final Offers;

(c) Multistep Unpriced Proposals; and

(d) Multistep Revised Negotiations. An Authorized Agency may also use a Request for Qualifications pursuant to OAR 125-247-0550 in combination with any of the methods described in ORS 279B.060(6)(b) or this Rule. All of the methods described in ORS 279B.060(6)(b) and this Rule may also be collectively referred to in division 247 as "Multi-tiered Sealed Proposals" or "Multistep Sealed Proposals."

(2) Generally; Protests.

(a) Solicitation Protest. Prior to the initial Closing, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(b) Addenda Protest. Pursuant OAR 125-247-0430(4), an Authorized Agency may provide an opportunity in accordance with OAR 125-247-0730 to protest any Addenda issued pursuant to ORS 279B.060(6)(d), but an Authorized Agency is not required to provide this opportunity.

(c) Exclusion Protest. An Authorized Agency may provide before the Notice of Intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of Multi-tiered or Multistep Sealed Proposals as set forth in OAR 125-247-0720.

(d) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from subsequent Phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest must be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Authorized Agency.

(e) Award Protest. An Authorized Agency must provide an opportunity to protest its Intent to Award a Contract pursuant to ORS 279B.410 and OAR 125-247-0740. An Affected Proposer may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from the Competitive Range or any phase of a Technical Proposal, Multi-tiered Proposal or Multistep Sealed Proposal, or an Addendum issued following initial Closing, if the Authorized Agency did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

(3) Competitive Range. When an Authorized Agency's Solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Authorized Agency to establish a Competitive Range at any stage in the Procurement Process, the Authorized Agency must comply with the following procedures:

(a) Determining Competitive Range:

(A) The Authorized Agency must establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency must determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) Protesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. An Authorized Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-030-0720.

(c) Intent to award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with Subsection (2)(b) expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range:

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-247-0740 and ORS 279B.410.

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(ii) After the protest period provided in accordance with OAR 125-247-0740 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence Negotiations in accordance with this Rule with Proposers in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in this Rule and following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations as set forth in this Rule with the Proposers in the Competitive Range.

(4) Discussions and Revised Proposals for Best and Final Offers. If an Authorized Agency chooses to use the Competitive Range method and then enter into Discussions and receive Best and Final Offers, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. If the Authorized Agency initiates any Discussion, the Authorized Agency must initiate oral or Written Discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Authorized Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this Section 4, but need not conduct the same amount of Discussions with each eligible Proposer. The Authorized Agency may terminate Discussions with any eligible Proposer at any time. However, the Authorized Agency must offer all eligible Proposers the same opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies eligible Proposers of the date and time pursuant to Subsection (4)(c) that best and final Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all eligible Proposers fairly and must not favor any eligible Proposer over another;

(ii) Must only disclose other eligible Proposer's Proposals or Discussions in accordance with 279B.060(6)(a)(ii) or (iii);

(iii) May adjust the evaluation of a Proposal as a result of a Discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the scope of the Request for Proposals.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular eligible Proposer;

(ii) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(iii) Conclude Discussions with all remaining eligible Proposers and provide notice pursuant to this Rule to the eligible Proposers requesting best and final Offers.

(c) Best and Final Offers. An Authorized Agency must establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers must be submitted only once; provided, however, the Authorized Agency may make a Written determination that it is in the Authorized Agency's best interest to conduct additional Discussions and Negotiations or change the Authorized Agency's requirements and require another submission of best and final Offers. Otherwise, no Discussion or changes in the best and final Offers may be allowed prior to award. Proposers must also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best final Offer. The Authorized Agency must evaluate Offers as modified by the best and final Offer. The Authorized Agency must conduct evaluations conducted as described in OAR 125-247-0600. The Authorized Agency must not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(5) Multistep Unpriced Proposals:

(a) Process. An Authorized Agency may procure Supplies and Services by using Multistep Unpriced Proposals pursuant ORS 279.060(6)(b)(G). The Multistep Unpriced Proposals process is a phased

Procurement Process that seeks necessary information or unpriced technical submittals in Phase One and regular Competitive Sealed Proposals, inviting Proposers who submitted technically qualified submittals in Phase One, to submit Competitive Sealed Price Proposals on the technical Proposals in Phase Two. Any Contract must be awarded to the Responsible Proposer, or in the case of multiple awards, the Responsible Proposer pursuant to ORS 279B.060(10), submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to Phase Two. A "Phase" may include one or more "steps" as referenced in the Code. If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced technical submittals. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) Procedure for Phase One of Multistep Unpriced Technical Proposals.

(A) Public Notice. Whenever Multistep Unpriced Proposals are used, the Authorized Agency must provide Public Notice of the Solicitation as set forth in OAR 125-247-0305. Public Notice is not required for any subsequent steps of Phase One, unless a step in Phase One expands the number of Proposers, and then Public Notice is required. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Proposers of subsequent steps in Phase One and Phase Two, inform Proposers of the right to protest Addenda issued after the initial Closing pursuant to OAR 125-247-0430, and further inform Proposers excluded from subsequent Steps or Phase of the right, if any, to protest exclusion pursuant to OAR 125-247-0720. If an Authorized Agency elects to provide a protest period during this Procurement Process for Addenda issued after the initial Closing pursuant to OAR 125-247-0430, then the Authorized Agency must give notice to the Proposers of this right to protest such Addenda.

(B) The Form of the Request for Proposals. Multistep Unpriced Proposals must be initiated by the issuance of a Request for Proposal in the form and manner required for Competitive Sealed Proposals in accordance with OAR 125-247-0260, except as provided in this Rule. In addition to the requirements set forth in OAR 125-247-0260(2), this Request for Proposal must state:

(i) That unpriced technical submittals are requested;

(ii) Whether price Proposals are to be submitted at the same time as unpriced technical submittals; if they are, that such price Proposals must be submitted in a separate sealed envelope;

(iii) That the Solicitation is a Technical Proposal Procurement, and priced Proposals will be considered only in Phase Two and only from those Proposers whose unpriced technical submittals are found acceptable in Phase One;

(iv) The criteria to be used in the evaluation of unpriced technical submittals;

(v) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced technical submittals;

(vi) That the Supplies and Services being procured must be furnished generally in accordance with the Proposer's unpriced technical submittals as found to be finally qualified and must meet the requirements of the Request for Proposals;

(vii) Whether Proposers excluded from subsequent steps or Phase Two have a right to protest the exclusion. Such information must be given in the Solicitation or changed by Addenda; and

(viii) If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced technical submittals.

(C) Addenda to the Request for Proposal. After receipt of unpriced technical in Phase One, Addenda to the Request for Proposal must be distributed only to those Proposers who submitted unpriced technical submittals.

(D) Receipt and Handling of Un-priced Technical Proposals. The Authorized Agency is not required to publicly open unpriced technical submittals.

(E) Evaluation of Un-Priced Technical Proposals. The unpriced technical submittals submitted by Proposers must be evaluated solely in accordance with the criteria set forth in the Request for Proposals. The unpriced technical submittals must be categorized as:

(i) Qualified;

(ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(iii) Unqualified. The Authorized Agency must record in Writing the basis for determining a Proposal unqualified and make it part of the

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Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient qualified unpriced technical submittals to assure effective price competition in Phase Two without technical Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Request for Proposals or engage in Discussions as set forth in this Rule.

(F) Discussion of Unpriced Technical Submittals. The Authorized Agency may seek clarification of any technical Proposal of any Proposer who submits a qualified, or potentially qualified unpriced technical submittal. During the course of such Discussions, the Authorized Agency must not disclose any information derived from one unpriced technical submittal to any other Proposer. Once Discussions begin, any Proposer may submit supplemental information amending the unpriced technical submittal at any time until the Closing of Phase Two set by the Authorized Agency. A submission may be in response to a request of the Authorized Agency or be initiated by the Proposer.

(G) Notice of Unqualified Unpriced Technical Submittals. When the Authorized Agency determines a Proposer's unpriced technical submittal to be unqualified, such Proposer must not be afforded an additional opportunity to supplement its unpriced technical submittal.

(H) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:

- (i) Before unpriced technical submittals are considered;
- (ii) After any Discussions have commenced under this Rule;
- (iii) When responding to any Addenda of the Request for Proposals;

or

- (I) In accordance with OAR 125-247-0470.
- (c) Procedure for Phase Two.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must either:

(i) Open price Proposals submitted in Step One (if price Proposals were required to be submitted) from Proposers whose unpriced technical submittals were found to be qualified; or

(ii) If price Proposals have not been submitted, Discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit a price Proposal.

(B) Conduct. Phase Two must be conducted as any other Competitive Sealed Proposals Solicitation pursuant to OAR 125-247-0260, except:

- (i) As specifically set forth in this Rule; and
- (ii) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Multistep Revised Negotiations:

(a) Process. Multistep Negotiations means a process that begins with the standard Solicitation procedures for an RFP and may include successive steps of Proposals achieved through Negotiations to gain the best and final Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination thereof. The Authorized Agency must treat all Proposers fairly. Before the start of each step of Negotiations, the Authorized Agency must disclose the parameters of that step of Negotiations. At that time, the Authorized Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive step, Proposers will have the option of dropping out of the process or continuing with the process. At each successive round, the Authorized Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Authorized Agency may eliminate any Proposal after a step because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a second step that requires additional Proposals based on the Revision(s). If any Revision is made by the Authorized Agency in any subsequent step, the Authorized Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal by that Proposer no longer applies. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(b) Negotiations. The Authorized Agency may negotiate serially with the highest-ranked eligible Proposers or simultaneously with all eligible Proposers as follows:

- (A) After an initial determination of which Proposals are Responsive;

(B) After an initial determination of the Competitive Range in accordance with this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals.

(c) Conducting Negotiations.

(d) Scope. The Authorized Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(d) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(e) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with a Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has determined either:

(A) To award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Has completed one step of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(f) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing Proposers. The Authorized Agency:

(A) Must treat all Proposers fairly and must not favor any Proposer over another;

(B) Must only disclose other Proposer's Proposals or the substance of Negotiations with other Proposers if the Authorized Agency notifies all of the Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any Proposer; and

(C) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing by the Proposer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0265

Small Procurements

(1) Generally. For Procurements of Supplies and Services less than or equal to \$5,000 an Authorized Agency may award a Contract as a Small Procurement pursuant to ORS 279B.065 and in accordance with these Rules.

(2) Amendments. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance OAR 125-246-0560, but the cumulative Amendments must not increase the total Contract Price to greater than \$6,000.

(3) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065(2).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0270

Intermediate Procurements

(1) Generally. For Procurements of Supplies and Services greater than \$5,000 and less than or equal to \$150,000, an Authorized Agency may award a Contract as an Intermediate Procurement pursuant to ORS 279B.070.

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(2) Written Solicitations. For Intermediate Procurements equal to or exceeding \$75,000, an Authorized Agency must use a Written Solicitation to obtain Quotes, Bids or Proposals and comply with the policy of the Department.

(3) Negotiations. An Authorized Agency may negotiate with a Proposer to clarify its Quote, Bid, or Proposal or to effect modifications that will make the Quote, Bid, or Proposal acceptable or make the Quote, Bid, or Proposal more Advantageous to the Authorized Agency.

(4) Amendments. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-246-0560.

(5) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement, pursuant to ORS 279B.070(2).

(6) Public Notices. Notice and advertising requirements must be in accordance with the Department's Policy. An Authorized Agency must use ORPIN to solicit Quotes.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority pursuant to OAR 125-246-0170 may award a Public Contract without a competitive process as a Sole-Source Procurement pursuant to the requirements of ORS 279B.075, this Rule, and the policy of the Department.

(2) Requirements:

(a) For all Public Contracts awarded as Sole-Source Procurements exceeding \$5,000 but not exceeding \$150,000:

(A) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(B) The public notice must describe the Supplies and Services to be acquired by a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(C) The Authorized Agency must give such public notice at least seven (7) days before the Award of the Contract to allow for protests pursuant to OAR 125-247-0710.

(D) For all Public Contracts exceeding \$75,000 but not exceeding \$150,000, the Authorized Agency must also obtain the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office before the Authorized Agency may award a Public Contract as a Sole-Source Procurement under this Rule.

(b) For all Public Contracts exceeding \$150,000:

(A) The State Procurement Office or other Authorized Agency must place a public notice on ORPIN in accordance with Subsection (2)(b)(A) and (B);

(B) The Authorized Agency must give such public notice at least fourteen (14) days before the Award of the Contract to allow for protests pursuant to OAR 125-247-0710, unless the Chief Procurement Officer or delegatee of the State Procurement Office gives prior Written approval to reduce the number of days based upon extraordinary circumstances that do not meet the criteria for an Emergency Procurement pursuant to OAR 125-247-0280; and

(C) The Authorized Agency must obtain the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office before the Authorized Agency may award a Public Contract as a Sole-Source Procurement under this Subsection (2)(b).

(3) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(4) Brand Name. If the Sole-Source Procurement involves any Brand Name specification, the Authorized Agency must also comply with OAR 125-247-0288(3).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.075
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract pursuant to OAR 125-246-0170. When an Emergency

Procurement is authorized, the Procurement must be made with competition that is practicable under the circumstances.

(2) Pursuant to the requirements of this Rule, the Authorized Agency, may in its discretion, enter into a Public Contract without competitive Solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must:

(a) Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(b) Encourage competition that is practicable under the circumstances; and

(c) Record the measures taken under Subsection (3)(b) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(4) Pursuant to ORS 279B.080, the head of the Authorized Agency, or person designated under ORS 279A.075, must declare the existence of the emergency, as required by Subsection (3)(a), which must authorize the Authorized Agency to enter into an Emergency Contract.

(5) Any Contract awarded under this Rule must be awarded within 60 days following the declaration of the emergency unless an extension has been granted by the head of the Authorized Agency, or Person designated.

(6) For Contracts greater than \$5,000.00, the Authorized Agency must report a summary of the Contract on ORPIN maintained by the Division and provide the Department of Justice, Attorney General with a copy of the Written documentation required in Section (3) of this Rule within a reasonable period of time or thirty (30) Days, whichever is less, following the declaration of an emergency. The Authorized Agency must maintain a copy of the report in the Authorized Agency's Emergency Procurement File.

(7) Emergency Public Contracts are exempted from Department of Justice legal sufficiency review pursuant to OAR 137-045-0070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.080
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0285

Special Procurements; Purpose and Application

(1) Generally. An Authorized Agency may award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Purpose. Pursuant to ORS 279B.085, these Rules establish the criteria for procuring Supplies and Services through Special Procurements by the State Procurement Office and Authorized Agencies.

(3) Application. Authorized Agencies must have delegated authority pursuant to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0286

Special Procurements; Definitions

As used in this Section and ORS 279B.400:

(1) "Class Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(2) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(3) "Special Procurement" means, unless the context requires otherwise, a class Special Procurement, a contract-specific Special Procurement or both.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval from the Chief Procurement Officer of the State Procurement Office to use a Special Procurement for a particular Contract or Contracts or for a specific class of Contracts using the designated State Procurement Office form.

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(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Authorized Agency has elected to use Special Procurement and how it will benefit the Authorized Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Will be unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Will either:

(i) Result in substantial cost savings to the Authorized Agency or to the public; or

(ii) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related rules.

(c) The alternative process designed by the Authorized Agency must be clear and complete, including a description of the Supplies and Services to be acquired, provisions for advertisement, a proposed Solicitation process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The State Procurement Office may require any additional information deemed necessary to evaluate the Authorized Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request.

(4) Public Notice:

(a) The manner in which an Authorized Agency must give public notice of its request for approval and of the Chief Procurement Officer's approval of a Special Procurement must be similar to the manner it gives for public notice of Competitive Sealed Bidding under ORS 279B.055(4) and OAR 125-247-0305. The public notice must describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement. Notwithstanding OAR 125-247-0305 and pursuant to ORS 279B.400, reasonable times and manners for affected persons to protest an Authorized Agency's request for approval of a Special Procurement are as follows:

(A) If the Special Procurement involves one or more Solicitations, then the Authorized Agency must give a combined public notice of its initial Solicitation, its request for approval of a Special Procurement, and the approval of the Special Procurement by the Chief Procurement Officer of the State Procurement Office, at least seven (7) calendar days before the initial Solicitation's closing date. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then the Authorized Agency must give a combined public notice of its request for approval of a Special Procurement and the approval of the Special Procurement by the Director, at least seven (7) days prior to the commencement of the Special Procurement.

(b) An Authorized Agency may specify an exception to the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only pursuant to an exception under the Public Meetings Law (ORS 192.610 through 192.690).

(5) Protest. An Affected Person may protest the approval of or request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must reference the Special Procurement approval number in the file.

(7) Conditions. The Chief Procurement Officer's approval may include conditions, such as expiration dates, and may be revoked at any time by the Chief Procurement Officer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0288

Special Procurements; by Rule

(1) Client Services.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement and delegated authority to Authorized Agencies for client placement and client health care services, as described in this Rule. When an Authorized Agency determines that an immediate crisis or urgent need exists to secure or main-

tain a client's placement or secure health care services they may use the process as defined below:

(A) "Client placement services" mean the securing, enhancing, or continuing the placement of a client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client health care services" mean health care services being provided outside an Authorized Agency's facility, which exceed the scope of practice of Authorized Agency health care practitioners.

(b) Authorized Services. Services such as these are provided in response to an immediate crisis or urgent need. Unless the services provided by the Contractor clearly fit within this definition and the authority by which this approval is granted, then those services are not subject to this Special Procurement or its related authority.

(A) Authorized Agencies may obtain placement services or health care services, as defined herein that call for payment of less than the Threshold for legal sufficiency review by the Attorney General.

(B) Authorized Agencies must execute a Contract within seven (7) business days of obtaining the placement services or health care services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(i) A Written statement of justification that describes the unforeseen or unavoidable circumstances that was reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial seven (7) day period; and

(ii) Evidence that a copy of the Written justification was submitted to the State Procurement Office.

(C) Authorized Agencies must use a contracting form approved by the State Procurement Office when acquiring placement services or health care services pursuant to this approval authority, but before making any payments. The State Procurement Office must approve any modifications to this form prior to execution of the Contract.

(D) The Authorized Agency will not make any payments for services before obtaining all requisite approvals.

(E) The Authorized Agency will adhere to all requirements of the Code and related rules and will follow all procedures, and guidelines of the Department when procuring these placement services or health care services as defined herein.

(F) The Authorized Agency will ensure that all procurement personnel responsible for processing Client Service Contracts for placement services or health care services are provided training on the conditions and limitations of this approval authority.

(c) Source Selection. Pursuant to this Special Procurement, the Chief Procurement Officer waives the source selection requirements for Authorized Agencies for Client Services, as defined in OAR 125-246-0110(19). If an Authorized Agency chooses to competitively solicit, it must comply with the rules for that Solicitation. Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(d) Amendments. In accordance with OAR 125-246-0560, the Authorized Agency must state in the Solicitation Document, if applicable, and the Original Contract that the Authorized Agency may amend the Contract.

(e) Contract Forms. Authorized Agencies must use a Contract form approved by the State Procurement Office when acquiring services pursuant to this Rule. The State Procurement Office may approve the Contract form by facsimile, email, letter or any other method that provides an objective means to verify State Procurement Office approval. The Authorized Agency must review the approved Contract form at least every two years. If upon review the Authorized Agency revises the Contract form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract form.

(2) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office hereby grants approval of this Special Procurement. An Authorized Agency must obtain delegated authority from the State Procurement Office in order to renegotiate and amend existing Contracts with incumbent Contractors, and then only if it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

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(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was reject at that time, (for the purpose of this subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency may research the accepted competitive practices and expectations of offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the Authorized Agency researches the Market Norm, then the Authorized Agency must document its results in the Procurement File. Based upon this information, the Authorized Agency may confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(3) Brand Names or Products, "or Equal," Single Seller and Sole Source.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office hereby grants approval of this Special Procurement. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of Brand Name "or Equal" Products and comply with the Requirements of this Rule.

(b) Definitions. "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(c) Requirements:

(A) Specifications. Solicitation Specifications for Public Contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in Subsections (i) and (ii) of this Rule.

(i) "Or Equal" Specification. The Authorized Agency may specify a particular brand name, make or product suffixed by "or equal", "or approved equal", "or equivalent", "or approved equivalent", or similar language if there is no other practical method of Specification.

(ii) Specifying a Particular Make or Product. The Authorized Agency may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement File in accordance with OAR 125-246-0355, with the following:

(I) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(II) The brand name, mark, or product to be specified; and

(III) The reasons the Authorized Agency is seeking this procurement method, which must include at least one of the following findings in the Procurement File:

(aa) It is unlikely that Specification of the brand name, mark or product will encourage favoritism in the award of the Public Contracts or substantially diminish competition; or

(bb) Specification of the brand name, mark or product would result in substantial cost savings to the Authorized Agency; or

(cc) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(B) Public Notice. The Authorized Agency must make reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or must document the Procurement File with findings of current market research to support the determination that the product is available from only one seller. This Requirement is satisfied by posting a notice on ORPIN for a reasonable time period.

(C) Purchasing From Sole Source, Single Seller. The Authorized Agency may purchase a particular product or service (also known as Supplies and Services) available from only one source if the Authorized Agency meets the Requirements of Subsection (c)(A) and (B) of this Rule and a Sole-Source Procurement pursuant to ORS 279B.275 and OAR 125-247-0275. The Authorized Agency, prior to purchase, must document the Procurement File with the Authorized Agency's findings of current market research to support the determination that the product or service is available from only one seller or source. The Authorized Agency's findings must also include:

(i) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(ii) Description of the product or service to be purchased; and

(iii) The reasons the Authorized Agency is seeking this procurement method, which must include at least one of the following:

(I) Efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services; or

(II) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(III) The particular product is for use in a pilot or an experimental project.

(D) Single Manufacturer, Multiple Sellers. The Authorized Agency may specify a product or service available from only one manufacturer, but available through multiple sellers, if the Authorized Agency meets the Requirements of Subsection (c)(A) and (B) and the following:

(i) If the total purchase is \$5,000 or more but does not exceed \$150,000 and a comparable product or service is not available under an existing Mandatory Use Contract, competitive quotes must be obtained and retained in the Procurement File pursuant to the policy of the Department for Intermediate Procurements;

(ii) If the purchase exceeds \$150,000, and the comparable product or service is not available under an existing Mandatory Use Contract, an Authorized Agency must first request and obtain authorization from the State Procurement Office to proceed with the acquisition. The acquisition process would then be subject to the Requirements in this Rule; or

(E) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state in the Solicitation file, the Solicitation Document, if any, and the public notice described in Subsection (c)(B) of this Rule. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$150,000, this must be stated in the advertisement for Bids or Proposals.

(F) If an Authorized Agency competitively solicits, it must comply with the Rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075.

(G) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(H) All Authorized Agencies must comply with ORS 200.035, notwithstanding this Rule.

(4) Advertising Contracts.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement and delegated authority to Authorized Agencies for the Procurement of advertising, as described in this Rule. An Authorized Agency may purchase media advertising, regardless of dollar value, without competitive bidding, pursuant to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing

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method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for equipment repair and overhaul, as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of equipment repair and overhaul, and the Authorized Agency must comply with the conditions of this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority pursuant to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and pursuant to the methods in (5)(b) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for price regulated items, as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of investment Contracts, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-030-0001 may, without competitive bidding, and regardless of dollar amount, Contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys").

(b) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for food Contracts, as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-246-0170 may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) A non-exclusive Mandatory Use Contract or regularly scheduled bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Mandatory Use Contract or recent bid (as described in Subsection (8)(c) of this Rule) and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(C) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes);

(D) Any Mandatory Use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special Procurement; and

(E) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0355: The Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months prior to the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for used personal property, as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of used personal property, and the Authorized Agency must comply with the conditions of this Rule. Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment costing not exceeding \$150,000, Authorized Agencies having delegated authority pursuant to OAR 125-246-0170, must, where feasible, obtain three competitive Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining competitive Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

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(B) For purchases of used personal property or equipment exceeding \$150,000, the State Procurement Office must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the State Procurement Office prior to making the purchase.

(D) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Business Assistance Services.

(a) Authorization. The Chief Procurement Officer of the State Procurement Office grants approval of this Special Procurement for Business Assistance Services, as described in this Rule. An Authorized Agency must obtain delegated authority from the State Procurement Office for the Procurement of Business Assistance Services, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency with delegated authority pursuant to OAR 125-246-0170 may, without any competitive process and regardless of dollar amount, procure Business Assistance Services. "Business Assistance Services" mean services that:

(A) Are delivered directly and expediently to small or troubled businesses in Oregon, and

(B) Assist businesses with start-up, growth, revitalization or stabilization.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(11) Reverse Auctions.

(a) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above.

Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency's or the State's best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) Policy and Approval. The Authorized Agency must follow the policy of the Department and obtain prior Written approval from the State Procurement Office before using this Reverse Auction Special Procurement.

(c) Public Notice. The Authorized Agency must disclose the Reverse Auction process in the Solicitation Documents. The Authorized Agency must provide initial notice of this Solicitation through ORPIN. The Authorized Agency must give subsequent notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders, as described in the Solicitation Document. The Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar days prior to making the Award.

(d) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must pre-qualify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(e) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0296

Mandatory Use Contracts and Price Agreements

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process pursuant to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the State Procurement Office.

(4) Notwithstanding Section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency, provided that a formal, Written agreement is entered into between the parties;

(b) Supplies and Services from the federal government, pursuant to ORS 279A.180 and OAR 125-246-0360;

(c) Personal property for resale through student stores operated by public educational Authorized Agencies; and

(d) Emergency purchases declared by an Authorized Agency pursuant to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the State Procurement Office.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0300

Applicability to Methods of Source Selection

(1) Generally. These Procurement Process Rules are intended to apply to more than one sourcing method pursuant to ORS 279B.050 through 279B.090 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in division 247 and a general Rule under Procurement Process, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a Rule under Procurement Process is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.090, that Rule applies only to Bidding and Proposals in accordance

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with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0305

Public Notice of Solicitation Documents

(1) Notice and Advertising of Solicitation Documents. An Authorized Agency must provide public notice and advertise every notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500. The Authorized Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(b) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(c) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4).

(2) Content of Advertisement. All advertisements for Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document and the Closing must not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Authorized Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event must the interval between the first date of notice of the Solicitation Document and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Authorized Agency must document the specific reasons for the shorter public notice period in the Procurement File in accordance with OAR 125-246-0355;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(e) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(f) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Authorized Agency deems to be appropriate.

(3) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(4) Minority, Women, and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

(5) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(6) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0310

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-247-0480. The Authorized Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 125-247-0261, a Proposer must not make its Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-247-0261, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0320

Facsimile Bids and Proposals

(1) Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize facsimile Offers unless the Authorized Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer, the Authorized Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Authorized Agency reserves the right to award the Contract solely on the basis of a facsimile Offer. However, upon the Authorized Agency's request the apparent successful Offeror must promptly submit its complete original Signed Offer;

(e) The data and compatibility characteristics of the Authorized Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that provides that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0330

E-Procurement

(1) Electronic Procurement Authorized:

(a) An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Authorized Agency specifies in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized

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Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency's use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of electronic methods of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these division 247 Rules, unless otherwise set forth in this Rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the State Procurement Office (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5(b) of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers:

(a) When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these division 247 Rules.

(b) When the Authorized Agency specifies that Persons may submit multiple Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must post on ORPIN, and update on a real time basis:

(i) The prices of the other Bidders or the price of the most competitive Bidder;

(ii) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(iii) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(iv) Any combination of (i), (ii) and (iii) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these Division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

(7) Reverse Auctions. If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288(11), the Authorized Agency must follow the policy of the Department and obtain the prior Written approval of the State Procurement Office before using a Reverse Auction process. The requirements of OAR 125-247-0288(11) apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288(11) take precedence over the more general requirements of this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0400

Offer Preparation

(1) Instructions. Offerors must submit and Sign their Offers in accordance with the instructions set forth in the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. Offerors must submit their Offer on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(3) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required by the Solicitation Document.

(4) Electronic Submissions. If the Solicitation Document permitted Electronic Offers under OAR 125-247-0330, Offerors may submit their Offers electronically. The Authorized Agency must not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0410

Offer Submission

(1) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if the Authorized Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Authorized Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers:

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable. If the Authorized Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 247 Rules and the instructions set forth in the Solicitation Document.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. Offerors are responsible for ensuring the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0420

Pre-Offer Conferences

(1) Purpose. An Authorized Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Authorized Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If an Authorized Agency holds a pre-offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

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(4) Statements Not Binding. Statements made by an Authorized Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Authorized Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Authorized Agency Announcement. The Authorized Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 125-247-0255(2) or 125-247-0260(2).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0430

Addenda to Solicitation Document

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available before Closing, and at each subsequent step or Phase of evaluation if the Authorized Agency will engage in a Multistep Competitive Sealed Bidding process in accordance with OAR 125-247-0256, or a Multi-tiered or Multistep Competitive Sealed Proposals process in accordance with OAR 125-247-0261.

(3) Timelines; Extensions:

(a) The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Authorized Agency must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding Subsection 3(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any step or Phase of competition under a Multistep Sealed Bidding or Multistep Sealed Proposals, issued in accordance with OAR 125-247-0256 or 125-247-0261, must be issued no fewer than five (5) Days before the beginning of that step or Phase of competition, unless the Authorized Agency determines that a shorter period is sufficient to allow the Offerors to prepare for that step or Phase of competition. The Authorized Agency must document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or Phase of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-247-0730, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 125-247-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 125-247-0730, then the Authorized Agency may only consider an Offeror's request for change or protest to the Addendum, and the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Subsection (4) of this Rule, an Authorized Agency is not required to provide a protest period for Addenda issued after initial Closing during a or multistep Procurement Process conducted pursuant to ORS 279B.055 or 279B.060 and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0440

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the Authorized Agency in accordance with OAR 125-247-0400 and 125-247-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the

modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Authorized Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Authorized Agency.

(b) The Authorized Agency may release an unopened Offer withdrawn under Subsection 2(a) of this Rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror must mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Authorized Agency must include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File in accordance with OAR 125-246-0355.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0450

Receipt, Opening, and Recording of Offers

(1) Receipt. An Authorized Agency must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Authorized Agency must not open the Offer or modification, but must maintain it as confidential and secure until Opening. If the Authorized Agency inadvertently opens an Offer or a modification prior to the Opening, the Authorized Agency must return the Offer or modification to its secure and confidential state until Opening. The Authorized Agency must document the resealing for the Procurement File in accordance with OAR 125-246-0355 (e.g., "Authorized Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. An Authorized Agency must publicly open Offers including any modifications made to the Offer pursuant to OAR 125-247-0440(1). In the case of Invitations to Bid, to the extent practicable, the Authorized Agency must read aloud the name of each Bidder, and such other information as the Authorized Agency considers appropriate. However, the Authorized Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Authorized Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0460

Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Authorized Agency must not consider late Offers, withdrawals or modifications except as permitted in OAR 125-247-0470 or 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0470

Mistakes

(1) General. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before the Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake

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that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices must prevail over extended prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder the most Advantageous Responsive and Responsible Proposer, or by resort to a new Solicitation.

(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this Division 247 to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0480

Time for Authorized Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0490

Extension of Time for Acceptance of Offer

An Authorized Agency may request, orally or in Writing that Offerors extend, in Writing, the time during which the Authorized Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0500

Responsibility of Offerors

(1) Determination. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

(3) Life Cycle Costing. See OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0525

Qualified Products Lists

An Authorized Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090, 279B.115
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0550

Prequalification of Prospective Offerors; Request for Qualifications (RFQ)

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125. Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(2) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification pursuant to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

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(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) Pursuant to ORS 200.035, the Authorized Agency must notify, in Writing, the Advocate for Minority, Women and Emerging Small Businesses of each Solicitation and contracting opportunity exceeding \$5,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050–279B.090, 279B.120, 279B.125
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0575

Debarment of Prospective Offerors

(1) Generally. An Authorized Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), an Authorized Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. An Authorized Agency may attribute improper conduct of a Person or their affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. An Authorized Agency may allow a Debarred Person to participate in Solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to an Authorized Agency. The determination must specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050–279B.090, 279B.130
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0600

Offer Evaluation and Award

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids:

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals:

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) Clarification of Bids. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Bidders for the purpose of clarification and to assure full understanding of the Bid. All Bids, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0355.

(3) Negotiations Prohibited:

(a) Bids. Except as permitted by this Section 3(b) of this Rule, an Authorized Agency must not negotiate with any Bidder. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560.

(b) Requests for Proposals. An Authorized Agency may only conduct Discussions or negotiate with Proposers in accordance with ORS 279B.060(6)(b) and OAR 125-247-0261. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560.

(4) Award:

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids:

(A) Notwithstanding Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(d) Multiple Awards; Proposals:

(A) Notwithstanding Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(c) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050–279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Authorized Agency must provide Written notice of its intent to award to all Offerors pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances require prompt execu-

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tion of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0355.

(2) Finality. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090, 279B.135
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0620

Documentation of Award

(1) Basis of Award. After Award, the Authorized Agency must make a record showing the basis for determining the successful Offeror as part of the Authorized Agency's Procurement File in accordance with OAR 125-246-0355.

(2) Contents of Award Record. The Authorized Agency's record must include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals;

and

(D) If the Authorized Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 125-247-0261, Written documentation of the content of any Discussions, Negotiations, best and final Offers, or any other procedures the Authorized Agency used to select a Proposer to which the Authorized Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0630

Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Authorized Agency must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Authorized Agency a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Authorized Agency may make available tabulations of Bids and Proposals through ORPIN or the Authorized Agency's website.

(3) Availability of Procurement Files. After notice of intent to award, the Authorized Agency must make Procurement Files, in accordance with OAR 125-246-0355, available in accordance with applicable law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0640

Rejection of an Offer

(1) Rejection:

(a) An Authorized Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Supplies and Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public procurement procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Authorized Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 125-246-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Authorized Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;

(ii) Has a satisfactory record of contract performance. An Authorized Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Pursuant to ORS 279B.110(2)(b), the Authorized Agency must make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. Pursuant to ORS 279B.110(2)(c), the Authorized Agency must make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iv) Is qualified legally to contract with the Authorized Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning Responsibility, the Authorized Agency must base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0650

Rejection of All Offers

(1) Rejection. An Authorized Agency may reject all Offers as set forth in ORS 279B.100. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The Authorized Agency may reject all Offers based upon the following criteria:

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(a) The content of or an error in the Solicitation Document, or the Procurement Process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Authorized Agency cancels the Procurement or Solicitation in accordance with OAR 125-247-0660; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0660

Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Procurement or Solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation before Opening. If the Authorized Agency cancels a Procurement or Solicitation prior to Opening, the Authorized Agency must provide Written notice of cancellation in the same manner that the Authorized Agency initially provided notice of the Solicitation. Such notice of cancellation must:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation after Opening. If the Authorized Agency cancels a Procurement or Solicitation after Opening, the Authorized Agency must provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0670

Disposition of Offers if Solicitation Cancelled

(1) Prior to Opening. If the Authorized Agency cancels a Procurement or Solicitation prior to Opening, the Authorized Agency must return all Offers it received to Offerors unopened, provided the Offerors submitted their Offers in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency must open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Authorized Agency must delete the Offers from ORPIN or other approved Electronic Procurement System.

(2) After Opening. If the Authorized Agency cancels a Procurement or Solicitation after Opening, the Authorized Agency:

(a) May return Proposals in accordance with ORS 279B.060(5)(c); and

(b) Must keep Bids in the Procurement File in accordance with OAR 125-246-0355.

(3) Rejection of All Offers. If the Authorized Agency rejects all Offers, the Authorized Agency must keep all Proposals and Bids in the Procurement File.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0700

Protests and Judicial Review of Approvals of Special Procurements

(1) Purpose. An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an Affected Person must file a Written protest with the Chief Procurement Officer of the State Procurement Office and exhaust all administrative remedies.

(2) Delivery:

(a) Protest of Request for Approval of a Special Procurement. An Affected Person must deliver a Written protest to the Chief Procurement Officer within fourteen (14) Days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.

(b) Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Chief Procurement Officer within fourteen (14) Days after the first date of public notice of the approval of a Special Procurement by the Chief Procurement Officer, unless a different protest period is provided in the public notice of the approval of a Special Procurement:

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Chief Procurement Officer Response.

(a) Protest of Request for Approval of a Special Procurement. The Chief Procurement Officer must not consider an Affected Person's protest of the Authorized Agency's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The Chief Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer upholds the protest, in whole or in part, the Chief Procurement Officer may with sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

(b) Protest of Approval of a Special Procurement. The Chief Procurement Officer must not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Chief Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer upholds the protest, in whole or in part, the Chief Procurement Officer may with sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may not seek judicial review of the Chief Procurement Officer's denial of a protest of a request for approval of a Special Procurement. An Affected Person may seek judicial review of the Chief Procurement Officer's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.400
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0710

Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For Sole-Source Procurements requiring public notice under OAR 125-247-0275, an Affected Person may protest the determination of the Chief Procurement Officer, or designee, that the Supplies and Services or class of Supplies and Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Chief Procurement Officer or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the Sole-Source Procurement, an Affected Person must deliver Written protest to the Chief Procurement Officer or designee within seven (7) Days after the first date of public notice of the Sole-Source Procurement, unless a different protest period is provided in the public notice of a Sole-Source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Chief Procurement Officer Response. The Chief Procurement Officer or designee must not consider an Affected Person's Sole-Source Procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the Sole-Source Procurement. The Chief Procurement Officer or designee must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer or designee upholds the protest, in whole or in part, the Authorized Agency must not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Chief Procurement Officer's or designee's disposition of a Sole-Source Procurement protest must be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

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125-247-0720

Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a Solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may only protest its exclusion from a tier or step of competition if the Offeror is Responsible and submitted a Responsive Offer and but for the Authorized Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier, step or Phase of competition. For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers, steps or Phases.

(4) Content of Protest. The Affected Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(5) Authorized Agency Response. The Authorized Agency must not consider an Affected Offeror's multi-tiered or multistep Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum under OAR 125-247-0430 reflecting its disposition or cancel the Procurement or Solicitation under OAR 125-247-0660.

(6) Judicial Review. Judicial review of the Authorized Agency's decision relating to a multi-tiered or multistep Solicitation protest must be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0730

Protests and Judicial Review of Solicitations

(1) Protests:

(a) A prospective Offeror may protest the Procurement Process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(b) Contract-Specific Special Procurements. Notwithstanding Section 1(a) of this Rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Authorized Agency not less than ten (10) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest must include a statement of the desired changes to the Procurement Process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Authorized Agency Response. The Authorized Agency must not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Authorized Agency must issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Authorized Agency upholds the protest, in

whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 125-247-0430 or cancel the Procurement or Solicitation under OAR 125-247-0660.

(5) Extension of Closing. If the Authorized Agency receives a protest from a prospective Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Solicitation protest must be in accordance with ORS 279B.405.

(8) Protests and Judicial Review of Qualified Products List Decisions

(a) Purpose. A prospective Offeror may protest the Authorized Agency's decision to exclude the prospective Offeror's Goods from the Authorized Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's qualified products list decision.

(b) Delivery. Unless otherwise stated in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the Authorized Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(c) Content of Protest. The prospective Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(d) The Authorized Agency Response. The Authorized Agency must not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the Authorized Agency upholds the protest, it must include the successful protestor's Goods on the qualified products list.

(e) Judicial Review. Judicial review of the Authorized Agency's decision relating to a qualified products list protest must be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.115, 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0740

Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the Award of a Contract, or the Intent to Award a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the notice of intent to award the Contract.

(3) Content of Protest. An Offeror's Written protest must specify the grounds for the protest to be considered by the Authorized Agency pursuant to ORS 279B.410(2).

(4) Authorized Agency Response. The Authorized Agency must not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either award the Contract to the successful protestor or cancel the Procurement or Solicitation.

(5) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Contract Award protest must be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.410, 270B.415
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

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125-247-0750

Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by an Authorized Agency, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.420
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0760

Review of Prequalification and Debarment Decisions

Review of the Authorized Agency's prequalification and Debarment decisions must be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.425
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0770

Dispute Resolution

Agencies are authorized to use dispute resolution pursuant to OAR 125-246-0580.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-247-0800

Contract Amendments

Authorized Agencies must follow the sections of OAR 125-246-0560 related to Supplies and Services.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.065(5)(a), 279A.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0100

Application; Effective Date

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 248 apply to:

(a) The screening and selection of Architects, Engineers, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services and Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(c) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(3) Delegation of authority for these contracts must be pursuant to OAR 125-246-0170.

(4) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, OAR 125-248-0210, and the Formal Selection Procedure, OAR 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(5) Effective Date. These Division 248 Rules become effective on March 1, 2005, and apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0110

Definitions

The definitions for this Division 248 are found in OAR 125-246-0110, except the following definitions apply only to this division 248:

(1) "Agreement-To-Agree" means a Written document of understanding negotiated between an Authorized Agency and the Consultant for the provision of services on a single Project, or on more than one project, which contains contract clauses that will apply to future Contracts during its term to be established through Work orders and which will incorporate the required and applicable clauses of the Agreement-To-Agree.

Agreement-To-Agree documents are also referred to as Price Agreements as defined in OAR 125-246-0110.

(2) "Consultant" means an Architect, Engineer, Land Surveyor, or Provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(3) "Design-Build" means an alternative contracting method for the construction of Public Improvements where construction and design services are combined in a single Contract.

(4) "Direct Appointment" or "Direct Appointment Procedure" means the Consultant selection method provided for under OAR 125-248-0200.

(5) "Estimated Fee" means an Authorized Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract Solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee must not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.247.

(6) "Formal Selection" or "Formal Selection Procedure" means the Consultant selection method provided for under OAR 125-248-0220.

(7) "Informal Selection" or "Informal Selection Procedure" means the Consultant selection method provided for under OAR 125-248-0210.

(8) "Mixed Contract" means a Contract that requires the Consultant to perform certain and also provide the Authorized Agency with other kinds of Supplies and Services; the classification of a Mixed Contract as a contract for Architectural, Engineering and Land Surveying Services and Related Services is determined by the Mixed Contract's predominant purpose. For a Mixed Contract to be considered a contract for Architectural, Engineering and Land Surveying Services and Related Services, the majority of the payments made or received under the Mixed Contract must be for Architectural, Engineering and Land Surveying Services and Related Services.

(9) "Project" means all components of an Authorized Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering and Land Surveying Services and Related Services under a Contract.

(10) "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(11) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency to which Consultants respond with a description of their experience with and qualifications for the Architectural, Engineering and Land Surveying Services and Related Services described in the RFQ and from which the Authorized Agency creates a list of Consultants who are qualified to perform those services, but which is not intended to result in a Contract between a Consultant and an Authorized Agency.

(12) "Record of Past Performance" means information including but not limited to price and cost data from previous Projects, performance data from previous Projects, quality of Work, ability to meet schedules, cost control methods and Contract Administration.

(13) "Resources Available" means information indicating, staff, specialized services, or other resources available for the Project described in the RFQ or RFP.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0120

List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering and Land Surveying Services and Related Services may annually submit a statement describing their qualifications and related performance information to Authorized Agencies' office addresses. Authorized Agencies may use this information to create a list of prospective Consultants and which will be updated at least once every two years.

(2) Authorized Agencies may compile and maintain a record of each Consultant's performance under contracts with the particular Authorized Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505) Authorized Agencies may make available copies of the records.

(3) Authorized Agencies must keep a record of all Contracts and must make these records available to the public consistent with the requirements

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of the Oregon Public Records Law (ORS 192.410 through 192.505). Authorized Agencies must include the following information in the record:

- (a) Locations throughout the State where the Contracts are performed;
- (b) Consultants' principal office address and all office addresses in the State of Oregon;
- (c) Consultants' direct expenses on each Contract whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and
- (d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0130

Applicable Selection Procedures; Pricing Information

(1) When selecting the most qualified Consultants to perform Architectural, Engineering or Land Surveying Services, Authorized Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) must follow the applicable selection procedure under either OAR 125-248-0210 (Informal Selection Procedure), 125-248-0220 (Formal Selection Procedure), or 125-248-0200 (Direct Appointment Procedure). Authorized Agencies subject to this Section (1) must not solicit or use pricing policies and proposals or other pricing information to determine a Consultant's compensation until after the Authorized Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Authorized Agencies selecting Consultants to perform Related Services must follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Authorized Agencies must follow the applicable selection procedure under 125-248-0210 (Informal Selection Procedure), 125-248-0220 (Formal Selection Procedure) or 125-248-0200 (Direct Appointment Procedure).

(b) When selecting a Consultant on the basis of price and qualifications, Authorized Agencies must follow the applicable selection procedure under OAR 125-248-0210 (Informal Selection Procedure), 125-248-0220 (Formal Selection Procedure) or 125-248-0200 (Direct Appointment Procedure). For these types of selections, Authorized Agencies subject to this Section (2) may request and consider a Proposer's pricing policies, proposals and other pricing information submitted with a Proposal as part of the evaluation.

(3) In applying these Rules, Authorized Agencies must support the State's goal of promoting a sustainable economy in the rural areas of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0200

Direct Appointment Procedure

(1) Authorized Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

- (a) The Authorized Agency finds that an Emergency exists; or
- (b) The Estimated Fee to be paid under the Contract does not exceed \$25,000; or
- (c) The Architectural, Engineering and Land Surveying Services and Related Services to be performed under the Contract:

(A) Consist of, or are related to, Architectural, Engineering and Land Surveying Services and Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services and Related Services rendered under the earlier Contract;

(B) The Authorized Agency used either the formal selection procedure under OAR 125-248-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; and

(C) For Related Services only, the Estimated Fee to be made under the Contract does not exceed \$150,000; or

(2) The Authorized Agencies may select Consultants for Contracts under this Rule from the following sources:

(a) The Authorized Agency's list of Consultants that is created under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(b) Another Authorized Agency's list of Consultants that the Authorized Agency has created under OAR 125-248-0120 (List of Interested Consultants; Performance Record), with Written consent of that Authorized Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services and Related Services that Authorized Agencies reasonably can identify under the circumstances.

(3) The Authorized Agency must direct Negotiations with Consultants selected under this Rule toward obtaining Written agreement on:

- (a) Consultant's performance obligations and performance schedule;
- (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services and Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services and Related Services; and
- (c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110, 279C.115
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0210

Informal Selection Procedure

(1) Authorized Agencies may use the informal selection procedure described in this Rule to obtain a Contract if the Estimated Fee is expected to not exceed \$150,000.

(2) Authorized Agencies using the informal selection procedure must:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering and Land Surveying Services and Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services and Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which most qualified Consultant will be selected. Selection Criteria may include:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services and Related Services described in the Request for Proposals within the applicable time limits, including the current and projected Workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services and Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services and Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services and Related Services, including but not limited to quality of Work, ability to meet schedules, cost control methods and Contract Administration practices;

(iv) Approach to Architectural, Engineering and Land Surveying Services and Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of Work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

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(viii) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(ix) A statement directing Proposers to the protest procedures set forth in these Rules; and

(x) For Related Services only, pricing policies, proposals and other pricing information.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(B) Another Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants the Authorized Agency can reasonably locate that offer the desired Architectural, Engineering and Land Surveying Services and Related Services, separately or in any combination thereof.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If the Authorized Agency does not cancel the RFP after it reviews and ranks each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services and Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services and Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(4) The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this Rule, until Negotiations result in a Contract. If Negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular informal Solicitation and thereafter may proceed with a new informal Solicitation under this Rule or proceed with a formal Solicitation under OAR 125-248-0220 (Formal Selection Procedure).

(5) The Authorized Agency must terminate the informal selection procedure and proceed with the formal selection procedure under OAR 125-248-0220 if the scope of the anticipated Contract is revised during Negotiations so that the Estimated Fee will exceed \$150,000. Notwithstanding the foregoing, the Authorized Agency may continue Contract Negotiations with the Proposer selected under the informal selection procedure if the Authorized Agency makes Written determinations that contracting with that Proposer will:

(a) Promote efficient use of the Authorized Agency's resources and result in substantial cost savings to the Authorized Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(6) The Authorized Agency must comply with applicable preferences for recycled materials, pursuant to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324.

(7) Minority, Women and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0220

Formal Selection Procedure

(1) General. Subject to OAR 125-248-0130 (Applicable Selection Procedures; Pricing Information), Authorized Agencies must use the formal selection procedure described in this Rule to select Consultants if the

Consultants cannot be selected under either OAR 125-248-0200 (Direct Appointment Procedure) or under 125-248-0210 (Informal Selection Procedure). The Formal Selection Procedure may otherwise be used at Authorized Agencies' discretion.

(2) Advertisement. Authorized Agencies using the formal selection procedure must obtain Contracts through public advertisement of a Request for Proposals or a Request for Qualifications followed by a Request for Proposals.

(a) The Authorized Agency must advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to: local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences. In the alternative, an Authorized Agency may use ORPIN pursuant to OAR 125-246-0500, provided the Authorized Agency follows a procedure for electronic advertisement approved by the State Procurement Office or its delegatee.

(A) The Authorized Agency must publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.

(B) The Authorized Agency must include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services and Related Services the Authorized Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFQ.

(b) The Authorized Agency may also send notice of the RFP or RFQ directly to all Consultants on the Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Authorized Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Authorized Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services and Related Services described in the RFQ.

(a) The Authorized Agency must include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Authorized Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services and Related Services the Authorized Agency seeks for the Project;

(C) The deadline for submitting a response to the RFQ;

(D) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services and Related Services the Authorized Agency seeks;

(E) The RFQ evaluation criteria, including weights or points applicable to each criterion;

(F) A statement whether or not the Authorized Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services and Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(G) A Statement that Proposers responding to the RFQ do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFQ.

(b) The Authorized Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering or Land Surveying Services or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services and Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other Authorized Agency;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering and Land Surveying Services and

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Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;

(E) Approach to Architectural, Engineering and Land Surveying Services and Related Services described in the RFQ and design philosophy, if applicable;

(F) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(G) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Any other information the Authorized Agency deems reasonable and necessary to evaluate Consultants' qualifications; and

(I) For Related Services only, pricing policies, proposals and other pricing information.

(c) RFQ Evaluation Committee. The Authorized Agency must establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the Solicitation criteria. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering, or land surveying, Related Services, construction or Public Contracting. If an Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Authorized Agency must designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The Authorized Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:

(A) Requiring Consultants responding to an RFQ to achieve a Threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications; or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Authorized Agency must establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The Authorized Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Authorized Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the Authorized Agency's short list established under Section (3) of this Rule if the Consultant or any of Consultant's principals, partners or associates is a member of the Authorized Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the Authorized Agency must provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Authorized Agencies must use the procedure described in Section (4) of this Rule when issuing an RFP for a Contract described in Section (1) of this Rule.

(a) RFP Required Contents. Authorized Agencies using the formal selection procedure must include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services and Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If the Authorized Agency does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:

(i) Proposer's availability and capability to perform the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering and Land Surveying Services and Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has available to perform the Architectural, Engineering and Land Surveying Service, and Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in this Section;

(v) The proportion of time Proposer estimates that the staff referenced in this Section, would spend on the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP;

(vi) Proposer's demonstrated ability to successfully complete similar Architectural, Engineering and Land Surveying Services and Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality Work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services and Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services and Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP;

(xiii) Any other criteria that the Authorized Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services and Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers;

(xiv) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(xv) Whether interviews are possible and if so, the weight or points applicable to the potential interview;

(xvi) The date and time Proposals are due, and the delivery location for Proposals;

(xvii) Reservation of the right to seek clarifications of each Proposal;

(xviii) Reservation of the right to negotiate a final Contract that is in the best interest of the Authorized Agency;

(xix) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Authorized Agency;

(xx) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(xxi) A statement directing Proposers to the protest procedures set forth in these Rules;

(xxii) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(xxiii) A statement whether or not the Authorized Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(xxiv) A request for any information the Authorized Agency deems reasonably necessary to permit the Authorized Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP;

(xxv) A sample form of the Contract; and

(xxvi) For Related Services only, pricing policies, proposals and other pricing information.

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(b) RFP Evaluation Committee. The Authorized Agency must establish a committee of at least three individuals to review score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Authorized Agency may include the same members who served on the RFQ evaluation committee. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering, land surveying, related services, construction or Public Contracting. At least one member of the evaluation committee must be an Authorized Agency employee. If the Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Authorized Agency must designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if the Proposer or any of Proposer's principals, partners or associates is a member of the Authorized Agency's RFP evaluation committee for the Contract.

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award up to the number of points indicated in the RFP for the anticipated interview.

(C) The evaluation committee must provide to the Authorized Agency the results of the scoring and ranking for each Proposer.

(c) Initial Negotiations. If the Authorized Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services and Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services and Related Services; and

(C) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(d) Subsequent Negotiations. The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with Section 4(c) of this Rule, until Negotiations result in a Contract. If Negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular formal Solicitation. Nothing in this Rule precludes the Authorized Agency from proceeding with a new formal Solicitation for the same Architectural, Engineering and Land Surveying Services and Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0230

Ties Among Proposers

(1) If an Authorized Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Authorized Agency may select a candidate through any process that the Authorized Agency believes will result in the best value for the Authorized Agency, taking into account the scope, complexity and nature of the Architectural, Engineering, and Land Surveying Services and Related Services. The process must instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Authorized Agency and Proposers and must protect the integrity of the Public Contracting process. Once a tie is broken, the Authorized Agency and the selected Proposer must proceed with Negotiations under OAR 125-248-0210(3) or 125-248-0220(4)(c), as applicable.

(2) If an Authorized Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are equal in terms of price or are equal in terms of price and qualifications, then the Authorized

Agency must follow the procedure set forth in OAR 125-247-0300, Preferences for Oregon Supplies and Services; Nonresident Bidders, to select the Consultant.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0240

Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a Written protest of anything contained in an RFP and may request a change to any provision, Specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications or Contract terms. The Authorized Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection. The Authorized Agency must provide to all Proposers a copy of the selection notice that the Authorized Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services and Related Services described in the RFP. The Authorized Agency will not consider any protest that is submitted after the submission deadline.

(3) Decision. A duly authorized representative of the Authorized Agency must resolve all timely submitted protests within a reasonable time following the Authorized Agency's receipt of the protest and once resolved, must promptly issue a Written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Authorized Agency must revise the RFP accordingly and must re-advertise the RFP in accordance with these Rules.

(4) Review. Proposers may be able to obtain judicial review of the Authorized Agency's protest disposition pursuant to ORS 183.484.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0250

RFP or RFQ Cancellation; Costs

An Authorized Agency may cancel a Solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability to the Authorized Agency at anytime after issuing an RFP or RFQ, if the Authorized Agency believes it is in the public interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0260

Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) Definition. For purposes of this Rule, "Local Contracting Agency" is defined in ORS 279A.010(n) and means a local government or special government body authorized by law to conduct a Procurement. "Local Contracting Agency" includes any Person authorized by a Local Contracting Agency to conduct a Procurement on behalf of the Local Contracting Agency.

(2) Generally. If a Local Contracting Agency requires a Consultant to perform Architectural, Engineering and Land Surveying Services and Related Services for a Public Improvement owned and maintained by that Local Contracting Agency, and an Authorized Agency will serve as the lead Authorized Agency and will enter into Contracts with Consultants for Architectural, Engineering and Land Surveying Services and Related Services for that Public Improvement, the Authorized Agency must utilize the two-tiered selection process described below to obtain these Contracts with Consultants.

(3) Tier One. The Authorized Agency must, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that

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was issued under the applicable selection procedures described in OAR 125-248-0210 (Informal Selection Procedure) and 125-248-0220 (Formal Selection Procedure), or from among Consultants identified under OAR 125-248-0200 (Direct Appointment Procedure), and must notify the Local Contracting Agency of the Consultants selected.

(4) Tier Two. The Local Contracting Agency must either:

(a) Select a Consultant from the list of Proposers provided from the Authorized Agency to perform the Architectural, Engineering and Land Surveying Services and Related Services for Local Contracting Agency's Public Improvement; or

(b) Select a Consultant to perform the Architectural, Engineering and Land Surveying Services and Related Services for the Local Contracting Agency's Public Improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these Division 248 Rules.

(5) Negotiations. The Authorized Agency must thereafter begin Contract Negotiations with the selected Consultant in accordance with the Negotiation provisions in OAR 125-248-0220(4)(c).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.110, 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0300

Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) Contract Forms. The State Procurement Office or its delegatee must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering and Land Surveying and Related Services Contracts. These forms can be obtained from the State Procurement Office. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain State Procurement Office approval prior to using the revised Contract or Amendment form. In using the standard Contract form and standard Amendment form, Authorized Agencies must abide by the following Contract provisions:

(2) Except as otherwise allowed by law, the Authorized Agency must not enter into any Contract in which the compensation provisions expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(3) Except as otherwise allowed by law, an Authorized Agency must not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel Working on the Project and reimbursable expenses incurred during the performance of Work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering, and Land Surveying, and Related Services required under the Contract.

(4) Except in cases of Emergency or in the particular instances noted in the Subsections below, the Authorized Agency must not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Authorized Agency from any Consultant under a Contract with an Authorized Agency to perform Architectural, Engineering, and Land Surveying, and Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering, Land Surveying, or Related Services under a Contract with to perform Design-Build services as defined in OAR 125-249-0010(3) or Energy Savings Performance Contract services (see OAR 125-249-0670 and 125-249-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such Contracts.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0310

Contract Reinstatements; Effect of Material Alteration or Delay of Project

(1) Compensation. When a Contract expires and is reinstated pursuant to this Rule, the Authorized Agency may compensate the Consultant for Architectural, Engineering and Land Surveying and Related Services performed in the interim between the expiration of the Original Contract and the reinstatement.

(2) Agreement to Agree Reinstatement. When an Agreement-To-Agree expires and is reinstated pursuant to this Rule, the Authorized Agency may compensate the Consultant for Architectural, Engineering and Land Surveying and Related Services performed under a Contract resulting from a Work order issued under the Agreement-To-Agree, during the time period between the expiration of the Agreement-To-Agree and the reinstatement.

(3) Reasons. Contracts or Agreements-To-Agree may be reinstated for any of the following reasons:

(a) When an administrative error or oversight is discovered, the Authorized Agency may submit, for approval, an Amendment to reinstate the contract to the Department and, if applicable, the Attorney General within a ninety (90) days after the contract expiration date; or

(b) If the project for which the Consultant has been selected and awarded becomes inactive, or is terminated, whether due to project phasing, and insufficient appropriations, separately or combined, the Authorized Agency may, if the project is reactivated, retain the same Consultant to complete the Architectural, Engineering and Land Surveying and Related Services required under the contract if the Authorized Agency makes informal Written findings that retaining the Consultant:

(A) Is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering and Land Surveying and Related Services Contracts;

(B) Will result in substantial cost savings to the Authorized Agency; and

(C) Is in the best interest of the Authorized Agency.

(4) Effect of Material Alteration or Delay of Project. If the Authorized Agency delays or delays and then materially alters a Project for which the Authorized Agency has entered a Contract, and the Contract has expired or been terminated, the Authorized Agency may enter a Contract with the same Consultant to perform either the same Architectural, Engineering and Land Surveying and Related Services described in the Contract or Architectural, Engineering and Land Surveying and Related Services as amended to reflect the Authorized Agency's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the Authorized Agency makes Written findings that entering a Contract with Consultant:

(a) Will promote efficient use of public funds and resources and result in substantial cost savings;

(b) Will not encourage favoritism in the contracting process; and

(c) Will not substantially diminish competition for future Contracts with Consultants.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279C.110, 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0330

Special Contract Processes

(1) Consultants for Agreements-To-Agree must be selected, and the Authorized Agency must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner:

(a) The Authorized Agency selects one or more Consultants under the applicable provisions of OAR 125-248-0200, 125-248-0210, or 125-248-0220.

(b) The Authorized Agency develops a document that includes the general provisions required under 125-248-300 and a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.

(c) When the Authorized Agency selects more than one Consultant under the Agreement-To-Agree Solicitation process, the Authorized Agency must identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services under the Agreements-To-Agree.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the

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predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under these Division 248 rules, so long as the requirements of OAR 125-248-300 are not violated. Otherwise, the selection process will require an exemption from competitive bidding under OAR 125-249-0335, unless the Design-Build Contract is to be awarded to the responsible bidder submitting the lowest responsive Bid.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110, 279C.115
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-248-0340

Contract Amendments

(1) An Authorized Agency may amend any Contract for Architectural, Engineering and Land Surveying and Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the scope of services contemplated under the Request for Proposals and that the Amendment would not materially impact the field of competition for the services described in the Request for Proposals. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Request for Proposals if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the Request for Proposals were re-issued to include the additional services.

(2) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(3) All Amendments to Contracts must be in Writing, must be signed by an authorized representative of the Consultant and the Authorized Agency and must receive all required approvals before the Amendments will be binding on the Authorized Agency.

(4) Contracts or Agreements-To-Agree entered into under this Rule may be amended, subject to the following conditions:

(a) The Architectural, Engineering and Land Surveying or Related Services to be provided under the Amendment are included within or directly related to, the scope of services that were described in the original Solicitation Document; and

(b) Each such Amendment is in Writing, signed by an authorized representative of the Consultant and the Authorized Agency, and receives all necessary approvals before it becomes binding on the State of Oregon.

(5)(a) A Contract may also be amended to reflect necessary changes if the scope of the project has been materially altered due to unforeseen or unavoidable circumstances that have arisen in the course of performing the services that could not have been anticipated and subject to the following conditions:

(b) Informal Written findings are submitted with the Amendment to the Authorized Agency's officer with contract approval authority containing the following:

(A) A description of the circumstances that require the necessary contract changes;

(B) A finding that the Amendment is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering, and Land Surveying and Related Services Contracts;

(C) A finding that the Amendment will result in substantial cost savings to the Authorized Agency; and

(D) A finding that the Amendment is in the best interest of the Authorized Agency; and

(E) Each such Amendment is in Writing, signed by an authorized representative of the Consultant and the Authorized Agency, and receives all necessary approvals before it becomes binding on the State of Oregon.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0100

Application; Federal Override; Effective Date

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 249 apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that

are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified. In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 249 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This Division 249 of the Rules specifically addresses matters covered in ORS Chapter 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in Division 248.

(3) Pursuant to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these Rules.

(4) These Division 249 Rules become effective on March 1, 2005, and apply only to the above-described Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0110

Policies

In addition to the policies of the Code as set forth in ORS 279A.015, the policy on competition as provided in ORS 279C.300 applies to this Division, except as provided in ORS 279C.335. The policy on least-cost for Public Improvements applies as described within ORS 279C.305.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.300, 279C.305
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0120

Definitions

The definitions for this division 249 are found in OAR 125-246-0650, except the following Rule and definitions apply only to this division 249: Capitalized terms used in this division 249 of the Rules must have the meaning set forth below or within the Sections in which they appear (such as the Section on Alternative Contracting Methods beginning at OAR 125-249-0600, and if not defined there, then the meaning set forth in Division 246 of the Rules, and if not defined there, then the meaning set forth in the Code at ORS 279A.010 (general definitions) or 279C.330 (for the term Findings).

(1) "Competitive Range" means the number of Proposers with whom the Authorized Agency will conduct Discussions or Negotiations if the Authorized Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-249-0390. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Authorized Agency in accordance with OAR 125-249-0390.

(2) "Conduct Disqualification" means a Disqualification pursuant to ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with an Authorized Agency for a period of time. Disqualification may be a Conduct Disqualification or DBE Disqualification. An Authorized Agency is authorized to disqualify a Person in accordance with OAR 125-249-0370.

(4) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 125-249-0480.

(5) "Notice" means any of the alternative forms of public announcement of Procurements, as described OAR 125-249-0210.

(6) "Responsible Offeror" (also, Responsible Bidder or Responsible Proposer, as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 125-249-0390(2) and that has not been disqualified by the Authorized Agency under OAR 125-249-0370. When used alone, "Responsible" means meeting the aforementioned standards.

(7) "Responsive Offer" (also, Responsive Bid or Responsive Proposal, as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects

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with applicable Solicitation procedure and requirements and the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0130

Competitive Bidding Requirement

An Authorized Agency must solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see OAR 125-249-0600 to 125-249-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-049-0140

Contracts for Construction Other Than Public Improvements

(1) Procurement Under ORS Chapter 279B. Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(5) and OAR 125-249-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 249 Rules.

(2) Application of ORS Chapter 279C. Non-procurement provisions of ORS chapter 279C and these division 49 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 655, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.320
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. Pursuant to ORS 279C.335(5) and this Rule, an Authorized Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration must be made at an administrative level consistent with the Authorized Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f), and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration must exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and must thereafter be kept on file as a public record.

(2) Competition for Contracts. The Authorized Agency must ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers, or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the Authorized Agency considers reasonable in responding to the Emergency.

(3) Contract Award. Any Contract awarded under this Rule must be Awarded within 60 Days after declaration of the Emergency, unless an extension is granted under ORS 279C.335(5).

(4) Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(5) Contract Modification. Emergency Contracts may be modified by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(6) Excusing Bonds. Pursuant to ORS 279C.380(4) and this Rule, the Emergency declaration may also state that the Authorized Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the Procurement.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.335(5), 279C.380(4)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) General. Public Improvement Contracts estimated by the Authorized Agency not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this Rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.

(3) Request for Quotes. Authorized Agencies must utilize Written requests for quotes whenever reasonably practicable. Written request for quotes must include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Authorized Agency must state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) Number of Quotes; Record Required. Authorized Agencies must seek at least three competitive quotes, and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Authorized Agency must make a Written record of the effort made to obtain those quotes.

(5) Award. If awarded, the Authorized Agency must Award the Contract to the prospective Contractor whose quote will best serve the interests of the Authorized Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Authorized Agency must make a Written record of the basis for Award.

(6) Price Increases. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by the Authorized Agency issuance of a Change to the Work or Amendment, pursuant to OAR 125-249-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the Original Contract amount when an Authorized Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the Original Contract amount, when an Authorized Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and an Authorized Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in Section (1) are specifically authorized by the Code, when made in accordance with this Rule. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from competitive Bidding.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this Rule, the Solicitation Document must include the following:

(a) General Information:

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(C) That statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

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(D) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(E) The name and title of the Authorized Agency Person designated for receipt of Offers and contact Person (if different);

(F) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or electronic means (See OAR 125-249-0300 regarding Facsimile Bids or Proposals and OAR 125-249-0310 regarding electronic Procurement);

(G) The time, date and place of Opening;

(H) The time and date of Closing after which an Authorized Agency will not accept Offers, which time must be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is proscribed, Authorized Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Authorized Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Authorized Agency must designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 125-249-0360. For timing issues relating to Addenda, see OAR 125-249-0250;

(I) The office where the Specifications for the Work may be reviewed;

(J) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder", as defined in ORS 279A.120;

(K) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the Authorized Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.";

(L) A statement that the Authorized Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 125-249-0230;

(M) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(N) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-249-0440(3));

(O) How the Authorized Agency will notify Offerors of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-249-0250); and

(P) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 125-249-0360.

(b) Evaluation Process:

(A) A statement that the Authorized Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the Authorized Agency's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Authorized Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and OAR 125-249-0620), along with the process the Authorized Agency will use to determine acceptability of the Work;

(D) If the Solicitation Document is an Invitation to Bid, the Authorized Agency must set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors must be objective, reasonable estimates based upon information the Authorized Agency has available concerning future use;

(E) If the Solicitation Document is a Request for Proposals, the Authorized Agency must refer to the additional requirements of OAR 125-249-0650; and

(c) Contract Provisions. The Authorized Agency must include all contract terms and conditions, including warranties, insurance and bonding requirements, that the Authorized Agency considers appropriate for the

Public Improvement project. The Authorized Agency must also include all applicable contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(ix) Environmental and natural resources regulations (279C.525);

(I) Payment for medical care and attention to employees (ORS 279C.530(1));

(d) A contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who Work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(A) Maximum hours, holidays and overtime (ORS 279C.540);

(B) Time limitation on claims for overtime (ORS 279C.545);

(C) Prevailing wage rates (ORS 279C.800 to 279C.870);

(D) Fee paid to BOLI (ORS 279C.830);

(E) Retainage (ORS 279C.550 to 279C.570);

(F) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(G) Contractor's relations with subcontractors (ORS 279C.580);

(H) Notice of claim (ORS 279C.605);

(I) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(J) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Authorized Agency's prior Written consent. Unless otherwise agreed by the Authorized Agency in Writing, such consent must not relieve the Contractor of any obligations under the Contract. Any assignee or transferee must be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Authorized Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the Authorized Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Authorized Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.110(4), 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005, 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0210

Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. An Authorized Agency must furnish "Notice," as set forth below in Section (2), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice must indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document.

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(2) Advertising. Pursuant to ORS 279C.360 and this Rule, an Authorized Agency must advertise on ORPIN every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Chief Procurement Officer of the State Procurement Office has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335:

(a) The Authorized Agency must furnish Notice using ORPIN and may use any additional method determined to foster and promote competition, including:

(A) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(B) Placing a Notice on the Authorized Agency's Internet World Wide Web site; or

(C) Publishing a Notice in a newspaper of general circulation as described in ORS 279C.360(1).

(b) Authorized Agencies must publish advertisements utilizing ORPIN as required under Sections (2)(a). Authorized Agencies may also publish advertisements utilizing other forms of Electronic Advertisement, such as Authorized Agency and general circulation web sites, as permitted under Section (2)(a). Authorized Agencies may also publish advertisements utilizing at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Authorized Agency determines to be necessary or desirable to foster and promote competition.

(c) An Authorized Agency may publish by Electronic Advertisement if the Authorized Agency posts in its business office a notice that the Authorized Agency will publish advertisements for Offers by Electronic Advertisement. The notice must include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the Authorized Agency publishes Electronic Advertisements or alternatively, to the Web location where the Authorized Agency publishes information on accessing the Electronic Advertisement via Telnet; and

(d) In addition to the Authorized Agency's publication required under Subsection 2(a) or 2(b), the Authorized Agency must also publish advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(e) All advertisements for Offers must set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, that must not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Authorized Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(3) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(4) Minority, Women Emerging Small Business. State Authorized Agencies must provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000. See ORS 200.035.

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

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.360, 200.035

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0220

Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this Rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. An Authorized Agency may, by rule, resolution, ordinance or other regulation, require mandatory prequalification of Offerors on forms prescribed by the State Procurement Office. An Authorized Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when an Authorized Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Authorized Agency must not consider an

Offer from a Person that is not prequalified if the Authorized Agency required prequalification.

(b) Permissive Prequalification. An Authorized Agency may prequalify a Person for the Authorized Agency's Solicitation list on forms prescribed by the State Procurement Office, but in permissive prequalification the Authorized Agency must not limit distribution of a Solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Department to perform Contracts, the Offeror must be rebuttably presumed qualified to perform similar Work for other Authorized Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Authorized Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Authorized Agency. (See OAR 125-249-0390(2) regarding standards of responsibility).

(4) Notice Of Denial. If a Person fails to prequalify for a mandatory prequalification, the Authorized Agency must notify the Person and specify the reasons under Section (3) of this Rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.430, 279C.435

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0230

Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape Contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the offer is made.

(3) Noncomplying Entities. The Authorized Agency must deem an Offer received from a Person that fails to comply with this rule nonresponsive and must reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding Authorized Agencies.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 671.530, 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0240

Pre-Offer Conferences

(1) Purpose. An Authorized Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Authorized Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a Person identifying themselves as a representative of an offering firm is present.

(3) Scheduled Time. If an Authorized Agency holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by an Authorized Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Authorized Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Authorized Agency Announcement. The Authorized Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 125-249-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.370

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

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125-249-0250

Addenda to Solicitation Documents

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda or in the Solicitation Document.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda consistent with the standards of Notice set forth in OAR 125-249-0210(1). The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available (see, OAR 125-249-0200(1)(a)(N)). For example, "The Authorized Agency will not mail notice of Addenda, but will publish notice of any Addenda on the Authorized Agency's Web site. Addenda may be downloaded off the Authorized Agency's Web site. Offerors should frequently check the Authorized Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions. The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Authorized Agency must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-249-0260, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 125-249-0260, whichever date is later. The Authorized Agency must consider only an Offeror's request for change or protest to the Addendum; the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Authorized Agency's receipt of request for change or protests as set forth in OAR 125-249-0260(2) and (3).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0260

Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(2) Request for Change:

(a) Delivery. An Offeror may request in Writing a change to the Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Authorized Agency not less than 10 Days prior to Closing;

(b) Content of Request for Change:

(A) An Offeror's Written request for change must include a statement of the requested change(s) to the contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror must mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Authorized Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the contract terms and conditions, including any Specifications.

(B) An Offeror must mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) The Authorized Agency Response. The Authorized Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Authorized Agency must provide notice to the applicable Person if it entirely rejects a protest. If the Authorized Agency agrees with the Person's request or protest, in whole or in part, the Authorized Agency must either issue an Addendum reflecting its determination under OAR 125-249-0260 or cancel the Solicitation under 125-249-0270.

(5) Extension of Closing. If an Authorized Agency receives a Written request for change or protest from an Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.345, 279C.365
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0270

Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Solicitation for good cause if the Authorized Agency finds that cancellation is in the public interest. The Authorized Agency's reasons for cancellation must be made part of the Solicitation file.

(2) Notice of Cancellation. If the Authorized Agency cancels a Solicitation prior to Opening, the Authorized Agency must provide Notice of cancellation in accordance with OAR 125-249-0210(1). Such notice of cancellation must:

(a) Identify the Solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any reSolicitation.

(3) Disposition of Offers:

(a) Prior to Offer Opening. If the Authorized Agency cancels a Solicitation prior to Offer Opening, the Authorized Agency will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency will open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Authorized Agency rejects all Offers, the Authorized Agency will retain all such Offers as part of the Authorized Agency's Solicitation file.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0280

Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Bidding, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-249-0410. The Authorized Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) In competitive Proposals, the Solicitation Document must describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without Negotiation, as in the case of competitive Bidding, or whether Offers are subject to Discussion, Negotiation or otherwise are not to be considered as final offers. See OAR 125-249-0650 on Requests for Proposals and OAR 125-249-0290 on Bid or Proposal Security.

(2) Responsive Offer. An Authorized Agency may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to OAR 125-249-0650, an Offeror must not make an Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and that they accept and agree to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative

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terms under OAR 125-249-0650, the Offeror's Offer includes the non-negotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

(5) Instructions. Offerors must submit and Sign their Offers in accordance with the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. Offerors must submit their Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. Offerors must provide the Authorized Agency with all documents and descriptive literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the Authorized Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Authorized Agency must not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Authorized Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers:

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offerors are responsible for ensuring that the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365, 279C.375
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0290

Bid or Proposal Security

(1) Security Amount. If an Authorized Agency requires Bid or Proposal security, it must be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. An Authorized Agency must not use Bid or Proposal security to discourage competition. The Authorized Agency must clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror must forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(4) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless an Authorized Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Authorized Agency must require Bid security for its Solicitation of Bids for Public Improvements. The Authorized Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Authorized Agencies may require Proposal security in RFPs when Award of a Public Improvement Contract may be made without Negotiation following receipt of a Firm Offer as described in OAR 125-249-0280(1)(b). See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. An Authorized Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. An Authorized Agency must return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds have been provided, or after all Offers have been rejected. The Authorized Agency may return the Bid or Proposal security of unsuccessful Offerors prior to award if the return

does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365, 279C.375
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0300

Facsimile Bids and Proposals

(1) The Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency must not authorize facsimile Offers unless the Authorized Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

- (a) To receive, identify, record and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer for Bids or Proposals, the Authorized Agency must include in the Solicitation Document (other than in a request for quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Authorized Agency reserves the right to award the Contract solely on the basis of the facsimile Offer. However, upon the Authorized Agency's request the apparent successful Offeror must promptly submit its complete original Signed Offer.";

(e) The data and compatibility characteristics of the Authorized Agency's receiving facsimile machine as follows:

- (A) Telephone number; and
- (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

- (A) Receipt of garbled or incomplete documents;
- (B) Availability or condition of the receiving facsimile machine;
- (C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0310

Electronic Procurement

(1) General. Authorized Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that an Authorized Agency desires to allow Electronic Offers for a Public Improvement Contract, it must first promulgate supporting procedures substantially in conformance with OAR 125-247-0330 (Electronic Procurement under ORS chapter 279B), taking into account ORS chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this Rule must be construed as prohibiting Authorized Agencies from making Procurement Documents for Public

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Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0320

Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the Authorized Agency in accordance with OAR 125-249-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Authorized Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

(b) The Authorized Agency may release an unopened Offer withdrawn under Subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark;

(c) The Offeror must mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Authorized Agency must include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.360(2), 279C.365, 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. An Authorized Agency must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Authorized Agency must not open the Offer or modification upon receipt, but must maintain it as confidential and secure until Opening. If the Authorized Agency inadvertently opens an Offer or a modification prior to the Opening, the Authorized Agency must return the Offer or modification to its secure and confidential state until Opening. The Authorized Agency must document the resealing for the Procurement File in accordance with OAR 125-246-0355 (e.g. "The Authorized Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. An Authorized Agency must publicly open Offers including any modifications made to the Offer pursuant to OAR 125-249-0320. In the case of Invitations to Bid, to the extent practicable, the Authorized Agency must read aloud the name of each Bidder, the Bid price(s), and such other information as the Authorized Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Authorized Agency will not read Offers aloud.

(3) Availability. After Opening, the Authorized Agency must make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Authorized Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Authorized Agency determines such designation is not in accordance with applicable law, the Authorized Agency must make those portions available for public inspection. The Offeror must separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and must be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365, 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0340

Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Authorized Agency must not consider late Offers, withdrawals or modifications except as permitted in OAR 125-249-0350 or 125-249-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365, 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0350

Mistakes

(1) Generally. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) The Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices must prevail over extended prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question of whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new Solicitation.

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(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this Division 249 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0360

First-Tier Subcontractors; Disclosure and Substitution; ITB

(1) Required Disclosure. Within two Working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Authorized Agency to exceed \$100,000, all Bidders must submit to the Authorized Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Price, but at least \$15,000; or
- (b) \$350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this rule applies, the Authorized Agency must:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this Rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Authorized Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this Rule, an Authorized Agency in its Solicitation must:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following: "Instructions for First-Tier Subcontractor Disclosure." Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(A) The subcontractor's name,

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

"THE AUTHORIZED AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 125-040-0017)."

(4) Submission. A Bidder must submit the disclosure form required by this Rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and must not be considered for Contract Award.

(6) Authorized Agency Role. Authorized Agencies must obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Rule. Authorized Agencies must also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Authorized Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors must be made only in accordance with ORS 279C.585. Authorized Agencies

must accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Authorized Agencies do not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.370, 279C.585, 279C.590, 279C.835
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0370

Disqualification of Persons

(1) Authority. An Authorized Agency may disqualify a Person from consideration of Award of the Authorized Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (2) and (4) of this Rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, an Authorized Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Authorized Agency to be so serious as to justify Disqualification. A violation under this Subsection 2(d) may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, an Authorized Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Authorized Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a Contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Authorized Agency must not permit such Person to participate in that Authorized Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, an Authorized Agency may disqualify a Person if the Authorized Agency finds that the Person discriminated against minority, women, or emerging small business enterprises in awarding a subcontract under a Contract with that Authorized Agency.

(2) Notice of Intent to Disqualify. The Authorized Agency must notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice must:

(a) State that the Authorized Agency intends to disqualify the Person;

ADMINISTRATIVE RULES

- (b) Set forth the reasons for the Disqualification;
 - (c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Authorized Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;
 - (d) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (e) Include a reference to the particular Sections of the statutes and rules involved;
 - (f) State the proposed Disqualification period; and
 - (g) State that the Person may be represented by legal counsel.
- (3) Hearing. The Authorized Agency must schedule a hearing upon the Authorized Agency receipt of the Person's timely request. The Authorized Agency must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.
- (4) Notice of Disqualification. The Authorized Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice must contain:

- (a) The effective date and period of Disqualification;
- (b) The grounds for Disqualification; and
- (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the Disqualified Person must notify the Authorized Agency in Writing within three business Days after receipt of the Authorized Agency's notice of Disqualification if the Person intends to appeal the Authorized Agency's decision.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445, 279C.450
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0380

Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See OAR 125-249-0390, and Rules for Alternative Contracting Methods at OAR 125-249-0600 to 125-249-0690.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Authorized Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Authorized Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Authorized Agency, for the purpose of comparing Bids. Authorized Agencies must specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price must govern. See OAR 125-249-0350(2)(b).

(3) Proposal Evaluation Criteria. If the State Procurement Office has exempted the Procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335(1), and has directed the Authorized Agency to use an Alternative Contracting Method under ORS 279C.335(3), the Authorized Agency must set forth the evaluation criteria in the Solicitation Documents. See OAR 125-249-0650, 125-249-0650, 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0390

Offer Evaluation and Award; Determination of Responsibility

(1) General. If Awarded, the Authorized Agency must Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a). The Authorized Agency may award by item, groups of items or the entire Offer provided such

Award is consistent with the Solicitation Document and in the public interest.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375(2)(b). To be a Responsible Offeror, the Authorized Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. An Authorized Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Authorized Agency must make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 125-249-0370 may be used to determine an Offeror's integrity. The Authorized Agency must make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is qualified legally to contract with the Authorized Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning responsibility, the Authorized Agency must base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Authorized Agency Evaluation. The Authorized Agency must evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Authorized Agency must not evaluate an Offer using any other requirement or criterion.

(4) Offeror Submissions:

(a) The Authorized Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or Workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Authorized Agency must evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Authorized Agency must reject an Offer providing any product that does not meet the Solicitation Document requirements. An Authorized Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(5) Evaluation of Bids. The Authorized Agency must use only objective criteria to evaluate Bids as set forth in the ITB. The Authorized Agency must evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must add a percentage increase to the Bid of a non-resident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, an Authorized Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.

ADMINISTRATIVE RULES

(c) Negotiation Prohibited. The Authorized Agency must not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to award.

(6) Evaluation of Proposals. See OAR 125-249-0650 regarding rules applicable to Requests for Proposals.

(7) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.335, 279C.365, 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0400

Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After Award, the Authorized Agency must make a record showing the basis for determining the successful Offeror part of the Authorized Agency's Solicitation file.

(2) Contents of Award Record for Bids. The Authorized Agency's record must include:

- (a) Bids.
- (b) Completed Bid tabulation sheet; and
- (c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in OAR 125-249-0650, the Authorized Agency's record must include:

- (a) Proposals.
- (b) The completed evaluation of the Proposals;
- (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(4) If the Authorized Agency permitted Negotiations in accordance with 125-249-0650, the Authorized Agency's completed evaluation of the initial Proposals and the Authorized Agency's completed evaluation of final Proposals.

(4) Contract Document. The Authorized Agency must deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person the Authorized Agency must provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Authorized Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites.

(6) Availability of Solicitation Files. The Authorized Agency must make completed Solicitation files available for public review at the Authorized Agency.

(7) Copies from Solicitation Files. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0410

Time for Authorized Agency Acceptance; Extension

(1) Time for Offer Acceptance. An Offeror's Bid, or Proposal submitted as a Firm Offer (see OAR 125-249-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) Extension of Acceptance Time. An Authorized Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Authorized Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.375
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0420

Negotiation With Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and OAR 125-249-0430 when all bids exceed the cost estimate, an Authorized Agency must not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract by change order or Amendment to the Contract in accordance with OAR 125-249-0860.

(2) Requests for Proposals. An Authorized Agency may only conduct Discussions or Negotiations with Proposers in accordance with the requirements of OAR 125-249-0650.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.340, 279C.375
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0430

Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Authorized Agency's Cost Estimate, prior to Contract Award the Authorized Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Authorized Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 125-249-0360 do not apply to Negotiations under this Rule.

(2) Definitions. The following definitions apply to this Rule:

(a) "Cost Estimate" means the Authorized Agency's most recent pre-Bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for Negotiation in the RFP process, relating to the details of contract performance as specified in OAR 125-249-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other contract requirements which may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Authorized Agency, must be excluded from consideration.

(4) Scope of Negotiations. Authorized Agencies must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Authorized Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during Negotiation. This Rule must not be construed to prohibit Solicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Authorized Agency may discontinue Negotiations at any time, and must do so if it appears to the Authorized Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-bid any portion of the project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in contract Negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the Negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.340
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0440

Rejection of Offers

(1) Rejection of an Offer.

ADMINISTRATIVE RULES

(a) An Authorized Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement Process or that rejecting the Offer is in the public interest.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or

(B) Takes exception to terms and conditions (including Specifications), or

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law; or

(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document; or

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Authorized Agency required mandatory prequalification; or

(B) Has been Disqualified; or

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; or

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or

(G) Has failed to provide the certification required under Section 3 of this Rule; or

(H) Is not Responsible. See OAR 125-249-0390(2) regarding Authorized Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 125-249-0370.

(3) Certification of Non-Discrimination. The Offeror must certify and deliver to the Authorized Agency Written certification, as part of the Offer that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so must be grounds for disqualification.

(4) Rejection of all Offers. An Authorized Agency may reject all Offers for good cause upon the Authorized Agency's Written finding it is in the public interest to do so. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) Criteria for Rejection of All Offers. The Authorized Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement Process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Authorized Agency cancels the Solicitation in accordance with OAR 125-249-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380, 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0450

Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Authorized Agency's Contractor selection or Contract Award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under OAR 125-249-0650, the Authorized Agency must provide Written notice to all Proposers of the Authorized Agency's determination of the Proposers included in the Competitive Range. The Authorized Agency's notice of the Proposers included in the Competitive Range must not be final until the later of the following:

(a) Ten (10) Days after the date of the notice, unless otherwise provided therein; or

(b) Until the Authorized Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, the Authorized Agency must provide Written notice to all Offerors of the Authorized Agency's intent to award the Contract. The Authorized Agency's Award must not be final until the later of the following:

(a) Seven (7) days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Authorized Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Authorized Agency a Written protest of the Authorized Agency's intent to award within seven (7) days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were non-responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range:

(a) An adversely affected or aggrieved Proposer may submit to the Authorized Agency a Written protest of the Authorized Agency's decision to exclude the Proposer from the Competitive Range within seven (7) days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at OAR 125-249-0650.)

(b) The Proposer's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

ADMINISTRATIVE RULES

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The head of the Authorized Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this Rule.

(7) Decision. If a protest is not settled, the head of the Authorized Agency, or such Person's designee, must promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror must promptly execute the Contract after the Award is final. The Authorized Agency must execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.375, 279C.380, 279C.385, 279C.460
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0460

Performance and Payment Security; Waiver

(1) Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the State Procurement Office exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor must execute and deliver to the Authorized Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. However, under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for Contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a).

(2) Other Construction Contracts. An Authorized Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements must be expressly set forth in the Solicitation Document.

(3) Requirement for Surety Bond. The Authorized Agency must accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e. the Authorized Agency may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) Time for Submission. The apparent successful Offeror must promptly furnish the required performance security upon the Authorized Agency's request. If the Offeror fails to furnish the security as requested, the Authorized Agency may reject the Offer and award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Authorized Agency's discretion, the Offeror must forfeit its Bid or Proposal security.

(5) Public Improvement Contracts Under \$100,000. An Authorized Agency having delegated purchasing authority pursuant to OAR 125-246-0170 may, in its discretion, waive the bid security requirements and performance bond requirements if the amount of the Contract for the Public Improvement is less than \$100,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.375, 279C.380, 279C.390
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0470

Substitute Contractor

If the Contractor provided a performance bond, the Authorized Agency may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the competitive procurement provisions of ORS chapter 279C.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380, 279C.390
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0490

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor must promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to the Authorized Agency. The Authorized Agency Awarding the Contract must satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.120
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0600

Purpose

These OAR 125-249-0600 to 125-249-0690 Oregon Administrative Rules are intended to provide guidance to Authorized Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the State Procurement Office under ORS 279C.335. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, these OAR 125-249-0600 to 125-249-0690 Rules implement the requirements of ORS 279C.335 pertaining to the adoption of Rules appropriate for use by all Authorized Agencies to govern the procedures for entering into ESPCs.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335, 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0610

Definitions for Alternative Contracting Methods

The following definitions must apply to these OAR 125-249-0600 to 125-249-0690 Rules, unless the context requires otherwise:

(1) "Alternative Contracting Methods" mean innovative procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 125-249-0600 to 125-249-0690 Rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under these OAR 125-249-0600 to 125-249-0690 Rules.

(2) "Construction Manager/General Contractor (or "CM/GC")" means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Authorized Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Authorized Agency, architect/engineers and other Consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) "Design-Build" means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Authorized Agency, and manages both design and construction. In this form of Contract, a single Person provides the Authorized Agency with all of the services necessary to both design and construct the project.

(4) "Energy Conservation Measures (or "ECMs")" (Also Known as "Energy Efficiency Measures") means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or struc-

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ture. For purposes of these OAR 125-249-0600 to 125-249-0690 Rules, use of either or both of the terms “building” or “structure” must be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these OAR 125-249-0600 to 125-249-0690 Rules.

(5) “Energy Savings Guarantee” means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Authorized Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee must include, but must not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Authorized Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Authorized Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) “Energy Savings Performance Contract (or “ESPC”)” means a Public Improvement Contract between an Authorized Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) “Guaranteed Maximum Price (or “GMP”)” means the total maximum price provided to the Authorized Agency by the Contractor, and accepted by the Authorized Agency, that includes all reimbursable costs of and fees for completion of the contract Work, as defined by the Public Improvement Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

(8) “Measurement and Verification (or “M & V”)” means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol (“IPMVP”), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) “Project Development Plan” means a secondary phase of services performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO’s Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO’s services during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term “Project Development Plan” can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(10) “Qualified Energy Service Company (or “ESCO”)” means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Authorized Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) “Technical Energy Audit,” as used in ESPC Procurement, means the initial phase of services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Authorized Agency of the ESCO’s Findings during this initial phase of the Work; the term “Technical Energy Audit” can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0620

Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted, or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Authorized Agency rules. Use of Alternative Contracting Methods may be directed by the State Procurement Office as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Public Contract law and these OAR 125-249-0600 to 125-249-0690 Rules. See OAR 125-249-0630 regarding required Findings and restrictions on class exemptions.

(2) Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by these OAR 125-249-0600 to 125-249-0690 Rules, ESPCs may be exempted from the competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, if the Authorized Agency complies with the procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules related to the Solicitation, Negotiation and contracting for ESPC services.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Authorized Agency prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Authorized Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Director of the Department as applicable within 30 Days of the date the Authorized Agency “accepts” the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335, 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0630

Findings, Notice and Hearing

(1) Cost Savings Factors. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive Bidding requirements, the “substantial cost savings” criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and “such other factors as may be deemed appropriate”.

(2) Required Information. Likewise, the statutory definition of “Findings” at ORS 279.330 means the justification for an Authorized Agency conclusion that includes, “but is not limited to,” information regarding eight identified areas.

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the “substantial cost savings” requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the project or projects at issue in the exemption request.

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is “unlikely” that the exemption will “encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Class Exemptions. In making the findings supporting a class exemption the Authorized Agency must clearly identify the class with

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respect to its defining characteristics. Those characteristics must include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from an Authorized Agency's overall construction program. Classes must not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(6) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract from the requirement of competitive bidding, an Authorized Agency must give notice and hold a public hearing as required by ORS 279C.335(4). The hearing must be for the purpose of receiving public comment on the Authorized Agency's draft Findings.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0640

Competitive Proposals; Procedure

Authorized Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and contract Negotiation, only in accordance with ORS 279C.400 to 279C.410 and OAR 125-249-0600 to 125-249-690, unless other applicable statutes control an Authorized Agency's use of competitive Proposals for Public Improvement Contracts. Also see the Subdivision of Rules in this Division entitled Formal Procurement Rules, OAR 125-249-0200 to 125-249-0480, and RFP related Rules under the Alternative Contracting Methods Subdivision at OAR 125-249-0640 to 125-249-0660. For ESPCs, the following RFP process must be utilized if an Authorized Agency desires the Procurement Process to be exempt from the competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 125-249-0600 to 125-249-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the Authorized Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Authorized Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation must be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors must:

(a) Be reasonable estimates based on information available to the Authorized Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Authorized Agency. See ORS 279C.305.

(2) Evaluation Factors:

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in Subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline Consultant), past performance of the ESCO in meeting energy guarantee contract levels, the

specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and Consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a subcontractor or Consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V Consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Authorized Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and OAR 125-249-0600 to 125-249-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 125-249-0650. Terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 125-249-0680 below.

Stat. Auth.: ORS 279C.335, 279A.065
Stats. Implemented: ORS 279A.065, 279C.335, 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0650

Requests for Proposals (RFP)

(1) Generally. The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335(1), OAR 125-249-0130 and 125-249-0600 to 125-249-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 125-249-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 125-249-0200, this Rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents must conform to the following standards:

(a) The Authorized Agency must set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 125-249-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Authorized Agency;

(b) When the Authorized Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following Discussions, the Authorized Agency must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to Negotiation or Discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Authorized Agency has identified as authorized for Negotiation. The Authorized Agency must describe the evaluation and Discussion or Negotiation process, including how the Authorized Agency will establish the Competitive Range;

(c) When the Authorized Agency intends to award Contracts to more than one Proposer, the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts

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it will Award. The Authorized Agency must also include the criteria it will use to determine how the Authorized Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Supplies and Services from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Authorized Agency must evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Authorized Agency must evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, an Authorized Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications must become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Authorized Agency did not permit Negotiation in its Request for Proposals, the Authorized Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process for Discussions or Negotiations that is outlined and explained in Subsections (5)(b) and (6) of this Rule does not apply to this limited Negotiation.

(b) Discussions; Negotiations. If the Authorized Agency permitted Discussions or Negotiations in the Request for Proposals, the Authorized Agency must evaluate Proposals and establish the Competitive Range, and may then conduct Discussions and Negotiations in accordance with this Rule.

(A) If the Solicitation Document provided that Discussions or Negotiations may occur at the Authorized Agency's discretion, the Authorized Agency may forego Discussions and Negotiations and evaluate all Proposals in accordance with this Rule.

(B) If the Authorized Agency proceeds with Discussions or Negotiations, the Authorized Agency must establish a Negotiation team tailored for the acquisition. The Authorized Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this Rule must restrict or prohibit the Authorized Agency from canceling the Solicitation at any time.

(4) Competitive Range, Protest, Award:

(a) Determining Competitive Range:

(A) If the Authorized Agency does not cancel the Solicitation, after the Opening the Authorized Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency will determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Authorized Agency's evaluation of revised Proposals submitted in accordance with the process described in this Rule.

(b) Protesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-249-0450.

(c) Intent to award; Discuss or Negotiate. After the protest period provided in accordance with these Rules expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450.

(ii) After the protest period provided in accordance with OAR 125-249-0450 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Authorized Agency chooses to enter into Discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. The Authorized Agency must initiate oral or Written Discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Authorized Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this Section, but need not conduct the same amount of Discussions with each Proposer. The Authorized Agency may terminate Discussions with any Proposer in the Competitive Range at any time. However, the Authorized Agency must offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies Proposers of the date and time pursuant to this Section that revised Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all Proposers fairly and must not favor any Proposer over another;

(ii) Must not discuss other Proposers' Proposals;

(iii) Must not suggest specific revisions that a Proposer should make to its Proposal, and must not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular Proposer;

(ii) Terminate Discussions with a particular Proposer and continue Discussions with other Proposers in the Competitive Range; or

(iii) Conclude Discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Authorized Agency does not cancel the Solicitation at the conclusion of the Authorized Agency's Discussions with all remaining Proposers in the Competitive Range, the Authorized Agency must give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Authorized Agency's termination of Discussions, and Proposers must submit revised Proposals by the date and time set forth in the Authorized Agency's notice.

(A) Upon receipt of the revised Proposals, the Authorized Agency must score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Authorized Agency's scoring.

(B) The Authorized Agency may conduct Discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Authorized Agency must provide Written notice to all Proposers in the Competitive Range of the Authorized Agency's intent to award the Contract. An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450. After the protest period provided in accordance with that Rule expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations.

(6) Negotiations:

(a) Initiating Negotiations. The Authorized Agency may determine to commence Negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of Discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Authorized Agency may negotiate:

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- (i) The statement of Work;
- (ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals. Accordingly, Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals.

(c) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Authorized Agency terminates Discussions or Negotiations with a Proposer, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has either:

(A) Determined to award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.400 - 279C.410
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0660

RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive Bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Authorized Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as Life Cycle Costing pursuant to OAR 125-247-0210.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Authorized Agency in determining whether the project scope is within the Authorized Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor must propose a final GMP, which may be accepted by the Authorized Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Authorized Agency must terminate the Contract. The public Authorized Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Authorized Agency must provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.335
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0670

Design-Build Contracts

(1) General. The Design-Build form of contracting, as defined at OAR 125-249-0610(3), has technical complexities that are not readily apparent. Authorized Agencies must use this contracting method only with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to use the Design-Build process, the Authorized Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction,

quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. Authorized Agencies must utilize the Design-Build form of contracting only in accordance with the requirements of these OARs 125-249-0600 to 125-249-0690 Rules. See particularly OAR 125-249-0620 on "Use of Alternative Contracting Methods" and OAR 125-249-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in OAR 125-249-0640(2)(a), (b) and (c).

(4) QBS Inapplicable. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for Authorized Agencies in obtaining certain Consultant services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the Authorized Agency must require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. Authorized Agencies must conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement Documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed must be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract must clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Authorized Agency, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract must clearly identify the extent to which the Authorized Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract must clearly identify any express warranties made to the Authorized Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract must clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the

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Solicitation process on the basis that the Authorized Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335, 279A.065
Stats. Implemented: ORS 279A.065, 279C.110, 279C.335, 351.086
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0680

Energy Savings Performance Contracts (ESPC)

(1) Generally. These OAR 125-249-0600 to 125-249-0690 Rules include a limited, efficient method for Public Contract Authorized Agencies to enter into ESPCs outside the competitive Bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If an Authorized Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 125-249-0600 to 125-249-0690 Rules, the Authorized Agency may still enter into an ESPC by complying with the competitive Bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the procurement requirements applicable to any Authorized Agency not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at OAR 125-249-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Authorized Agency, as well as the additional technical complexities associated with a Design-Build Contract. Authorized Agencies must only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Authorized Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. Authorized Agencies desiring to pursue an exemption from the competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), must utilize the ESPC form of contracting only in accordance with the requirements of these OAR 125-249-0600 to 125-249-0690 Rules.

(4) No Findings Required. An Authorized Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules in order for the ESPC to be exempt from the competitive Bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Authorized Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules.

(5) Selection. ESPC selection criteria may include those factors set forth above in OAR 125-249-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) QBS Inapplicable. Because the value of construction services predominates in the ESPC method of contracting, the qualifications based

selection (QBS) process mandated by ORS 279C.110 for Authorized Agencies in obtaining certain Consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the Authorized Agency must require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the Authorized Agency's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any services associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, an Authorized Agency may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the Authorized Agency so provides in the RFP.

(9) Contracting Requirements. Authorized Agencies must conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent Consultant hired by the Authorized Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Authorized Agency must conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 125-040-0560(7) above.

(c) Pricing Alternatives. The Authorized Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the services to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option

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of the Authorized Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Authorized Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a Solicitation under these 125-249-0600 to 125-249-0690 Rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335, 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.335, 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0690

Construction Manager/General Contractor (CM/GC)

(1) General. The CM/GC form of contracting, as defined at OAR 125-249-0610(2), is a technically complex project delivery system. Authorized Agencies must use this contracting method only with the assistance of knowledgeable staff or Consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Authorized Agency and design professional, although in CM/GC there is a separate contract between the Authorized Agency and design professional. In order to utilize the CM/GC method, the Authorized Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Authorized Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The Authorized Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Authorized Agency must specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Authorized Agency, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The Authorized Agency may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. Authorized Agencies must use the CM/GC form of contracting only in accordance with the requirements of these Rules. See particularly OAR 125-249-0620 on "Use of Alternative Contracting Methods".

(3) Selection. CM/GC selection criteria may include those factors set forth above in OAR 125-249-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified Construction Manager services to traditional General Contractor services, requiring full contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and services rendered, which together must not exceed the GMP. See GMP definition at OAR 125-249-0610(7) and Pricing Mechanisms at OAR 125-249-0660.

(5) Contract Requirements. Authorized Agencies must conform their CM/GC contracting practices to the following requirements:

(a) Setting the GMP. The GMP must be set at an identified time consistent with industry practice, after supporting information reasonably con-

sidered necessary to its use has been developed, and the supporting information must define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications must be produced establishing the GMP scope.

(b) Adjustments to the GMP. The Contract must clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP must not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP Amendment.

(c) Cost Savings. The Contract must clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the Authorized Agency's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the Authorized Agency.)

(d) Cost Reimbursement. The Contract must clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(e) Audit. Cost reimbursements must be made subject to final audit adjustment, and the Contract must establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(f) Fee. Compensation for the CM/GC's services must be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, must be identified during and become an element of the selection process. It must subsequently be expressed as a fixed amount when the GMP is established.

(g) Incentives. The Contract must clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

(h) Controlled Insurance Programs. For projects anticipated to exceed \$75 Million, the Contract must clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract must clearly identify:

(A) Anticipated cost savings from reduced premiums, claims reductions and other factors;

(B) The allocation of cost savings; and

(C) safety responsibilities and incentives, separately or combined.

(i) Early Work. The RFP must clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

(A) Early Procurement of materials and supplies;

(B) Early release of Bid packages for such things as site development; and

(C) Other advance Work related to critical components of the Contract.

(j) Subcontractor Selection. The Contract must clearly describe the methods by which the CM/GC must publicly receive, open and record Bids or price quotations, and competitively select subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the Authorized Agency may waive those requirements. The documents must also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.

(k) Subcontractor Approvals and Protests. The Contract must clearly establish whether the Authorized Agency must approve subcontract awards, and to what extent, if any, the Authorized Agency will resolve procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms must be established with certainty, including whether the CM/GC acts as the Authorized Agency's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the Authorized Agency must retain the right to monitor the subcontracting process in order to protect the Authorized Agency's interests.

(l) CM/GC Self-Performance. Whenever feasible, the Contract must establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract must include a process for Authorized Agency approval of CM/GC self-performance.

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(m) Socio-Economic Programs. The Contract must clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 297C.335, 279C.380(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0800

Required Contract Clauses

Authorized Agencies must include in all formal Solicitations for Public Improvement Contracts all of the ORS chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 125-249-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 297C.505 - 279C.545, 279C.800 - 279C.870
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0810

Waiver of Delay Damages Against Public Policy

Authorized Agencies must not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from an Authorized Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.315
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0820

Retainage

(1) Withholding of Retainage. Except to the extent an Authorized Agency's enabling laws require otherwise, an Authorized Agency must not retain an amount in excess of five percent (5%) of the Contract Price for Work completed. If the Contractor has performed at least fifty percent (50%) of the contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Authorized Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Authorized Agency must respond in Writing to all such applications within a reasonable time. When the contract Work is ninety seven and one half percent (97-1/2%) completed, the Authorized Agency may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed contract Work. An Authorized Agency may at any time reinstate retainage. Retainage must be included in the final payment of the Contract Price.

(2) Deposit in interest-bearing accounts. Upon request of the Contractor, an Authorized Agency must deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Authorized Agency. Earnings on such account must accrue to the Contractor. State Authorized Agencies must establish the account through the State Treasurer.

(3) Alternatives to cash retainage. In lieu of cash retainage to be held by an Authorized Agency, the Contractor may substitute one of the following:

(a) Deposit of Securities:

(A) The Contractor may deposit bonds or securities with the Authorized Agency or in any bank or trust company to be held for the benefit of the Authorized Agency. In such event, the Authorized Agency must reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage must be of a character approved by the Department, including but not limited to:

- (i) Bills, certificates, notes or bonds of the United States.
- (ii) Other obligations of the United States or its Authorized Agencies.
- (iii) Obligations of any corporation wholly owned by the Federal Government.
- (iv) Indebtedness of the Federal National Mortgage Association.
- (iii) Upon the Authorized Agency's determination that all requirements for the protection of the Authorized Agency's interests have been fulfilled,

it must release to the Contractor all bonds and securities deposited in lieu of retainage.

(C) Deposit of Surety Bond. An Authorized Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Authorized Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond must accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage must be reduced by an amount equal to the value of the bond, and the excess must be reimbursed.

(4) Recovery of Costs. An Authorized Agency may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.560, 279C.570, 701.420
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0830

Contractor Progress Payments

(1) Request for Progress Payments. Each month the Contractor must submit to the Authorized Agency, their Written request for a progress payment based upon an estimated percentage of Contract completion. At the Authorized Agency's discretion, this request may also include the value of material to be incorporated in the completed Work, which has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Authorized Agency will make a progress payment to the Contractor, which must be equal to:

- (a) The value of completed Work;
- (b) Less those amounts that have been previously paid;
- (c) Less other amounts that may be deductible or owing and due to the Authorized Agency for any cause; and
- (d) Less the appropriate amount of retainage.

(2) Progress Payments Do Not Mean Acceptance of Work. Progress payments must not be construed as an acceptance or approval of any part of the Work, and must not relieve the Contractor of responsibility for defective Workmanship or material.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0840

Interest

(1) Prompt Payment Policy. An Authorized Agency must pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments. Late payment interest must begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Authorized Agency approval of payment (the "Progress Payment Due Date"). The interest rate must equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) Interest on Final Payment. Final payment on the Contract Price, including retainage, must be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment must thereafter accrue at the rate of one and one-half percent per month until paid.

(4) Settlement or Judgment Interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment must be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, must accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Authorized Agency in Writing or otherwise in accordance with the contract requirements.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.570
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0850

Final Inspection

(1) Notification of Completion; Inspection. The Contractor must notify the Authorized Agency in Writing when the Contractor considers the contract Work completed. Within 15 Days of receiving Contractor's notice, the Authorized Agency will inspect the project and project records, and will

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either accept the Work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of Acceptance. When the Authorized Agency finds that all Work required under the Contract has been completed satisfactorily, the Authorized Agency must acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.570(8)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0860

Public Works Contracts

(1) Generally, ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR 839.

(2) Required Contract Conditions. As detailed in the above statutes and Rules, every Public Works Contract must contain the following provisions:

(a) Authorized Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement Specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on the Authorized Agency web site or the BOLI web site) when procurement Specifications are also made available in electronic format.

(b) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0870

Specifications; Brand Name Products

(1) Generally. The Authorized Agency's Solicitation Document must not expressly or implicitly require any product by brand name or mark, nor must it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. An Authorized Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Authorized Agency must determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.345
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0880

Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors must maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors must maintain all other records necessary to clearly document:

(a) Their performance; and

(b) Any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors must make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Authorized Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. An Authorized Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person must maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) Records Inspection; Contract Audit. The Authorized Agency, and its authorized representatives, must be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in Section 1 of this Rule. The Contractor and subcontractor must maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.030, 279C.375, 279C.380, 279C.440
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0890

Authorized Agency Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the Authorized Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If an Authorized Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety must not be relieved from liability for unpaid claims.

(2) Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims must be referred to the Contractor's surety for resolution. The Authorized Agency must not make payments to subcontractors or suppliers for Work already paid for by the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.515
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0900

Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Authorized Agency suspends performance of Work for any reason considered by the Authorized Agency to be in the public interest other than a labor dispute, the Contractor must be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by Mutual Agreement for Reasons Other Than Default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Authorized Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this Section (2), the Authorized Agency must pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Authorized Agency must also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment must be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the Authorized Agency. An Authorized Agency may include in its Contracts terms detailing the circumstances under which the Contractor must be entitled to compensation as a matter of right in the event the Authorized Agency unilaterally terminates the Contract for any reason considered by the Authorized Agency to be in the public interest.

(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof pursuant to this Rule must not relieve either

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the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies Cumulative. The Authorized Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these Rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.326, 279C.650, 279C.655, 279C.660, 279C.665, 279C.670
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

125-249-0910

Changes to the Work and Contract Amendments

(1) Definitions. As used in this Rule:

(a) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general Scope of the original Procurement that requires mutual agreement between the Agency and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Agency or its authorized representatives to the Contractor requiring a change in the Work within the general Scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(2) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Agencies must include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Agencies.

(3) Change Order Authority. Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) Contract Amendments. Contract Amendments within the general Scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general Scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency Contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065, 279C.400(1)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05

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Adm. Order No.: DAS 5-2004(Temp)

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 12-1-04 thru 5-29-05

Notice Publication Date:

Rules Adopted: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0050, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105, 125-145-0110, 125-145-0120

Subject: Administrative Rules, OAR 125-145-0010 to 125-145-0120, are to implement the provisions of Ballot Measure 37 which passed on November 2, 2004. Measure 37 mandates that on December 2, 2004, Governments accept claims from property owners who may be entitled to receive just compensation when a land use regulation is enacted after the owner or family member became the owner

of the property if the regulation restricts the use of the property and reduces its fair market value.

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

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0020

Definitions

The following definitions apply to this division:

(1) "Agency" means any state officer, board, commission, council, department or division of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) "Claim" means a written demand for compensation under Measure 37.

(3) "Claimant" means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) "Complete Claim" means a Claim that includes all the material and information required by OAR 125-145-0040.

(5) "Department" means the Department of Administrative Services.

(6) "Land Use Regulation" has the meaning provided in ORS 197 (Measure 37, 2004)

(7) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(8) "Measure 37" means ORS 197(Measure 37, 2004).

(9) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(10) "Property" means the Lot or Parcel that is or includes the private real property that is the subject of a Claim.

(11) "Reduction in Fair Market Value" means the difference in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim and is determined as of the date the Complete Claim is submitted to the Department.

(12) "Registry" means the database of information about Claims required by OAR 125-145-0060.

(13) "Regulating Entity" means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

(14) "Tract" means one or more contiguous Lots or Parcels under the same ownership.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner on forms available from the Department. The forms may be available at the address provided in this rule or from the Department's website.

(2) Claims must be submitted by personal delivery, private courier, or certified or registered mail, to the Department at the following address: 1225 Ferry Street SE, U160 Salem, OR 97310-4292. Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under Section 4 of Measure 37 on the date a Complete Claim is received by the Department.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0040

Required Contents of a Complete Claim

A Complete Claim contains all of the following:

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The name, mailing address and telephone number of every owner of the Property, including but not limited to:

(a) Every lessee and lessor of the Property;

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(b) Every person or entity holding a lien against, or a security interest in, the Property;

(c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.

(3) A description of the interest in the Property held by each owner listed.

(4) The street address, if applicable, of the Property, including the county and city in which it is located, and the legal description of the Property, including reference to the township, range and section in which it is located.

(5) The street address, if applicable, and legal description of the Tract that includes the Property.

(6) The tax lot number for the Property, and reference to and the date of the local government tax assessor's map that includes the Property.

(7) Evidence that the Claimant is an owner, including the date of acquisition, and the nature and scope of the Claimant's ownership.

(8) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions, and federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations.

(9) Citation to each Land Use Regulation on which the Claim is based and evidence or information that demonstrates the following:

(a) The manner in which each cited Land Use Regulation restricts the use of the Property compared with how the owner was permitted to use the Property under Land Use Regulations in effect at the time the owner acquired the Property;

(b) The amount by which the restriction in use imposed by each cited Land Use Regulation has caused a Reduction in the Fair Market Value of the Property;

(c) The date on which each cited Land Use Regulation began to apply to the Property;

(10) Written permission from the Claimant and all other owners with a right to restrict access, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it and to verify information in the Claim.

(11) If the person submitting the Claim is not the Claimant, the Claim must include a written statement signed by the Claimant expressly authorizing the person submitting the Claim to do so on the Claimant's behalf, and describing in detail the person's authority to act on the Claimant's behalf with regard to the Claim.

(12) A sworn and notarized statement signed by the Claimant, and the person submitting the Claim if different, attesting that all information contained in the Claim is true and correct.

(13) Evidence and information that may be submitted to address the requirements of this section include but are not limited to the following: the most recent tax assessor's maps; title reports; appraisal reports by certified appraisers; deeds; Covenants, Conditions & Restrictions; and affidavits.

Stat. Auth.: ORS 293.295-293.515

Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0045

Additional Information

In addition to the information required by OAR 125-145-0040, the Department and Regulating Entity may consider this information regardless of its inclusion in a Complete Claim:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) A statement of the effect of the cited Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the cited Land Use Regulation(s);

(3) Citation to each Land Use Regulation in effect at the time the owner acquired the property explaining how the use that is now not permitted by the Land Use Regulation set forth in OAR 125-145-0040(9) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

Stat. Auth.: ORS 293.295-293.515

Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0050

Review for Completeness

(1) The Department shall review each submitted Claim to determine whether it is a Complete Claim. The Department shall make its determination and notify in writing the person submitting the Claim of its conclusion.

(2) If the Department determines that a submitted Claim is not a Complete Claim, it shall notify in writing the person who submitted the Claim. The written notice shall specify the material or information missing from the Claim, and shall state that, due to the deficiencies, the Claim is not a Complete Claim.

(3) A determination by the Department that a submitted Claim is a Complete Claim is subject to further review under subsection (5) of this rule. Unless the Regulating Entity issues notice under subsection (5)(b) within 45 days of the notice issued by the Department under subsection (4)(c) of this rule, the Claim is deemed a Complete Claim.

(4) If the Department determines a submitted Claim is a Complete Claim, it shall:

(a) Enter information about the Complete Claim in the Registry;

(b) Forward copies of the Complete Claim to the Regulating Entity or Entities;

(c) Send a written notice to the person who submitted the Complete Claim noting:

(A) That the Claim is a Complete Claim, and therefore was filed on the date it was submitted; and

(B) Information about the remainder of the review process.

(5) If a Claim that the Department determines is a Complete Claim is forwarded to a Regulating Entity and the Regulating Entity determines that the Claim is not a Complete Claim, the Regulating Entity shall:

(a) Return the Claim to the Department explaining why the Claim is not a Complete Claim; and

(b) Send written notice to the person who submitted the Claim explaining why the Claim is not a Complete Claim and notifying the person who submitted the Claim to resubmit the Claim to the Department as provided in OAR 125-145-0030.

Stat. Auth.: ORS 293.295-293.515

Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0060

Registry of Claims

(1) The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed and whether it is a Complete Claim. Entry of information about a Complete Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Complete Claim as it becomes available:

(a) The name of the Claimant, and the name of the person submitting the Claim, if different;

(b) The street address of the Property, including the county and city in which it is located, and reference to the township, range and section in which it is located;

(c) The amount of Reduction in Fair Market Value alleged in the Claim;

(d) Citation to the Land Use Regulation alleged to restrict the use of the Property;

(e) The date the Complete Claim was filed;

(f) The date information about the Complete Claim was entered into the Registry

(g) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or the cited Land Use Regulation(s) was modified, removed or not applied;

(h) Additional information deemed appropriate by the Department.

(2) Until the Registry is available electronically, the information described in this rule will be available at the location described in OAR 125-145-0030 and at other locations that may be designated by the Department.

Stat. Auth.: ORS 293.295-293.515

Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0080

Third Party Participation

(1) The Department shall mail written notice of a Complete Claim to any person who is an owner of record of real property located within 100 feet of the Property if the Property is located in whole or in part in an urban

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growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, and to neighborhood or community organization recognized by the Department or Regulating Entity and whose boundaries include the site.

(2) Any person receiving notice under this rule or who would be adversely affected or aggrieved if state Land Use Regulations were modified, removed or not applied as to the Property, may submit written comments, evidence and information addressing any aspect of the Complete Claim.

(3) Comments, evidence and information from third parties must be submitted within 10 days of the date the notice under this rule is sent or information about the Complete Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the tenth day, or actually delivered to the Department by the close of business on the tenth day.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0090

Department Review and Decision Process

(1) This rule does not apply to any Claims that the Department forwards to a Regulating Entity, including as provided in OAR 125-145-0110, except that subsection (5) will apply if the Regulating Entity issues an order under OAR 125-145-0100(6).

(2) The Department shall issue a staff report addressing at least the issues listed in subsection (3) of this section. The staff report shall be mailed to the Claimant and to the person who submitted the Claim if different, and shall be mailed or otherwise delivered to the Regulating Entity.

(3) The Claimant or the Claimant's authorized agent may submit comments, evidence and information in response to any third party submittals and the staff report. Such response must be filed no more than 10 days after the date the staff report is mailed to the Claimant, and at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the tenth day, or actually delivered to the Department by the close of business on the tenth day.

(4) The Department may deny a Complete Claim if it finds:

(a) The Claimant is not an owner;

(b) The Land Use Regulation that is the basis of the Claim falls within one or more of the provisions of section (3) of Measure 37;

(c) The Land Use Regulation cited in the Complete Claim does not result in a Reduction in Fair Market Value of the Property or that the Property could not be used for a purpose or in a manner described in the Complete Claim as being affected by the cited Land Use Regulation;

(d) There is no Reduction in Fair Market Value of the Property due to enforcement of the Land Use Regulation if it was in effect on December 2, 2004, or due to enactment or enforcement of a Land Use Regulation that took effect after December 2, 2004; or

(e) The Claim may be denied on any other basis authorized by law.

(5) If a Complete Claim is not denied based on subsection (4) of this section, or subsection (4) of OAR 125-145-0100, the Department shall consider the Record and the final decision of the Regulating Entity and issue a final decision that determines whether and how much compensation is owed to the Claimant.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0100

Regulating Entity Review and Decision Process

(1) This rule applies to all Claims forwarded to a Regulating Entity by the Department, including under OAR 125-145-0110. If a Regulating Entity determines that the Claim is not a Complete Claim, it shall provide notice to the Claimant as provided in OAR 125-145-0050(4).

(2) For all Complete Claims, the Regulating Entity shall issue a staff report addressing at least the issues listed in subsections (4) and (5) of this section. The staff report shall be mailed to the Claimant and the person who submitted the Claim if different, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(3) The Claimant or the Claimant's authorized agent may submit comments, evidence and information in response to any third party submittals and the staff report. Such response must be filed no more than 10 days after the date the staff report is mailed to the Claimant, and at the location and in the manner described in OAR 125-145-0030. Such responses will be sub-

mitted in a timely fashion if either postmarked on the tenth day, or actually delivered to the Department by the close of business on the tenth day.

(4) A Regulating Entity may deny a Complete Claim as to its Land Use Regulation if it finds:

(a) The Claimant is not an owner;

(b) The Land Use Regulation that is the basis of the Claim falls within one of the provisions of section (3) of Measure 37;

(c) The Land Use Regulation cited in the Complete Claim does not result in a Reduction in Fair Market Value of the Property or that the Property could not be used for a purpose or in a manner described in the Complete Claim as being affected by the cited Land Use Regulation;

(d) There is no Reduction in Fair Market Value of the Property due to enforcement of the Land Use Regulation if it was in effect on December 2, 2004, or due to enactment or enforcement of a Land Use Regulation that took effect after December 2, 2004; or

(e) The Claim may be denied on any other basis authorized by law.

(5) If a Complete Claim is not denied based on subsection (4) of this section, or subsection (4) of OAR 125-145-0090, the Regulating Entity shall consider the Record and issue a final decision that determines:

(a) Whether and in what manner the Land Use Regulation restricts the use of the Property;

(b) When the Land Use Regulation was adopted, first enforced or applied; and

(c) Whether the Regulating Entity intends to modify, remove or not apply the Land Use Regulation to the Property.

(6) If the Regulating Entity determines that enactment or enforcement of the Land Use Regulation results, or may result, in a Reduction in Fair Market Value of the Property, the Regulating Entity shall forward the Claim to the Department for issuance of a final order as provided in OAR 125-145-0090(5). If the Department determines that Compensation is due to Claimant, the Regulating Entity shall determine whether it will modify, remove or not apply the Land Use Regulation before payment is due to Claimant.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Complete Claim shall be based on a written record that includes the following, if available:

(1) The Complete Claim;

(2) The Department's written notice of completeness;

(3) The contents of the Registry as to the Complete Claim;

(4) Comments, evidence and information properly submitted by third parties;

(5) Staff reports, evidence and information submitted by the Department and the Regulating Entity;

(6) Response and rebuttal properly submitted by the Claimant or the person who submitted the Claim; and

(7) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0110

Multiple Regulating Entities

When a Complete Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department shall consult with all the Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) and (4) with regard to its Land Use Regulation cited in the Claim.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

125-145-0120

No Regulating Entity

When a Complete Claim cites a Land Use Regulation for which there is no Regulating Entity, the Department shall carry out the duties and issue the final decision required by OAR 125-145-0100.

Stat. Auth.: ORS 293.295-293.515
Stats. Implemented: ORS 293.306, 197 (Measure 37, 2004
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05

ADMINISTRATIVE RULES

Department of Agriculture Chapter 603

Adm. Order No.: DOA 26-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 11-30-04

Notice Publication Date: 9-1-04

Rules Adopted: 603-042-0015

Rules Repealed: 603-040-0010, 603-040-0020, 603-040-0030, 603-040-0040, 603-040-0050, 603-040-0065, 603-041-0015, 603-041-0030, 603-041-0035, 603-041-0040, 603-041-0050, 603-041-0060, 603-041-0065, 603-041-0075

Subject: Rule provides the process and standards for review of commodity commissions promotion and research programs and plans. Rules being repealed no longer have statutory authority.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-042-0015

Department Oversight over Promotion and Research

(1) The Department has the duty to review, and either approve or disapprove plans and projects recommended by a commodity commission for commodity promotion and research under ORS 576.066, 577.125 and 578.025. The Department's review will ensure that the plans or projects are:

- (a) Factual;
- (b) Not disparaging to other commodities; and
- (c) Consistent with the purposes of ORS 576.051 to 576.584, 577, and 578.

(2) In order to assist with the Department's review under section (1) of this rule commodity commissions must:

(a) Submit to the Department two copies of a detailed operational plan describing plans and projects for commodity promotion and research to be undertaken, contracted for, or otherwise funded (in whole or in part) over the next fiscal year. An operational plan submitted under this section shall include, if known and as applicable:

- (A) An outline of the message to be communicated through commodity promotion or research, including the target audience;
- (B) The objective of the commodity promotion or research;
- (C) The manner in which the commodity promotion or research is to be communicated, for example print ads, radio, mailings, e-mail, websites;
- (D) The entity that will undertake the commodity promotion or research; and
- (E) A description of how the Commission will evaluate the effectiveness of the promotion and how the objectives of the research will be met.

(b) Scientific research plans or projects that will be the subject of grant agreements do not have to be included in the operational plan described in (a) of this section as long as the grant agreements include the information required by (2)(a)(B), (D), and (E) of this rule.

(3) Each Commission shall submit an operational plan under section (2)(a) of this rule within 60 calendar days after its budget hearing. A Commission may request an extension of time from the Department for good cause shown.

(4) If a significant new plan or project for commodity promotion or research was not included in the operational plan described in subsection (2)(a) of this rule the Commission must submit an amendment to the operational plan to the Department for review under subsection (1) of this rule.

(5) The Department will review an operational plan submitted under (2)(a) of this rule in accordance with the criteria in section (1) of this rule, and approve, approve with modifications, or disapprove the operational plan, in writing, within 21 business days of receipt of the plan.

(6) A Commission shall include a clause in all contracts, grants and any other arrangement for payment for promotion or research that reserves to the Commission the right to approve a final communication prior to its dissemination. A Commission shall also reserve the right to refuse payment for work performed, unless a final communication has been approved. A Commission may consult with the Department prior to approval of a final communication in order to ensure that the communication is consistent with Section (1) of this rule.

(7) To the extent feasible, any commodity promotion paid for with commission funds, including promotion carried out by a contractor or grantee, shall include an identification statement such as: "paid for/paid in part by the Oregon _____ (insert name of commission), an agency of the State of Oregon."

(8) If the Department approves with modifications, or disapproves an operational plan or a communication submitted for review under subsection

(2) of this rule, the Department shall explain the basis for its modifications or disapproval and shall give the Commission an opportunity to request that the Department reconsider its decision. A request for reconsideration must be in writing, must be received by the Department within 14 business days of the day the plan or communication was modified or disapproved, and must include the basis upon which the Commission believes the Department's modification or disapproval was in error. The Department will act on the request for reconsideration within 14 business days of its receipt.

(9) If a Commission enters into a contract, grant or otherwise contributes funds to an entity to do commodity promotion or research, the Commission may submit evidence to the Department that the United States Department of Agriculture (USDA) engages in oversight and control substantially equivalent to that the Department undertakes under subsection (1) of this rule. After an examination of this evidence, the Department may waive its review under subsection (1) of this rule if it concurs that a substantially equivalent degree of governmental oversight and control will occur.

(10) This rule does not apply to a Commission that has adopted a rule under ORS 576.372 or 578.216 providing for a refund.

(11) For purpose of this rule:

(a) "Commodity commission or commission(s)" means a commodity commission listed in ORS 576.062, the Oregon Beef Council established in ORS 577 and the Oregon Wheat Commission established in ORS 578.

(b) "Commodity promotion" means any action taken to present a favorable image of the commodity to the general public or to the food and agriculture industry for the purpose of improving the competitive position of the commodity and stimulating the sale of the commodity.

(A) Without limiting the generality of the foregoing, "commodity promotion includes

(i) Providing information to consumers that is designed to enhance the image or sale of the commodity;

(ii) Consumer Education;

(iii) Nutrition Education;

(iv) Providing funding to another person or entity to carry out any of the above.

(c) "Consumer education" means any program or action utilizing or funding public relations, advertising or other means devoted to educating the general public or the food and agriculture industry about the desirable characteristics of the commodity and directed toward increasing the demand for the commodity.

(d) "Research" means any type of test, study, or analysis. Research may include research concerning how to enhance the image or sale of the commodity, as well as research concerning use, production, product development, quality, nutrition, or other characteristics of the commodity.

(12) For the 2004-05 fiscal year, a Commission shall submit an operational plan under section (2)(a) within 60 calendar days of the rule becoming effective. A Commission may request an extension of time from the Department for good cause shown.

Stat. Auth.: ORS 576.066, 577.125, 578.025
Stats. Implemented: ORS 576.066, 577.125 & 578.025
Hist.: DOA 26-2004, f. & cert. ef. 11-30-04

Department of Community Colleges and Workforce Development Chapter 589

Adm. Order No.: DCCWD 2-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 11-30-04

Notice Publication Date: 6-1-04

Rules Adopted: 589-020-0225

Subject: Executive Order #03-16 established the Employer Workforce Training Account and directed the Department of Community Colleges and Workforce Development to develop and adopt rules to implement the administration of the Account. This rule established the role of the Workforce Response Teams; establishes the amount of funds and manner of distribution of funds; the criteria for the use of the funds earmarked for Regional disbursement and the 100% non-federal match requirement for such funds; the use of funds earmarked for Statewide Opportunity areas; responsibilities of the designated organization or entity serving as the fiscal agent; and performance and reporting requirements.

Rules Coordinator: Laura J. Roberts—(503) 378-3600, ext. 238

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589-020-0225

Employer Workforce Training Fund

(1) Purpose: The Employer Workforce Training Account (EWTA) was established by Executive Order # EO 03-16. In order to administer the EWTA, the Department of Community Colleges and Workforce Development (DCCWD) will establish the Employer Workforce Training Fund (EWTF). The EWTF is funded from the State of Oregon's allocation of Workforce Investment Act funds that are identified as the reserve under section 128(a) and 133(a) of the Workforce Investment Act of 1998 (P.L. 105-220). The funds are to be used to support the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. Funds are prioritized and awarded through the state and through regional Workforce Response Teams (WRTs).

(2) Definitions:

(a) Employer Workforce Training Fund (EWTF): State funds reserved by the Governor for use in accordance with the provisions of Section 128 and 134 of the Workforce Investment Act to fulfill the purposes listed in Executive Order # EO 03-16. EWT funds are a portion of the funds made available to the State identified through OAR 151-020-0020 "Allocation to Subrecipients". The EWTF supports training of current workers, for growing businesses, training initiatives for industry associations and strategic economic clusters, and initiatives designed by business-labor consortia.

(b) Incumbent worker: an individual who is employed, but who does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers as required at 20 CRF 663.220(a)(2) and 663.310. (see WIA sec. 134(a)(3)(A)(iv)(I).)

(c) Workforce Response Teams (WRT): WRTs are formed by and with the collective partners in their represented regional areas. These teams:

(A) Provide a single point of contact and a quick turnaround for existing businesses and their workforce needs;

(B) Select a fiscal agent to administer the regional funds

(C) Set regional funding priorities for contracts; and

(D) Prioritize projects and award funds to eligible businesses and associations.

(3) Fund Allocation:

(a) For the period July 1, 2003 through June 30, 2004, the Department of Community Colleges and Workforce Development shall set aside \$6,000,000 in Workforce Investment Act funds in accordance with Section 128 and 132 of PL 105-220 and OAR 151-020-0020 "Allocation to Subrecipients" Section (1)(a) and (b). These funds shall be used in accordance with the following allocation:

(A) 15% of the annual allocation shall be held for the Governor's Strategic Reserve,

(B) 20% of the annual allocation shall be used for Statewide Initiatives, and

(C) 65% of the annual allocation shall be distributed to the 15 Workforce Regions identified in ORS 660.315.

(b) The Regional Fund will be apportioned so that 60% is distributed based on Economic Drivers and 40% based on Equitable Foundation. Data on these factors shall be prepared annually by the Research division of the Employment Department.

(A) The 60% will be added to each region's foundation, based on the region's percentage of covered private establishments, and the region's percentage of covered private sector labor force.

(B) The 40% foundation will be divided into 15 equal shares among the 15 workforce regions.

(c) CCWD shall contract with the selected fiscal agent in each workforce area to distribute, on a cost reimbursement basis, the regional fund identified above.

(d) The amount of funds set-aside for the Employer Workforce Training Fund for subsequent years shall be determined by the Oregon Workforce Investment Board (OWIB) through an annual review of EWTF outcomes, regional needs and economic conditions.

(4) Use of funds — Regional Fund Focus

(a) Eligible uses: The EWTF shall be used at the regional level for job-attached training for incumbent, private sector workers.

(b) Emphasis areas for training projects: Emphasis areas will be used in the regions to focus their work and screen projects to determine which are the most advantageous economically to the region and the state. Projects that address more than one emphasis areas will have the greatest priority for funding. Emphasis areas are:

(A) Companies in clusters formed around traded-sectors;

(B) Training in occupations or skills where shortage exists in region or state;

(C) Training in skills necessary to permit companies to advance their technological capabilities or enhance their productivity.

(D) Multiple employer, worker or industry association-led projects, while still allowing single employer projects;

(E) Projects that make a conscious attempt to utilize existing curricula/training programs/resources, when available, and develop new curricula only when it will not duplicate other work;

(F) Training of workers who are paid wages that meet or exceed the median hourly wage in the county in which they are trained, or result in wage gain or career ladder development;

(G) Training that leads to industry certification or industry skill standards.

(c) Capacity-building activities that are part of a specific training project, such as conducting needs assessments with employers, designing and developing curricula, or developing and delivering post-training evaluation, are considered eligible activities to be funded within the context of a training project.

(d) Recapture Clause: Any WRT that does not make a satisfactory commitment to using the funds for their desired outcomes will be subject to the recapture policy during the first or subsequent year of effort.

(A) First year: any WRT that has not made contractual commitments for at least 75% of its funds within six months after certification of its Workforce Response Team shall develop a plan for expending resources by the end of the fiscal year or shall return the funds to the state for distribution to other regions demonstrating excess need.

(B) Subsequent years: any region that has not made contractual commitments for at least 50% of its funds by January 15th shall submit a plan to the Governor's Policy Advisor for Labor, Revenue and Workforce for expending resources by the end of the fiscal year or shall return the funds to the state for distribution to other regions demonstrating excess need.

(e) Ineligible expenditures. No funds may be used for:

(A) Training of public sector employees;

(B) Recruitment of non-Oregon-based businesses or workers;

(C) Wages for trainees;

(D) Purchase of equipment;

(E) Businesses that are relocating existing jobs from one location to another in or outside the state. Companies that locate in Oregon or relocate workers from their original location outside the state will be eligible for training funds after the workers to be trained have been paid employees in Oregon for 120 days.

(F) Any expenditure strictly prohibited in the relevant OMB Circular establishing cost principles.

(f) Contract Size — There is no minimum or maximum contract size for regional and/or state projects. Regional Workforce Response Teams will have discretion in the award of contracts and will make appropriate investments to leverage resources and maximize program outcomes and performance measures. The Governor will determine the appropriate size for statewide contracts.

(g) Employer Match — Entities that receive contracts from the EWTF for projects must provide non-governmental matching funds or third-party in-kind contributions to the project that equal or exceed the amount of the contract. An entity's non-Federal contribution may be provided in cash or third-party in kind, fairly evaluated, and shall only be used in a manner that is consistent with the purpose of this rule and in accordance with federal definitions found in 29 CFR Part 95.23 and Part 97.24.

(5) Use of funds — Statewide funds and Opportunity Areas:

(a) Statewide funds are for the purpose of solving unique challenges or engaging in unique opportunities in the state with regard to its workforce development system. Statewide funds will only be used if the challenge or opportunity cannot be addressed with other system resources (e.g., Title 1B, Wagner-Peyser, Title II). Statewide funds will be focused in opportunity areas:

(A) Opportunities to address major skill gaps in specific occupations/industry across the state and have an impact in at least five workforce regions.

Example: health care — expand statewide capacity to train in one or two high demand health occupations by removing barriers, improving articulation, or expanding class offerings, scheduling, etc.

(B) Opportunities to build capacity statewide in a traded-sector industry. Example: build skill panels in several regions for biomedical or metals or food processing; identify their training needs; utilize or develop curricula; position industry/employer consortia to qualify for training funds at regional level in future years.

(C) Opportunities that implement cross-industry, transferable skills training projects statewide.

Example: Scale the manufacturing skills standard project (in 8/8 reading materials) or implement OCKED IT Road Map project that would develop capacity for regional

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and on-line development of IT skills across industries statewide or develop vocational ESL/language proficiency project.

(D) Opportunities to replicate a successful project(s) previously funded by the Current Worker Grant Program and expand to more regions and/or to a statewide scale.

Example: Secondary Wood Products Training System (31 companies, multiple community colleges).

(E) Opportunities to develop alternative training delivery systems that provide just-in-time training, training in remote areas, or training designed around the needs of businesses and workers (evenings, shortened schedules, sequential modules rather than academic schedules).

Example: develop improved access to on-line training, implement Career Pathways project in several regions.

(b) The Oregon Workforce Investment Board will seek or identify proposals based on OWIB strategic plan priorities.

(c) OWIB will elect projects within opportunity areas and recommend projects and funding amounts to the Governor.

(6) Fiscal Agent Responsibilities:

(a) The organization or entity serving as the fiscal agent selected by the WRT must be a legal entity to which a sub award of Federal funds may be made, and is accountable to CCWD for the use of the funds provided. As designated fiscal agent, the organization or entity is required to perform the following activities:

(A) To receive EWT funds, the organization serving as the fiscal agent must delegate decision making authority to the WRT.

(B) In conjunction with the WRT, the fiscal agent shares responsibility for programmatic decision-making,

(C) Has responsibility for adherence to applicable federal program compliance requirements (for example, the regulations)

(D) Uses the federal funds to carry out contracts as opposed to providing goods or services for a program.

(b) The entity must have an administrative and financial management system which complies with the appropriate standards stipulated in either 29 CFR Part 97 or part 95. The standards cover:

(A) Financial reporting;

(B) Accounting records;

(C) Internal control;

(D) Budget control;

(E) Allowable costs;

(F) Procurement (including code of conduct);

(G) Source Documentation; and

(H) Cash Management.

(c) The entity must have the capability to report the financial results of the WIA programs in accordance with the requirements set forth by the Secretary of Labor and State policy of Financial Status Reports. Recipients are required to report accrued expenditures separately for each source of funds cumulatively from the inception of each contract.

(d) Every recipient and subrecipient organization that expends \$300,000 or more in federal financial assistance funds (received from all Federal sources combined) during its fiscal year to operate one or more programs must undergo an audit. The State may have the right to require a certified financial report for any entity that receives less than \$300,000 in Federal financial assistance funds.

(e) The State as the awarding entity may review the adequacy of the administrative and financial management system of the designated fiscal agent as part of a pre-award review or at any time subsequent to award to assure these standards are met.

(7) Performance and reporting requirements:

(a) The Workforce Response team shall report on the following measures quarterly, for each project for each quarter and cumulative by project to date:

(A) Number of jobs created;

(B) Number of jobs retained;

(C) Certification Rate for those in training resulting in certification;

(D) Amount and percentage of private sector match (leverage);

(E) Cycle time: from receipt of completed application to approval (goal of 30 days);

(F) Number trained, number completing training.

(b) The Workforce Response team shall submit a final project report for each training project. The report shall provide final cumulative totals for the above performance measures and in addition will contain the following anecdotal performance information provided by the companies involved in the projects. This information will be provided as appropriate for the project; not all measures will apply to all projects.

(A) Increase in the percent of the company budget allocated to training/capacity building activities,

(B) Increase in productivity as measured by the following:

(i) Percent of reduction in the amount of rework or production waste gained as a result of the training or capacity-building activity.

(ii) Saved operating cost as result of QA or technology-related training

(iii) Decrease in product cycle time

(C) Curriculum shared or training replicated,

(D) Increase in competitiveness of company, and/or

(E) Increase in capital investment (new investment in equipment or facilities)

(c) CCWD shall provide guidance and templates for performance and financial reporting.

(d) Teams shall assure that for each training project, informed consent for release of Social Security Numbers be obtained from workers participating in the training. The informed consent language and format shall be that approved by the Oregon Attorney General for such purposes. The social security numbers of all workers participating in approved training programs with signed releases on file shall be reported to CCWD.

(e) The following performance information shall be tracked by CCWD for each project and for the program as a whole using information provided in the above reports.

(A) Met or exceeded median private sector hourly wage by county,

(B) Wage increase,

(C) Job retention,

(D) Reduction of turnover rate in company,

(E) Return on training investment: Cost per training completion,

(F) Return on training investment: ROI measure to be developed,

(G) Percent of workforce trained in region/industry

(f) CCWD shall prepare an annual report to the OWIB on expenditures and outcomes of the Employer Workforce Training Fund.

Statutory Authority: 660.318

Statutes Implemented:

Hist.: DCCWD 2-2004, f. & cert. ef. 11-30-04

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

Adm. Order No.: BCD 23-2004

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 4-1-05

Notice Publication Date: 11-1-04

Rules Adopted: 918-305-0105, 918-305-0280, 918-305-0290, 918-305-0300, 918-305-0310, 918-305-0320

Rules Amended: 918-305-0005, 918-305-0010, 918-305-0030, 918-305-0100, 918-305-0110, 918-305-0120, 918-305-0130, 918-305-0150, 918-305-0160, 918-305-0165, 918-305-0180, 918-305-0250, 918-305-0270, 918-306-0005

Subject: These rules adopt the 2005 Oregon Electrical Specialty Code as allowed in ORS 455.020, 455.110 and 479.730. The Director of the Department of Consumer & Business Services, with the approval of the Electrical and Elevator Board, may adopt and amend codes and regulations provided it conforms to in so far as it is practicable to model building code generally acceptable throughout the United States. The current code adopted is the 2002 edition of the NFPA 70 National Electrical Code (NEC) and the Institute of Electrical and Electronics Engineers National Electrical Safety Code (NESC). Additionally, this rule corrects references to other codes, publications, and updates and clarifies amendments to meet current statutory requirements.

Rules Coordinator: Heather L. Gravelle—(503) 373-7438

918-305-0005

Interpretations

All interpretations and advisories dated prior to April 1, 2005, issued by the Building Codes Division, Electrical Safety Section, are withdrawn.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0010

Scope of the Electrical Specialty Code

The **Electrical Specialty Code** applies to all nonexempt electrical installations except as covered by the

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electrical provisions of the **Oregon Residential Specialty Code** and is inspected by an **Electrical Specialty Code** inspector.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0030

Other Codes or Publications that Impact Electrical Installations

The responsibility for complying with all applicable requirements rests with the permit holder. Examples are listed below:

(1) Chapter 9 of the **Oregon Structural Specialty Code** (OSSC) as adopted in OAR chapter 918, division 460 relating to fire alarm systems and Chapter 3 of the **Oregon Residential Specialty Code** as adopted in OAR

chapter 918, division 480 relating to smoke alarm installations.

(2) ORS 455.420 requiring individual electric meters for dwelling units.

(3) Chapter 13 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the energy efficiency issues of motors, electric lighting and other electric equipment; and

(4) Chapter 16 and 17 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the seismic requirements of nonstructural components and special inspection requirements.

(5) Publications and requirements of the serving utility.

(6) **Public Law 101-336, the Americans with Disabilities Act, Part III**; Department of Justice Regulations of Friday, July 26, 1991; 28 CFR Part 36, as amended January 1, 1995, including Americans with **Disabilities Act Accessibility Guidelines (ADAAG)** and **Public Law 100-430, the Fair Housing Act** and the regulations adopted thereunder.

(7) Chapter 11 of the **Oregon Structural Specialty Code** which relates to the Americans with Disabilities Act for mounting height requirements for electrical and communication receptacles located in affected buildings and structures.

(8) The interconnection of all net-metering facilities and solar photovoltaic systems operated as interconnected power production sources shall comply with the **Oregon Electrical Specialty Code** as adopted in OAR 918-305-0100. In addition, the interconnection of all net-metering facilities utilizing solid-state inverters and up to 25 kW peak generating capacity shall comply with the requirements of the Institute of **Electrical and Electronic Engineers (IEEE) Recommended Practice P929-2000**. The interconnection of all net-metering facilities utilizing solid-state inverters shall use inverters listed in accordance with Underwriters Laboratories Subject 1741-1999 (UL 1741).

(9) **Oregon Manufactured Dwelling and Park Specialty Code** as adopted in OAR chapter 918, division-500. The electrical installations shall be in accordance with the requirements of the Oregon Electrical Specialty Code.

(10) The electrical portions of the installation or product standards identified in OAR 918-306-0005. These standards are informational only and are to be used to clarify code intent. They may be used as installation guides when not specifically referenced or covered in the **Oregon Electrical Specialty Code**. Examples include, but are not limited to, the electrical sections of NFPA 20, NFPA 99, NFPA 101, NFPA 110 and NFPA 820.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730 & ORS 757.262

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0610; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0020; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 12-2000, f. 6-3-00, cert. ef. 7-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0100

Code Adoption of Electrical Specialty Code

(1) The **Electrical Specialty Code** shall consist of the following, adopted by this reference:

(a) **NFPA 70-2005, National Electrical Code (NEC), 2005 Edition**, effective April 1, 2005, subject to the amendments adopted in OAR 918-305-0105 to 918-305-0320;

(b) **IEEE C2-2002, National Electrical Safety Code (NESC), 2002 Edition**; and

(c) **Oregon Elevator Specialty Code** adopted by the Electrical and Elevator Board in OAR 918-400-0520.

(2) In the event of a conflict between the NEC and NESC requirements, the NEC requirement, as amended in subsection (1)(a) of this rule, shall apply.

(3) The electrical code requirements for residential dwellings are adopted under the **Oregon Residential Specialty Code** in OAR chapter 918, division 480.

(4) As used in this rule:

(a) "ANSI" is the American National Standards Institute;

(b) "ASME" is the American Society of Mechanical Engineers;

(c) "IEEE" is the Institute of Electrical and Electronics Engineers;

and

(d) "NFPA" is the National Fire Protection Association.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0600; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0010; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0105

Amend Article 90 — Introduction

Amend **Section 90.4** Enforcement by inserting the following after **Section 90.4**. Section 90.4(A) Electrical products sold or disposed of in conjunction with a persons business must either be certified or exempt under ORS 479.760. Where the **2005 NEC** requires electrical products to be "listed" or "labeled", the words "listed" or "labeled" shall have the same meaning as "certified electrical product" under ORS 479.530.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0110

Amend Article 100 — Definitions

(1) Replace the definitions of "Building", "Labeled" and "Listed" in **Article 100**, with the definitions of "Building", "Labeled" and "Listed" in OAR 918-251-0090.

(2) Replace the definition of "Dwelling, Multifamily" in Article 100, with the definition of "Multifamily Dwelling" in ORS 479.530.

(3) Amend **Article 100** by adding the definition for "Certified electrical product" means an electrical product that is certified under ORS 479.760 and is not de-certified.

(4) Amend **Article 100** by adding the definition for "Fire protection system" means approved devices, equipment and systems or combinations of systems used to detect a fire, activate an alarm, extinguish a fire, control or manage smoke and products of a fire or any combination thereof.

(5) Amend **Article 100** by adding the definition for "Kitchen" means a room or area equipped for preparation and cooking of food. "Kitchen" does not include a break room as determined by the Building Official.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0120

Amend Article 110 — Requirements for Electrical Installations

(1) Amend Section **110.8** Wiring Methods as follows:

(a) Only wiring methods recognized as suitable are included in this code. The recognized methods of wiring shall be permitted to be installed in any type of building or occupancy, except as otherwise provided in this code.

(b) For the purpose of this article, "schools" are buildings used for education purposes, excluding administrative offices, dormitories or detached utility buildings not used for education or training.

(c) Raceway systems, type MI, MC and AC cable or manufactured metallic wiring assemblies shall be the wiring method in the following occupancies: Schools, universities, colleges, child care centers, correctional facilities and hospitals as defined in **NEC Article 517**. This includes:

(A) Group I-2 Occupancies as defined in Chapter 3 of the adopted **Oregon Structural Specialty Code**; and

(B) Group E Occupancies as defined in Chapter 3 of the adopted Oregon Structural Specialty Code.

(C) SR Occupancies classified as SR 1 and SR 2 as defined in Appendix SR of the adopted Oregon Structural Specialty Code.

(2) The requirements of subsection (1)(c) of this rule do not apply to:

(a) Spaces in a retail center used for adult training or educational purposes;

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(b) SR Occupancies classified as SR 3 or SR 4 as defined in Appendix SR or R occupancies classified in Chapter 3 of the adopted Oregon Structural Specialty Code;

(c) Foster homes providing family-type care only;

(d) Class 2 and 3 systems installed in conformity with Articles 725, 727, 760, 770, 780 and Chapter 8 of the **2005 National Electrical Code**; and

(e) Power limited fire protection alarm systems.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0620; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0030; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0130

Amend Article 210 — Branch Circuits

(1) Amend **Section 210.8** Ground-Fault Circuit-Interrupter Protection for Personnel by inserting the following after **Section 210.8(A)(2)** Exception No. 2: "Exception No. 3: Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps."

(2) Amend **Section 210.8** Ground-Fault Circuit-Interrupter Protection for Personnel by inserting the following after **Section 210.8(A)(8)** "Exception No. 1: A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(7), or (A)(8)."

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 15-2001(Temp), f. & cert. ef. 11-26-01 thru 5-24-02; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0150

Amend Article 230 — Services

(1) Amend **Section 230.40** Number of Service-Entrance Conductor Sets, Exception No. 3 by adding: "when there are continuous metallic paths bonded to the grounding system in the buildings involved, a disconnect, a separate grounded conductor and equipment grounding conductor shall meet the provisions of Article 225."

(2) Amend Section 230.43 Wiring Methods for 600 Volts, Nominal, or Less by adding the following to the end of the first paragraph: "Exception: Items (13) and (15) are limited to traffic control devices and highway lighting poles."

(3) Amend **Section 230.70(A)(1)**, Readily Accessible Location by adding an exception: "Exception: In existing installations where only the service panel or meter base is changed and the existing service conductors meet the ampacity requirements, or the existing conduit is of sufficient size to install new conductors, the panel may remain at the present location providing all requirements of Sections 110.26 and 240.24 are met. This exception does not require a main disconnect located nearest the point of entry."

(4) Amend Section 230.95(C) Performance Testing to read: "The ground-fault protection system shall be performance tested when first installed on the site. The test shall be conducted in accordance with instructions provided with the equipment. This test shall be performed by persons having proper training and experience required to perform and evaluate the results of such performance testing. A written record of this test shall be made available to the authority having jurisdiction. This report shall be signed by the person(s) performing this test."

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; BCA 13-1989, f. & cert. ef. 5-24-89; Renumbered from 814-022-0630; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0040; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0160

Amend Article 250 — Grounding

The following provisions of **Article 250** are amended:

(1) **Section 250.24(A)** — System Grounding Connections. Insert the following after **Section 250.24(A)(1)**: "Exception: When the electric utility has installed a ground fault protection system ahead of the customer's service equipment, no bonding or electrical connection from the grounding electrode system shall be made to the grounded service conductor on the load side of the utility ground fault sensing device. The neutral or ground-

ed service conductor, however, shall be grounded on the line side of the first ground fault sensor in a manner otherwise required at the customer's service equipment. The grounding electrode conductor shall be run to an equipment grounding bus or terminal at the service equipment as long as the equipment grounding conductor and the grounded neutral conductor are not connected to each other at this point. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(2) **Section 250.28** — Main Bonding Jumper. Insert the following after Section 250.28 Exception No. 2: "Exception No. 3. When the electric utility has installed a ground fault protection system ahead of the customer's service equipment and if the operation of the ground fault system relies on the absence of the main bonding jumper at the service equipment but includes an otherwise satisfactory main bonding jumper as a part of its sensing device, the main bonding jumper shall not be installed at the service equipment which would otherwise bond the grounded service conductor to the equipment ground. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(3) **Section 250.30(A)** — Grounded Systems. Insert the following after Section 250.30(A) Exception No. 2: "Exception No. 3: A premises' electrical system with an alternate source of power, such as an emergency or standby generator, connected to the normal system via a transfer switch, shall have the alternate source neutral grounded only when the transfer switch causes the neutral conductor to be switched between the normal and the emergency sources. The on-site ground fault test required by Sections 215.10, 230.95 and 517.17 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(4) **Section 250.52(A)(3)** — Concrete-Encased Electrode. Insert the following at the end of Section 250.52(A)(3), as follows: "In new construction with steel reinforced concrete footings, a concrete-encased grounding electrode connected to the grounding electrode system is required. The installation shall meet the requirements of Section 250.50. When a concrete encased electrode system is used, a minimum size of 1/2-inch reinforcing bar or rod shall be stubbed up at least 12 inches above the floor plate line or floor level, whichever is the highest, near the service entrance panel location."

(5) **Section 250.52(B)** — Electrodes Not Permitted for Grounding. Insert the following after Section 250.52(B)(2), as follows "(3) In existing electrical installations, when a service change or upgrade occurs, an existing metal underground water pipe shall not be used unless the metal underground water pipe has been verified as suitable for continued use as a grounding electrode. An existing metal underground water pipe shall be bonded to the new grounding electrode system as required by 250.52 and 250.58."

(6) **Section 250.56** — Resistance of Rod, Pipe, and Plate Electrodes. Insert the following at the end of the first sentence: "For permanent installations where the only grounding electrode is a single ground rod, pipe or plate, documented verification of 25 ohms or less shall be provided. Documented verification shall be done by a recognized method, provided by the installer, and made available for the electrical inspector."

(7) **Section 250.118** — Types of Equipment Grounding Conductors. Insert the following after Section 250.118(14): "Where metallic conduit is installed on roof tops, an equipment grounding conductor shall be provided within the raceway and sized per Section 250.122."

(8) **Section 250.184(B)** — Multiple Grounding. Change Sections 250.184(B)(1), (2) and (3) to: "(1) Services(2) Underground circuits where a bare copper neutral is exposed (3) Overhead circuits installed outdoors."

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0660; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0070; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0165

Amend Article 334 — Nonmetallic-Sheathed Cable: Types NM, NMC, and NMS

(1) Amend Section 334.10 Uses Permitted, (2), (3), and (4) by deleting current language and replacing with the following:

"(2) Multifamily dwellings and other structures, except as prohibited in Section 334.12."

"(3) Cable trays, where the cables are identified for the use."

(2) Amend **Section 334.12(A)(1)** Types NM, NMC, and NMS by deleting current language and replacing with the following: "In any multifamily dwelling or other structure exceeding three floors above grade. For the purposes of this article, the first floor of a building shall be that floor

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that has 50 percent or more of the exterior wall surface area level with or above finished grade. One additional level, that is the first level and not designed for human habitation and used only for vehicle parking, storage or similar use, shall be permitted.”

(3) Amend Section 334.15(B) Protection from Physical Damage by adding: “Exposed nonmetallic sheathed cable shall be protected where it is installed horizontally below 8 feet above the floor. Exposed nonmetallic sheathed cable below 8 feet above the floor that enters the top or bottom of a panelboard shall be protected from physical damage by conduit, raceway, 1/2” plywood or 1/2” drywall.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0180

Amend Article 394 — Concealed Knob-and-Tube Wiring

Add the following to the end of Section 394.12 Uses Not Permitted: “Exception: The provisions of Section 394.12 shall not be construed to prohibit the installation of loose or rolled thermal insulating materials in spaces containing existing knob-and-tube wiring, provided all the following conditions are met:

(1) The visible wiring shall be inspected by a certified electrical inspector or a general supervising electrician employed by a licensed electrical contractor.

(2) All defects found during the inspection shall be repaired prior to the installation of insulation.

(3) Repairs, alterations or extensions of or to the electrical systems shall be inspected by a certified electrical inspector.

(4) The insulation shall have a flame spread rating not to exceed 25 and a smoke density not to exceed 450 when tested in accordance with ASTM E84-91A. Foamed in place insulation shall not be used with knob-and-tube wiring.

(5) Exposed splices or connections shall be protected from insulation by installing flame resistant, non-conducting, open top enclosures which provide three inches, but not more than four inches side clearances, and a vertical clearance of at least four inches above the final level of the insulation.

(6) All knob-and-tube circuits shall have overcurrent protection in compliance with the 60 degree C column of Table 310-16 of NFPA 70-2005. Overcurrent protection shall be either circuit breakers or type S fuses. The type S fuse adapters shall not accept a fuse of an ampacity greater than permitted in Section 240.53.”

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96;

Renumbered from 918-290-0085; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f.

8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0250

Amend Article 620 — Elevators, Dumbwaiters, Escalators, Moving Walks, Wheelchair Lifts and Stairway Chair Lifts

(1) Amend Section 620.1 Scope by replacing FPN No. 1 with “FPN No. 1: For further information, see the Oregon Elevator Specialty Code as adopted in OAR chapter 918, division 400.”

(2) Amend Section 620.2 Definitions by adding: “Separate Branch Circuit. A circuit dedicated solely for the purpose intended without other devices, systems or equipment connected to the circuit.”

(3) Amend Section 620.5 Working clearances by adding: “Where machine room doors swing inward, the arc of the door shall not encroach on those clearances required by Section 110.26(A).”

(4) Amend Section 620.11(A) Hoistway Door Interlock Wiring to read: “The conductors of the hoistway door interlocks from the hoistway riser shall be flame-retardant and suitable for a temperature of not less than 200° C (392°F). Conductors shall be Type SF or equivalent except where not required by the Elevator Safety Code (ASME A17.1).”

(5) Amend Section 620.21(A)(1)(a) by adding: “The length of flexible metal conduit shall not exceed 6 feet (1.83 m).”

(6) Amend Section 620.37(A) Uses Permitted by adding: “Conduits and raceways necessary for the connection of such devices shall only enter hoistways and machine rooms to the extent necessary to connect the device(s) attached thereto.”

(7) Amend Section 620.51(B) Operation by adding to the end of the paragraph: “When provided, this disconnecting means shall be located in the elevator control room or control space. The installation shall comply with the requirements of NFPA 72 as adopted in OAR 918-306-0005.”

(8) Amend Section 620.51(C) Location by adding: “Where machine rooms are provided, the disconnecting means required by Section 520.51

shall be located within 24 inches (610 mm) of the open side of the machine room access door. Where more than one disconnect is required for a multi-car group, the disconnects shall be adjacent to each other with the first disconnect located within 24 inches (610 mm) of the open side of the machine room access door. Measurement shall be taken from the edge of the disconnect nearest the machine room door.”

(9) Amend Section 620.51(C)(4) On Wheelchair Lifts and Stairway Chair Lifts to read: “On wheelchair lifts and stairway chair lifts, the disconnecting means shall be located within sight of the motor controller or lift and within six feet (1.83 m) of the motor controller. The disconnecting means shall not be located in the runway enclosure and a means shall be provided to lock the door or cover in the closed position.”

(10) Amend Section 620.51(C) by adding: “(5) Residential installations. A disconnecting means shall be required to be placed within sight of the controller or lift. Where such devices are supplied with flexible plug type connectors, the supply receptacle shall be switched by the disconnecting means. The disconnecting means does not require overcurrent protection, provided such protection is supplied by the branch circuit overcurrent device. In all other respects the disconnecting means shall comply with the requirements of this section.”

(11) Add new section: “Section 620.86 Flexible Metal Conduit. Where flexible metal conduit is utilized between the disconnecting means specified in Section 620.51 and the elevator controller, an equipment grounding conductor shall be provided within the raceway and sized per Section 250.122 and Table 250.122.”

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00;

BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0270

Amend Article 692 — Fuel Cell Systems

Amend Section 692.6 Listing Requirement to read: “The fuel cell system shall be certified for its intended application prior to final approval.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0280

Amend Article 725 — Class 1, Class 2 and Class 3 Remote-Control, Signaling, and Power-Limited Circuits

Amend Section 725.8 Mechanical Execution of Work by replacing the last sentence with “This installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0290

Amend Article 760 — Fire Alarm Systems

Amend Section 760.8 Mechanical Execution of Work by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0300

Amend Article 770 — Optical Fiber Cables and Raceways

Amend Section 770.24 Mechanical Execution of Work by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-305-0310

Amend Article 800 — Communications Circuits

Amend Section 800.24 Mechanical Execution of Work by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

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918-305-0320

Amend Article 820 — Community Antenna Television and Radio Distribution Systems

Amend **Section 820.24** Mechanical Execution of Work by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

918-306-0005

Standards for Product Evaluations

The following standards shall be adopted for use when completing product evaluation:

(1) NFPA standards on list dated April 1, 2005, maintained by the division titled “NFPA Standards”; and

(2) UL standards on list dated April 1, 2005, maintained by the division titled “UL Standards.”

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05

Adm. Order No.: BCD 24-2004

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 4-1-05

Notice Publication Date: 11-1-04

Rules Amended: 918-690-0420, 918-750-0110

Subject: The Director of the Department of Consumer and Business Services, with the approval of the Oregon State Plumbing Board, may amend such codes and regulations provided it conforms to in so far it is practicable to model building code generally acceptable throughout the United States.

The current Oregon Plumbing Specialty Code adopted is the 1997 Edition of the Uniform Plumbing Code, (UPC) with Oregon amendments. This proposed rule adopts the 2003 Edition of the Uniform Plumbing Code (UPC), as published by the International Association of Plumbing and Mechanical Officials, with Oregon Amendments.

Rules Coordinator: Heather L. Gravelle—(503) 373-7438

918-690-0420

Definitions

Scope of definitions:

(1) “Administrator” means the Administrator of the Building Codes Division.

(2) “Alterations” means to change, to take away, or to add to.

(3) “Apprenticeship Plumbing Experience” means experience equivalent to the training standards of the Oregon State Apprenticeship Program for the specific category of plumber.

(4) “Commercial or Industrial Installation” means an installation of plumbing fixtures in a commercial or public building and in areas of an apartment building, hotel, motel, or similar residential structure, open and available for use by the public at large, or by employees.

(5) “Division” means the Building Codes Division.

(6) “Equivalent Experience” means legal work experience gained outside the State of Oregon equal to general journeyman plumbing experience or apprenticeship plumbing experience.

(7) “Existing Work” is defined in the Plumbing Specialty Code.

(8) “General Journeyman Plumbing Experience” means experience equivalent to the standards required for completion of the Oregon State Apprenticeship Program.

(9) “Inspection” means careful investigation, critical examination, or official examination and review of the plumbing installation at the site of the installation.

(10) “Limited Specialty Plumber” means any person holding a valid limited specialty plumber’s certificate of competency issued under ORS 693.103 and these rules.

(11) “Medical Gas” means any gas and vacuum system or equipment intended for medical and dental procedures in health care and non-health care facilities within the scope of the **Plumbing Specialty Code** as defined in OAR 918-750-0110.

(12) “Plumbing Specialty Code” means the **Oregon State Plumbing Specialty Code** as defined in OAR 918-750-0110.

(13) “Solar Heating and Cooling System” means any configuration of plumbing equipment and components to collect, convey, store and convert the sun’s energy for the purpose of heating or cooling potable water.

(14) “Water Supply System” is defined in the **Plumbing Specialty Code**.

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

Stat. Auth.: ORS 447.010, 447.020, 455.110 & 693.103

Stats. Implemented: ORS 447.010, 447.020, 455.110 & 693.103

Hist.: DC 4, f. 8-13-71, ef. 9-11-71; DC 25-1978, f. 9-5-78, ef. 9-20-78; Renumbered from 814-021-0500; DC 2-1983, f. & ef. 1-3-83; Renumbered from 814-020-0006; BCA 18-1991, f. & cert. ef. 6-12-91; BCA 19-1993(Temp), 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-690-0005; BC-22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 24-2004, f. 12-15-04, cert. ef. 4-1-05

918-750-0110

Plumbing Specialty Code

(1) Effective April 1, 2005, the **Plumbing Specialty Code** is the **2003 Edition of the Uniform Plumbing Code, Second Printing, Chapters 2-11, 13, 14 and 15, Appendices A, B, D, E, I and J** published by the International Association of Plumbing and Mechanical Officials, with errata through December 15, 2004, except for the following additions, amendments and deletions:

(a) **Appendices G, H, K and L** are not adopted as part of the **Plumbing Specialty Code**;

(b) Useful tables, **Oregon Installation Standards** and **IAPMO Installation Standards in the Uniform Plumbing Code, “IS-1A-04”, “IS-1-91”, “IS-2-90”, “IS-3-00”, “IS-4-96”, “IS-5-92”, “IS-6-00”, “IS-7-90”, “IS-8-95”, “IS-9-95”, “IS-11-87”, “IS-15-82”, “IS-16-84”, “IS-18-85”, “IS-20-00”, “IS-21-89”, “IS-26-02”, “IS-27-01”, “IS-28-02”, and “IS-29-04”** are adopted;

(c) Oregon amendments by the Division, through December 15, 2004, are adopted;

(d) Medical Gas and Vacuum Systems **Standard NFPA 99C-2002** Edition as published by the National Fire Protection Association.

(2) If any of the publications adopted by reference in this rule adopt other references:

(a) The adoption date of the references shall be the date stated in the publication; or

(b) If no adoption date is shown, or if reference is made to further dates the references are adopted as of April 1, 2005.

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

Stat. Auth.: ORS 447.020, 455.030 & 455.110

Stats. Implemented: ORS 447.020, 455.030 & 455.110

Hist.: DC 40, f. 1-6-75, ef. 2-1-75; DC 99, f. 9-2-77, ef. 11-1-77; DC 15-1979(Temp), f. 12-21-79, ef. 1-1-80; DC 2-1980, f. 2-14-80, ef. 3-1-80; DC 3-1980, f. & ef. 2-14-80; DC 4-1981, f. 5-15-81, ef. 7-1-81; DC 9-1981, f. & ef. 7-6-81; DC 14-1981(Temp), f. 10-30-81, ef. 11-6-81; DC 15-1982(Temp), f. & ef. 5-5-82; DC 1-1983, f. & ef. 1-3-83; DC 28-1984, f. 9-5-84, ef. 10-15-84; DC 10-1985, f. & ef. 4-1-85; DC 4-1987, f. & ef. 3-4-87; DC 11-1987, f. & ef. 4-21-87; Renumbered from 814-021-0005; BCA 27-1989, f. 12-5-89, cert. ef. 1-1-90; BCA 14-1990, f. & cert. ef. 6-13-90; BCA 42-1991, f. & cert. ef. 12-23-91; BCA 19-1993(Temp), f. 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 4-1996, f. 2-29-96, cert. ef. 4-1-96; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0010; BCD 7-1999, f. 6-21-99, cert. ef. 4-1-2000; BCD 6-2000, f. 3-15-00, cert. ef. 4-1-00; BCD 27-2000, f. 10-13-00 cert. ef. 10-01-01; BCD 24-2004, f. 12-15-04, cert. ef. 4-1-05

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

Adm. Order No.: FCS 5-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 11-30-04

Notice Publication Date: 10-1-04

Rules Adopted: 441-710-0045

Subject: This rule specifies the minimum amount of information to be provided to members of a merging credit union, to enable the members to cast an informed vote. The rule also specifies how this information may be made available for inspection by the director.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-710-0045

Notice to Members of Merger Plan

(1) After approval of a plan of merger by the board of directors of two or more credit unions, the plan of merger, in summary form, must be presented to the members of the merging credit union(s) prior to the affirmative vote required by ORS 723.682. Unless waived by the director, the summary of the merger plan must contain the following, as applicable:

(a) Current financial reports for each credit union, consisting of the most currently filed NCUA Form 5300 pages reflecting assets and liabilities, income and expenses, and net worth ratio;

(b) A combined financial report as submitted to the director;

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- (c) An analysis of share values, and any proposed share adjustments;
- (d) An explanation of any changes concerning insurance of member accounts;
- (e) The reason(s) for the merger;
- (f) The name and location of the continuing credit union, including branches, expected to be open after the merger;
- (g) A description of the organization of the continuing credit union board of directors and the identity, if known, of its members and committees;
- (h) An explanation of any new or expanded products and services to be made available to members, and any services or products expected to be discontinued, as a result of and expected to be effective within 30 days of the closing date of the merger;
- (i) A statement of whether any senior management officials (vice president level and above) of the merging credit union are subject to employment agreements, deferred compensation agreements, or other employee benefit arrangements not offered to employees generally, and if so, whether any such agreements or arrangements contain provisions effecting compensation or benefits changes in the event of a merger;
- (j) A statement of whether any agreements, plans or arrangements identified in subsection (1)(i) will be modified or superseded in connection with the merger, or whether any senior management officials (vice president and above) of the merging credit union will be offered new employment agreements, deferred compensation arrangements, incentive plans, retirement packages or other employee benefit arrangements not offered to employees generally. Provide a summary description of the arrangements identified in this subsection, disclosed in the aggregate, and not by individual employee, with a brief explanation of how such arrangements differ from existing arrangements of such employees; and
- (k) An estimate itemized by general categories of the cost of the merger.

(2) Before dissemination to the members, the merger plan summary described in section (1) will be made available for inspection by the director or the director's employees at the offices of the credit union(s) or by viewing a web site maintained by the credit union(s) to which the director is provided access. The credit union(s) will notify the director when the merger plan summary becomes available for review. The credit union may disseminate the merger plan summary to the members at the time the director grants preliminary approval of the merger or five business days after the merger plan summary is made available for inspection by the director, whichever is later.

- (3) The summary may be communicated to members by means of:
 - (a) United States postal mail;
 - (b) Electronic mail;
 - (c) Facsimile;
 - (d) Access to an Internet web page which may be password-protected if deemed necessary by the credit union;
 - (e) Permitting members to pick up materials at a main or branch office; or
 - (f) Any other method identified by the credit union and approved by the director that allows for access by the members to the information.

Stat. Auth.: ORS 723.102
Stats. Implemented: ORS 723.682
Hist.: FCS 5-2004, f. & cert. ef. 11-30-04

Adm. Order No.: FCS 6-2004
Filed with Sec. of State: 12-14-2004
Certified to be Effective: 1-1-05
Notice Publication Date: 11-1-04

Rules Amended: 441-860-0020, 441-860-0050
Subject: These amendments increase the initial and renewal license fees, including adding a variable component based on the number of loan originators employed by or associated with a licensed firm.
Rules Coordinator: Berri Leslie—(503) 947-7478

441-860-0020 **Application Procedure**

Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:

- (1) A completed application on a form approved by the Director;
- (2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090;
- (3) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a state-

ment of income or operations which is dated not more than six months prior to submission of the application:

(a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;

(b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.

(4) Written Authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(3);

(5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;

(6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon;

(7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:

- (A) Any director, officer, and shareholder with ownership of greater than or equal to 10 percent of outstanding shares of a corporate applicant;
- (B) Owner, if the applicant is an unincorporated sole proprietorship; and

(C) Each managing partner of a limited or general partnership.

(b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and

(c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(8) The information required pursuant to OAR 441-880-0030 for loan originators.

(9) The information required pursuant to OAR 441-860-0030 for each branch office.

(10) Initial fees. An initial application fee composed of a fixed component in the amount of \$825 and a variable component in the amount of \$60 for each reported loan originator to be employed by or associated with the firm to do business in this state, plus a fee of \$165 for each initial branch office operated by a licensee that will do business in this state.

(11) Additional branch offices. A fee of \$247.50 for each branch office added after the mortgage banker or mortgage broker license is issued.

(12)(a) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010 is insufficient to fund the administration of ORS 59.840 through 59.960, the Director may amend this rule to increase the fees to an amount necessary to fund the administration of ORS 59.840 through 59.960 plus a reasonable emergency fund;

(b) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010, exceeds the amount necessary to fund the administration of ORS 59.840 through 59.960, the Director may amend this rule to decrease the fees to an amount necessary to administer ORS 59.840 through 59.960 plus a reasonable emergency fund;

(c) If licensees have paid the licensing fees pursuant to this rule and the Director finds that the total fees collected exceed the amount necessary to administer ORS 59.840 through 59.960 and provide a reasonable emergency fund, the Director may adjust the licensee's next renewal fee, following the making of such a finding, downward to provide for an equitable assessment of fees.

(13) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the

ADMINISTRATIVE RULES

request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850(1), 59.855(1) & 59.900
Stats.: Implemented: ORS 59.845 & 59.969
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05

441-860-0050

Renewal of Mortgage Banker and Mortgage Broker License

Except as provided in section (6) of this rule, licensees shall renew for a 24-month period from the date of original licensing or last renewal. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the Director and shall include the following:

- (1) A completed license renewal form approved by the Director.
- (2) Financial statements on a compiled basis, consisting of a balance sheet and a statement of income or operations, prepared in accordance with generally accepted accounting principles, which is dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of the application must also be submitted.

(3) A license renewal fee composed of a fixed component in the amount of \$825 and a variable component in the amount of \$60 for each reported loan originator employed by or associated with the firm to do business in this state as of the date 60 days prior to the renewal date plus a fee of \$165 for each branch office license which is renewed.

(4) Current information on officers, directors, or persons who own ten percent or more of the outstanding shares of a corporate applicant, or every owner if the applicant is unincorporated.

(5) The information required pursuant to OAR 441-880-0030 for loan originators.

(6) A licensee may renew their license, one time only, for less than the full 24 months but more than 12 months for the purpose of changing the anniversary date of license renewal. The licensee shall pay a prorated renewal fee equal to a fixed component of \$34.38 plus a variable component of \$2.50 for each reported loan originator employed by or associated with the firm to do business in this state as of the month end date immediately preceding the renewal date for each month of renewal for the principal office plus \$6.88 for each month of renewal for each branch office.

(7) If a licensee submits an application which is incomplete in any respect, the Director will contact the licensee to request the required information. The licensee shall have 10 days to respond to the request for additional information. If the licensee fails to respond to the request, the renewal application will not be processed, and the license shall be canceled on the expiration date.

(8) If a licensee's license is canceled pursuant to section (7) of this rule, and the licensee remedies the incomplete application before the scheduled license expiration date, the license will be renewed for a two-year period.

Stat. Auth.: ORS 59.850(7), 59.855(2) & 59.900
Stats. Implemented: ORS 59.855 & 59.969
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05

Adm. Order No.: FCS 7-2004

Filed with Sec. of State: 12-14-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Amended: 441-930-0030, 441-930-0210, 441-930-0270

Subject: These amendments increase the initial and annual fees for certified providers and master trustees from \$275 to \$335.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-930-0030

Applications for Registration of Master Trustees

(1) Each person desiring to register as master trustee shall apply by submitting a written application with the Director on forms prescribed by the Director.

(2) The application must contain:

(a) Information concerning the applicant's identity, address, and personal background and business, professional or work history of all execu-

tive officers and directors or individuals performing similar duties, and owners of 10% or more on a form approved by the Director;

(b) Proof of registration or good standing of the applicant's business name in the state or country under which it is organized;

(c) The depositories the applicant intends to use for funds received under the appointment from the certified provider and notification of any changes at or before the time of the change;

(d) Financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles;

(B) If the audited financial statement is more than six months old, internally prepared statement for the most recent month end.

(3) Any other pertinent information as the Director may require; and

(4) A registration fee as set in OAR 441-930-0270.

(5) The Director may conduct a background check of any person applying for registration. The background check may include information solicited from the Oregon State Police.

(6) Initial registration period shall be for a period of 1 year from the date of initial registration.

(7) Unless there are grounds for denying the application pursuant to OAR 441-930-0310, the Director shall issue an Order of Registration.

(8) The Order of Registration is a continuing registration and remains in effect until the registration is surrendered by the registrant or revoked or suspended by the Director as provided for in OAR 441-930-0310.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0030; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05

441-930-0210

Application for Original Order of Certification

(1) Each entity desiring to obtain an Order of Certification shall apply by submitting a written application with the Director on forms prescribed by the Director.

(2) An application must contain:

(a) A list of all officers, directors, and owners of 10% or more;

(b) Information concerning the applicant's identity, address, and the business, professional or work history of all executive officers and directors or individuals performing similar duties, and owners of 10% or more;

(3) Proof of registration or good standing of the applicant's business name in the state or country under which it is organized;

(4) The depositories the applicant intends to use for funds received from the sale of the preneed plans and notification of any changes at or before the time of the change; and

(5) For providers who do not appoint a master trustee, financial statements including:

(a) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(b) If the audited financial statement is more than six months old, internally prepared statement for the most recent month end.

(6) A list of prearrangement plans to which the applicant was a party at the date of application; and

(7) A registration fee as set in OAR 441-930-0270.

(8) The Director may conduct a background check of any person applying for registration. The background check may include information solicited from Oregon State Police.

(9) If the applicant is an individual or sole proprietorship, the applicant's social security number. Provision of this number is mandatory and failure to provide the applicant's social security number shall be considered grounds for denying certification to the applicant.

(10) Initial registration period shall be for a period of one year from the date of initial registration.

(11) Unless there are grounds for denying the application pursuant to ORS 97.948, the Director shall issue an Order of Certification.

(12) The certificate issued to certified providers is continuing and remains in effect until surrendered by the Provider or revoked or suspended by the Director.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0210; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

441-930-0270

Fees Assessed to Certified Providers and Registered Master Trustees

The Director shall collect the following fees from each registered master trustee and certified provider:

- (1) A registration or certification fee — \$335.
- (2) Annual Report Fee — \$335 per trustee, provider and/or cemetery or crematorium location. For purposes of the annual report fee, each branch location of a registrant's funeral establishment is a separate establishment and each location of a cemetery or crematorium is a separate location.
- (3) Short form Annual Report Fee — \$10.
- (4) Exam Fees — \$60 per hour for each examiner, plus costs of an examination.
- (5) If the books and records are located outside Oregon, the certified provider or master trustee must pay travel and per diem expenses.
- (6) In addition to the charges fixed by this rule, the Director shall collect any additional costs directly attributable to extra services provided under ORS 97.923 to 97.949 or these rules.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.933, 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0270; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05

Department of Consumer and Business Services, Insurance Division Chapter 836

Adm. Order No.: ID 9-2004

Filed with Sec. of State: 11-19-2004

Certified to be Effective: 11-19-04

Notice Publication Date: 9-1-04

Rules Amended: 836-053-0510

Subject: This rulemaking amends the Oregon Standard Health Statement, an exhibit to OAR 836-053-0510, which is established to be used with applications for individual health benefit plans. The amendments update and clarify the questions and other matters, and provide for conformance of its authorization provision to federal law, specifically to regulations adopted under the federal Health Insurance Portability and Accountability Act (HIPAA).

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0510

Oregon Standard Health Statement

(1) The Oregon Standard Health Statement is included as **Exhibit 1** to this rule.

(2) The Oregon Standard Health Statement is the only health statement that a carrier may use to evaluate the health status of applicants for coverage in an individual health benefit plan and for late enrollees in a group health benefit plan. In all instances in which a carrier uses the Oregon Standard Health Statement, the cost of processing the statement shall be borne by the carrier.

(3) In evaluating the Oregon Standard Health Statement submitted by an applicant, a carrier may request medical records or an attending physician's statement for the applicant, but such a request shall be made only for questions that have been marked "Yes" by the applicant in the numbered questionnaire portion of the statement. The cost of obtaining such information shall be borne by the carrier. Although a carrier's request for additional medical information is limited to the specific questions marked "Yes," a carrier may use all of the information received in response to such a request in evaluating the applicant's health statement.

(4) In accordance with ORS 746.135, a carrier may not use genetic information to reject, deny, limit or alter the terms of a health benefit plan.

(5) A carrier may use, until April 1, 2005, the Oregon Standard Health Statement that was authorized under this rule prior to amendments adopted on October 29, 2004.

(6) Violation of any provision of this rule is an unfair trade practice under ORS 746.240.

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

Stat. Auth.: ORS 731.244, 743.766

Stats. Implemented: ORS 743.766

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0470, ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 9-2004, f. & cert. ef. 11-19-04

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

Adm. Order No.: OSHA 5-2004

Filed with Sec. of State: 11-19-2004

Certified to be Effective: 11-19-04

Notice Publication Date: 10-1-04

Rules Amended: 437-002-0120

Subject: Federal OSHA published, in the August 4, 2004 Federal Register, changes to Appendix A to 1910.134, the Respiratory Protection standard. 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 2/I, Personal Protective Equipment.

Federal OSHA approved an additional quantitative fit testing protocol, the controlled negative pressure (CNP) REDON fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard. The protocol affects, in addition to general industry, OSHA respiratory standards for shipyard employment and construction.

The CNP REDON protocol requires the performance of three different test exercises followed by two redonnings of the respirator, while the CNP protocol approved previously by OSHA specifies eight test exercises, including one redonning of the respirator. In addition to amending the standard to include the CNP REDON protocol, this rulemaking makes several editorial and nonsubstantive technical revisions to the standard associated with the CNP REDON protocol and the previously approved CNP protocol.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0120

Adoption by Reference

In addition to and not in lieu of any other health and safety codes contained in OAR 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/03, and any subsequent amendments published in the Federal Register and listed below:

(1) 29 CFR 1910.132 General requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 6/30/93, FR vol. 58, no. 124, p. 35306; 4/6/94, FR vol. 59, no. 66, p. 16360; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(2) 29 CFR 1910.133 Eye and face protection, published 6/27/74, Federal Register, vol. 39, p. 23502; 4/6/94, FR vol. 59, no. 66, p. 16360; 3/7/96, FR vol. 61, no. 46, p. 9236; 5/2/96, FR vol. 61, p. 19547.

(3) 29 CFR 1910.134 Respiratory protection, published 1/8/98, Federal Register, vol. 63, no. 5, p. 1270; 4/23/98, FR vol. 63, no. 78, p. 20098; 8/4/04, FR vol. 69, p. 46986.

(4) 29 CFR 1910.135 Occupational head protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547.

(5) 29 CFR 1910.136 Occupational foot protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547; 5/9/96, FR vol. 61, p. 21228.

(6) 29 CFR 1910.137 Electrical protective equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 1/8/98, FR vol. 63, no. 5, p. 1270. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices. **Appendix A** – References for further information (nonmandatory). **Appendix B** – Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the **United States Government Printing Office.**

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

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

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

ADMINISTRATIVE RULES

Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04

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Department of Environmental Quality
Chapter 340

Adm. Order No.: DEQ 9-2004

Filed with Sec. of State: 11-19-2004

Certified to be Effective: 11-19-04

Notice Publication Date: 7-1-04

Rules Amended: 340-016-0055

Subject: The amended rule aligns the deadline for filing an application and the program's sunset date to the statute.

Rules Coordinator: Roberta Young—(503) 229-6408

340-016-0055

Application Procedures

Any Oregon taxpayer may apply for the certification of a pollution control facility to take relief from their Oregon tax liability. The applicant and the facility shall be eligible under ORS 307.405, 315.304, and 468.150 to 468.190. The applicant shall submit the application to the Department on the application form provided by the Department.

(1) Application for Preliminary Certification. An applicant may apply for preliminary certification of a pollution control facility to determine if a future facility would meet the certification requirements as set forth in OAR 340-016-0060. The applicant may submit the optional preliminary application anytime before the construction of the pollution control facility is complete. If the Commission issues a preliminary certificate and if the applicant constructs the facility as represented on the preliminary application and the preliminary certificate then the facility shall meet the requirements as set forth in OAR 340-016-0060. The preliminary certification of a facility does not exempt the applicant from submitting a timely application for final certification as set forth in section (2) of this rule.

(2) Application for Final Certification. The applicant shall submit all information, exhibits and substantiating documents requested on the application for final certification. The Department shall reject the application for final certification if the applicant fails to submit the application:

(a) After the construction of the facility is substantially complete and the facility is placed in service;

(b) Within one year after construction of the facility is substantially completed; and

(c) On or before December 31, 2008.

(3) Complete Application. The applicant shall submit to the Department an application as set forth in section (1) or section (2) that is complete and ready to process. For an application to be complete and ready to process, the applicant shall:

(a) Complete all required application fields;

(b) Provide all appropriate exhibits;

(c) Explain how the facility is eligible for a pollution control tax credit as set forth in OAR 340-016-0060. The applicant shall include supporting documentation if the facility is eligible for certification based upon orders or permit limitations;

(d) Include the appropriate fees established in OAR 340-016-0065;

(e) Provide documentation that substantiates the facility cost as claimed on the application for final certification and as set forth in OAR 340-016-0070;

(f) Contain a statement that the facility is in compliance with Department statutes, rules and standards, and any documentation regarding non-compliance;

(g) Sign the application certifying that all claims made on the application are true and accurate;

(h) Provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit if the applicant is claiming a tax credit for a leased facility. The applicant shall provide a copy of the cover, first and signature pages of the complete and current lease agreement for the facility. The Department may request a copy of the complete agreement; and

(i) Provide a copy of a written and signed agreement between the owners designating the party or parties to receive the tax credit certificate if the applicant is claiming the tax credit for a facility with more than one owner.

(4) Department Notification. The Department shall notify the applicant in writing when:

(a) Rejecting an application for the applicant's failure to file a timely application as set forth in sections (1) and (2) of this rule or rejecting an application for failure to provide a timely response as set forth in subsection (5)(a) of this rule.

(b) Requiring additional information from the applicant. The Department shall request additional information within 60 days from the date the Department received the application if the Department is unable to complete the review;

(c) Requiring additional information, for applications for final certification only, if the Department is unable to determine the actual cost of the facility or the portion of the actual cost of the facility properly allocable to pollution control;

(d) Notifying the applicant of the date, time and place of the Commission meeting where the Commission shall take action on the application; and

(e) Notifying the applicant of the action taken by the Commission. If the Commission rejects an application for certification; certifies a lesser actual cost of the facility; or certifies a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than the applicant claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant.

(5) Applicant Response to Notification. The applicant:

(a) Shall respond to the Department within 60 days of receipt of the Department's written notification when the Department requests additional information as set forth in section (4) of this rule. The applicant shall respond by providing the additional information requested or by submitting a written estimate of the time needed to provide the information necessary to complete the application.

(b) May appeal from the rejection or reduction as provided in ORS 468.170(3) and 468.110.

(6) Extension of Time. The Commission may grant an extension of time to submit an application for final certification. An extension of time:

(a) Shall only be considered for applications that may exceed the time limits set forth in section (2) of this rule;

(b) Shall not extend the period for filing an application beyond December 31, 2008; and

(c) Shall only be granted for circumstances beyond the control of the applicant that would make filing a timely application unreasonable.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468.165 & ORS 468.170

Hist.: DEQ 5-1998, f. 4-24-98, cert. ef. 5-1-98; DEQ 4-2004(Temp), f. & cert. ef. 6-8-04 thru 12-5-04; DEQ 9-2004, f. & cert. ef. 11-19-04

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Adm. Order No.: DEQ 10-2004

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 12-15-04

Notice Publication Date: 10-1-04

Rules Amended: 340-200-0040, 340-204-0090, 340-242-0440

Subject: This rulemaking adopts the Portland Area Carbon Monoxide Maintenance Plan as a revision to the State Implementation Plan under the federal Clean Air Act. The proposed changes will discontinue the wintertime oxygenated fuel requirement for Clackamas, Multnomah, Washington and Yamhill Counties (as of October 31, 2007), amend Motor Vehicle Emissions Budgets, modify current Transportation Control Measures and prepare for potential future changes to the way DEQ tests emissions of 1981 through 1995 vehicles.

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.

ADMINISTRATIVE RULES

(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-f-1-01; 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

340-204-0090

Oxygenated Gasoline Control Areas

The following are oxygenated gasoline control areas until October 31, 2007: Clackamas, Multnomah, Washington and Yamhill Counties.

[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 468A.420

Hist.: DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0470; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 10-2004, f. & cert. ef. 12-15-04

340-242-0440

Industrial Growth Allowance Allocation

(1) The owner or operator of a proposed new major source or major modification emitting VOCs, NOx, or CO, as identified in OAR 340-242-0400, may obtain a portion of any remaining emissions in the respective growth allowance based on the following conditions:

(a) Access is on a first-come-first-served basis, based on the submit date of a complete permit application;

(b) Unused PSEL donation sources that meet the donation criteria specified in OAR 340-242-0420(2) have priority access to their respective growth allowance as a "tie-breaker" over non-donation sources; and

(c) No single source may receive an emissions allocation of more than 50% of any remaining growth allowance, or up to 10 tons per year,

whichever is greater. On a case-by-case basis, the Environmental Quality Commission may approve an emissions allocation of greater than 50% upon consideration of the following:

(A) Information submitted by the source to the Department justifying its request for exceeding the 50% emissions allocation, based on significant economic, employment, or other benefits to the Portland area that will result from the proposed new major source or major modification;

(B) Information provided by the Department on other known new major sources or major modifications seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the source or the Department.

(2) To avoid jeopardizing maintenance of the ozone standard during the interim years of the plan, the Department will allocate only a portion of the VOC and NOx growth allowances each year. The Department will track the use of emissions from the growth allowances and will notify unused PSEL donation sources by mail if either growth allowance is reduced by 50 percent. The amount of the growth allowance that can be allocated each year is identified in Section 4.50 of the State Implementation Plan (SIP), which is on file with the Department.

(3) The amount of the CO growth allowance that can be allocated is identified in the Portland Area Carbon Monoxide Maintenance Plan, Section 4.58 of Volume 2 of the State Implementation Plan on file with the Department.

[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]

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0740; DEQ 10-2004, f. & cert. ef. 12-15-04

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 111-2004(Temp)

Filed with Sec. of State: 11-16-2004

Certified to be Effective: 11-20-04 thru 12-31-04

Notice Publication Date:

Rules Amended: 635-014-0090

Rules Suspended: 635-014-0090(T)

Subject: Amend rule to close the coho salmon season on Siltcoos Lake.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-014-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) Siltcoos Lake and Tahkenitch Lake is open to angling for coho salmon effective October 1, 2004 through December 31, 2004. The daily bag limit is one adult coho salmon and one jack coho salmon. The annual limit, in aggregate from both lakes, is five adult coho.

(a) The waters of Siltcoos Lake is defined as that area upstream from the Highway 101 Bridge and downstream of the railroad trestle on the Maple Creek arm and the Fivemile Road crossing on the Fiddle Creek arm.

(b) The waters of Tahkenitch Lake is defined as that area upstream from the Highway 101 Bridge and downstream from Fivemile Road bridge on the Leitel Creek arm and ODFW Marker at Snare Point on the Fivemile Creek arm.

(3) Effective 12:01 am November 20, 2004, Siltcoos Lake, as defined in (2)(a), is closed to the retention of coho salmon.

(4) The North Fork Alsea River is open to angling for adipose fin-clipped steelhead from December 1, 2004 through December 31, 2004, from the mouth upstream to 100 feet below the Alsea Hatchery fishway and from 100 feet above the Alsea Hatchery fishway upstream 600 feet to an angling deadline marker.

(5) All other specification and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulation** apply.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert.

ADMINISTRATIVE RULES

ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04

Adm. Order No.: DFW 112-2004
Filed with Sec. of State: 11-17-2004
Certified to be Effective: 11-17-04
Notice Publication Date: 10-1-04
Rules Amended: 635-412-0030
Subject: Amend rule to eliminate the mandatory requirement of negotiation on the part of the owner or operator prior to filing a fish passage protest.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-412-0030

Fish Passage Protests

(1) A person owning or operating an artificial obstruction may request alternative dispute resolution at any point in the process of determining fish passage requirements.

(2) The owner or operator of the artificial obstruction who objects to a determination made by the Department under these rules may file a protest with the Commission. Protests must be submitted in writing within 30 days of receipt of a written determination from the Department and must include the grounds for protesting the Department's determination.

(3) The Commission may approve, deny, or modify the Department's determination after sufficient opportunity for public review and comment.

(4) If a protest is not filed within 30 days of receipt of a written determination from the Department, the Department's determination shall become a final order.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.585, 509.645
Hist.: DFW 23-2003, f. & cert. ef. 3-26-03; DFW 112-2004, f. & cert. ef. 11-17-04

Adm. Order No.: DFW 113-2004(Temp)
Filed with Sec. of State: 11-23-2004
Certified to be Effective: 12-1-04 thru 3-1-05
Notice Publication Date:
Rules Amended: 635-005-0045

Subject: Amend rule to 1) open the Oregon 2004-2005 ocean commercial Dungeness crab fishery at 12:01 a.m. on December 1, 2004 for the area south of 45° 46' 00" N. lat. (at Cape Falcon) to the OR/CA border; 2) delay the season opening date for this fishery north of 45° 46' 00" N. lat. (at Cape Falcon) to the OR/WA border until 12:01 a.m. on December 15, 2004; 3) delay the opening for vessels operating under the authority of an Oregon permit for this fishery for the area north of an east-west line at 46° 53' 18" N. lat. (Point Chehalis) off the Washington coast until 12:01 a.m. on March 1, 2005; and 4) 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 January 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), or January 14, 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 December 14 as provided 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 through December 14, 2004. The closed area will open at 12:01 a.m. on December 15, 2004.

(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. before 12:01 a.m. on January 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.

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

Adm. Order No.: DFW 114-2004(Temp)
Filed with Sec. of State: 11-23-2004
Certified to be Effective: 11-23-04 thru 5-20-05
Notice Publication Date:
Rules Amended: 635-075-0026
Subject: Amend rules relating to the application process for the Out-fitter and Guides Nonresident Tags.
Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-075-0026

Application Requirements

(1) A valid controlled hunt Outfitter and Guide application shall be purchased from the department. The purchase price of the application is set forth in OAR 635-060-0005(2) (\$3.00 plus \$1.50 agent fee).

(a) Only one hunt number and one species type may be included on a single application. No more than 50% of the available tags for a specific hunt number and species may be applied for, except in cases where only one person applies for tags and/or an odd number of tags exists in particular hunt.

(b) Tags will only be issued for specific hunt units in which the Outfitter and Guide is certified.

(c) Applications must be complete and include such information as required which will include the six-digit State Marine Board Registration number required under ORS 704.020 or they may be disqualified from the tag allocation drawing.

(d) Applications, along with the proper fees, must be received by midnight December 1, of each year, at the department headquarters office. Applications received after the specified deadline dates shall be disqualified.

(2) No outfitter or guide may receive more than 25 tags per year for any single species of big game.

(3) In the event unissued tags remain they will be included in the tags available as described in OAR 635-060-0030(2).

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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 114-2004(Temp), f. & cert. ef. 11-23-04 thru 5-20-05

Adm. Order No.: DFW 115-2004

Filed with Sec. of State: 11-26-2004

Certified to be Effective: 11-26-04

Notice Publication Date: 10-1-04

Rules Adopted: 635-430-0025, 635-430-0375

Rules Amended: 635-430-0000, 635-430-0010, 635-430-0020, 635-430-0030, 635-430-0040, 635-430-0050, 635-430-0060, 635-430-0070, 635-430-0080, 635-430-0090, 635-430-0100, 635-430-0310, 635-430-0320, 635-430-0330, 635-430-0350, 635-430-0360

Subject: Rules were amended regarding the Wildlife Habitat Conservation and Management Plan and Riparian Lands Tax Incentive Program to address legislative changes to the programs.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-430-0000

Purpose

The purpose of OAR 635-430-0000 through 635-430-0100, is to implement ORS 308A.400 through 308A.430, Oregon Laws 2003, which allows Oregon cities and counties to develop programs for the conservation and enhancement of wildlife habitat. These rules:

(1) Establish criteria and standards for Department review and monitoring of wildlife habitat conservation and management plans;

(2) Specify the form and content of a wildlife habitat and conservation management plan and the conservation and management practices that are appropriate to preserve, enhance or improve the structure or function of wildlife habitat; and

(3) Establish a process for adding and removing eligible land.

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

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0010

Definitions

For the purposes of OAR 635-430-0000 through 635-430-0100 only:

(1) "Cooperating agency" means the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, the Oregon State University Extension Service or other persons with wildlife conservation and management training meeting the following qualifications:

(a) A degree or certification from an accredited educational institution in a field of study providing knowledge that may be applied to preserve, enhance or improve habitat for native wildlife. Such fields of study include, but are not limited to, wildlife biology, wildlife management, fisheries management, biology, zoology, limnology, botany, ecology, wetland ecology,

forest ecology, ecosystem management, environmental engineering, soil science, other natural science, or landscape architecture; or

(b) Certification from a professional society (including but not limited to The Wildlife Society, American Fisheries Society, or Ecological Society of America) or licensure by the state in a field listed in subsection (1)(a) of this rule; or

(c) Evidence of professional experience in a field listed in subsection (1)(a) of this rule.

(2) "Department" means the Oregon Department of Fish and Wildlife.

(3) "Landowner" means the party or parties having the fee interest in land, except where land is subject to a real estate sale contract where "landowner" means the contract vendee.

(4) "Land that is clearly identifiable as containing significant wildlife habitat" means land that meets one or more of the criteria identified in OAR 635-430-0020(1) through (7).

(5) "Lot" has the meaning given that term in ORS 92.010.

(6) "Native vegetation" means vegetation that is indigenous to the subject property or to the physiographic province in which the subject property is located.

(7) "Parcel" has the meaning given that term in ORS 215.010(1).

(8) "Subject property" means a lot, parcel or tract that is subject to a wildlife habitat conservation and management plan.

(9) "Tract" has the meaning given that term in ORS 215.010(2).

(10) "Wildlife" means fish, shellfish, intertidal animals, wild birds, amphibians, reptiles, and wild mammals.

(11) "Wildlife habitat conservation and management plan" or "plan" means a plan developed by a cooperating agency and landowner that specifies the conservation and management practices, including agricultural and forestry practices, that will be conducted to preserve, enhance or improve the structure or function of wildlife habitat on the subject property.

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

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0020

Wildlife Habitat Conservation and Management Plan Objectives

The objective of a wildlife habitat conservation and management plan is to preserve, enhance or improve the composition, structure or function of habitat for native wildlife species, with emphasis on native habitats that:

(1) Have been identified as scarce, becoming scarce or of special ecological significance within the city or county. Sources of information that may be used to identify these habitats include, but are not limited to, the Biodiversity Gap Analysis Program of the USGS Biological Resources Division and the Oregon Department of Fish and Wildlife, the Metropolitan Greenspaces Master Plan or equivalent Metropolitan Functional Plans, the Oregon Natural Heritage Program, the Oregon Biodiversity Project, the Oregon Habitat Joint Venture, the Oregon Comprehensive Wildlife Conservation Strategy, and the Oregon Plan for Salmon and Watersheds.

(2) Have been identified by state or federal resource agencies, local governments, regional governments, watershed councils, conservation organizations or other qualified entities as important habitats for ecological restoration to prevent additional loss of native habitats or species.

(3) Are important to achieve the conservation or management objectives for native habitats or species in public or private land management plans covering multiple land ownerships.

(4) Provide habitat for threatened or endangered species listed in or pursuant to 16 USC Section 1533, ORS 496.172(2), and OAR 635-100-0125;

(5) Provide habitat for state sensitive species listed pursuant to OAR 635-100-0040; or

(6) Are identified as significant wildlife habitat in the Goal 5 elements of city or county comprehensive plans.

(7) Areas that have been adopted by the Metropolitan Service District (Metro) as significant natural areas, open spaces or fish and wildlife habitats or regional resources under Goal 5 pursuant to OAR 660-023-0080.

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

Stats. Implemented: Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0025

State Fish and Wildlife Commission Designation of Eligible Land

(1) At the request of the governing body of a county, the State Fish and Wildlife Commission may designate any or all of the following land in unincorporated areas within the county as eligible for wildlife habitat special assessment:

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(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(2) At the request of the governing body of a city, the commission may designate any or all of the following land within the incorporated city as eligible for wildlife habitat special assessment:

(a) Any land that is zoned for exclusive farm use, mixed farm and forest use or forest use under a land use planning goal protecting agricultural land or forestland; or

(b) Land that is clearly identifiable as containing significant wildlife habitat.

(3) With the prior consent of the governing body of a city, the county in which all or a part of the city is located may apply to the commission on behalf of the city for designation of any area that is within both the city and the county as eligible for wildlife habitat special assessment.

(4) The Commission may designate land described in subsection (1) or (2) of this section as eligible for wildlife habitat special assessment only if the commission finds that designation will promote the objectives of the program and the implementation requirements of these rules.

(5) Any county that did not forbid, by a resolution or other decision of the county governing body, the establishment of wildlife habitat conservation and management plans as of January 1, 2003, shall be deemed to have the land described in OAR 635-430-0025(1) as eligible for wildlife habitat special assessment.

(6) The governing body of the city or county that requested designation under section OAR 635-430-0025 may request that the State Fish and Wildlife Commission remove that designation.

(7) The commission shall remove the designation if:

(a) The city or county demonstrates that the designation creates an economic burden for the city or county; and

(b) The Commission finds that the economic burden is significant.

(8) In making its determination under subsection (7) of this section, the Commission shall give significant weight to the demonstration of economic burden made by the city or county.

(9) A determination by the State Fish and Wildlife Commission to designate land as eligible for the wildlife special assessment or to remove that designation shall for property tax purposes be effective as of the tax year beginning the July 1 immediately following the determination.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0030

Wildlife Conservation and Management Practices

Conservation and management practices appropriate to achieve the objectives of OAR 635-430-0020 may include, but are not limited to:

(1) Protecting existing native vegetation;

(2) Planting native trees, shrubs, grasses and other native vegetation;

(3) Removing invasive, non-native vegetation that threatens native plant communities;

(4) Control of invasive, non-native fish or wildlife that threaten native wildlife species;

(5) Burning as prescribed by the Department to maintain fire-dependent native vegetation;

(6) Fencing to protect wildlife habitat or plant communities;

(7) Increasing habitat diversity by practices such as placing downed, woody material, preserving or creating standing dead trees, creating ponds, or other methods approved by the Department;

(8) Placing boulders, logs and other appropriate materials in streams to enhance fish habitat;

(9) Removing buildings, pavements and other man-made features;

(10) Grading altered land areas to restore original hydrology and natural topography;

(11) Restoring, enhancing or creating wetlands;

(12) Establishing vegetative buffers or structural setbacks adjacent to wildlife habitats;

(13) Amending or allowing farming and forestry management practices that preserve, enhance or improve the structure or function of wildlife habitat;

(14) Locating new dwellings or structural improvements to minimize conflict with existing or proposed habitat for native wildlife species;

(15) Planting new riparian vegetation or protecting existing riparian vegetation through fencing or other means;

(16) Leasing or selling in-stream water rights as an integral part of the wildlife habitat conservation and management practices; or

(17) Other efforts that improve water quality, protect and restore fish and wildlife habitats, recover threatened or endangered species, enhance stream flows or maintain or restore long-term ecological health, diversity and productivity on a broad geographic scale.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0040

Preparation and Content of a Plan

A wildlife habitat conservation and management plan shall be developed by the landowner and a cooperating agency as defined in OAR 635-430-0010(1). The plan shall include the following:

(1) The signed county eligibility certification described in OAR 635-430-0050(1).

(2) The name, home and business addresses and telephone number of the landowner.

(3) The name, address, and telephone number of the cooperating agency.

(4) The township, range, section and tax lot number(s) of the subject property.

(5) The acreage of the subject property.

(6) An aerial photograph of the subject property at a scale of 400 feet per inch, unless otherwise authorized by the Department.

(7) Map(s) and written descriptions of the physical features, vegetation, and wildlife habitats that currently exist on the subject property. The map(s) shall be reproducible, and shall be at a scale of 400 feet per inch unless otherwise authorized by the Department. The map(s) shall display the following:

(a) Rivers and intermittent and perennial streams (including names);

(b) Lakes, ponds and other water bodies;

(c) Wetlands and riparian areas;

(d) Areas that contain threatened or endangered plant species listed under ORS 564.105(2) obtained from existing information available from the Oregon Department of Agriculture, Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(e) Areas of native vegetation, such as oak woodlands or grasslands composed of native plant species;

(f) Location of federal threatened or endangered wildlife species or their critical habitats listed or identified pursuant to 16 USC Section 1533, obtained from existing information available from the Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(g) Location of state sensitive species identified pursuant to OAR 635-100-0040, state threatened or endangered species listed pursuant to ORS 496.172(2) and OAR 635-100-0125, and sites identified pursuant to ORS 496.182(2) that are critical to the survival of state listed threatened or endangered species, obtained from existing information available from the Oregon Natural Heritage Information Center, a cooperating agency, or other source approved by the Department;

(h) Other areas identified in the local comprehensive plan as significant wildlife habitat;

(i) Areas currently managed for forestry;

(j) Areas currently farmed, including the location of all dikes, drainage ditches, or drainage tiles;

(k) Soil map units within the subject property from the Natural Resources Conservation Service Soil Survey.

(l) Dwellings, roads, fences and other artificial structures.

(m) Areas that have been adopted by the Metropolitan Service District (Metro) as significant natural areas, open spaces or fish and wildlife habitats or regional resources under Goal 5 pursuant to OAR 660-023-0080.

(8) A description of:

(a) The wildlife habitat conservation and management objectives to be achieved; and

(b) The conservation and management practices that will be conducted to preserve, enhance or improve the structure or function of wildlife habitat on the subject property.

(9) Time frames to implement each conservation and management practice identified in section (8) of this rule.

(10) Map(s) and written descriptions of the physical features, vegetation, and wildlife habitats reasonably expected to exist on the subject property after implementation of the conservation and management practices

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described in section (8) of this rule, including the location of areas managed for farming or forestry, existing and proposed dwellings and other proposed structural improvements. The map(s) shall be reproducible, and shall be at a scale of 400 feet per inch unless otherwise authorized by the Department.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0050

Plan Submission and Review Procedures

The Department will review wildlife habitat conservation and management plans and make decisions as follows:

(1) Before preparing or submitting a plan, the applicant must obtain certification from the city or county, on a Department form, that the subject property lies within an area or zone designated for participation in the Wildlife Habitat Conservation and Management Program.

(2) The landowner shall simultaneously submit the proposed plan to the appropriate district wildlife office of the Department and the appropriate city or county planning department.

(3) The city or county planning department may submit comments on the proposed plan to the appropriate watershed district office of the Department within 30 working days of the city or county's receipt of the proposed plan.

(4) The Department will review a complete plan for compliance with the standards in these rules and evidence of initial implementation.

(5) The Department will, within 90 days of receipt of a complete plan, make a decision to either approve, approve with modifications, or reject the plan, and will notify the landowner of its decision in writing. If the plan is rejected, the Department will identify in writing the reasons for its decision. The landowner may accept the Department's proposed modifications or correct plan deficiencies identified by the Department and resubmit the plan for review.

(6) The Department may choose to limit the number of plans approved each year due to workload constraints. Preference may be given to those plans with the highest quality and/or quantity of habitat. An application that is not approved due to time constraints shall be held for consideration for approval the following year.

(7) Department decisions on plans may be appealed to the Department under the provisions of ORS 183.310 to 183.550 governing contested cases.

(8) The Department will send one copy of an approved plan to the appropriate city or county planning department.

(9) When a wildlife habitat conservation and management plan is approved by the Department and has been initially implemented, the owner of the land subject to the plan may apply to the county assessor to receive wildlife habitat special assessment.

(10) Application shall be made to the county assessor on forms prepared by the Department of Revenue and supplied by the county assessor. (See ORS 308A.42-308A.430 for further tax assessment guidance.)

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0060

Approval Standards for Plans

The Department will approve plans that meet the following standards:

(1) The property is located on land that has been designated for participation in the program as defined in OAR 635-430-0025.

(2) The plan was developed by the landowner and a cooperating agency as defined in OAR 635-430-0010(1), and contains all of the elements required under OAR 635-430-0040.

(3) The plan is consistent with the objectives in OAR 635-430-0020.

(4) The wildlife conservation and management practices are appropriate and adequate to carry out the objectives of the plan.

(5) The plan emphasizes preservation, enhancement or improvement of native vegetation appropriate to the site.

(6) All new dwellings or structural improvements are located to minimize conflicts with existing wildlife habitats and negative impacts to native wildlife species.

(7) The plan is consistent with the Fish and Wildlife Habitat Mitigation Policy (OAR chapter 635, division 415) and other applicable Department plans, policies, rules and statutes.

(8) The plan's proposed wildlife conservation and management practices will not increase wildlife damage on adjacent lands.

(9) Buffers needed to protect any new habitats created under the plan will be located on the subject property.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0070

Amendments to Approved Plans

(1) Landowners may request amendments to approved wildlife habitat conservation and management plans by contacting the appropriate Department watershed district office.

(2) The landowner shall provide a copy of the approved plan and a description of the proposed amendments.

(3) The Department will follow the procedures in OAR 635-430-0050 when reviewing amendments to approved plans.

(4) Amendments shall meet the standards in OAR 635-430-0060.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0080

Implementation of Approved Plans

(1) For the purpose of making application to the county assessor for wildlife habitat special assessment under ORS 308A.424 to 308A.430, a landowner may request the Department to determine whether an approved wildlife habitat conservation and management plan has been initially implemented.

(2) The Department will, within 90 days of receipt of such request, physically inspect the subject property and determine whether the plan has been implemented.

(3) The Department will consider the plan initially implemented when:

(a) The landowner is carrying out and maintaining the conservation and management practices identified in the plan in accordance with the time frames established in the plan; and

(b) The conservation and management practices are progressing toward the plan's objectives.

(4) If, based on its review, the Department determines the landowner is not implementing the plan as approved, the Department will notify the landowner in writing of the reasons for the decision and the compliance measures he or she must take. The Department will send a copy of this notice to the county assessor.

(5) If the Department determines the landowner is implementing the plan as approved, the Department will provide the landowner with a written declaration to this effect. The Department will send a copy of this declaration to the county assessor.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0090

Monitoring Approved Plans

(1) The Department will monitor an approved wildlife habitat conservation and management plan periodically to determine continued compliance with the plan.

(2) The Department's monitoring activities will include a physical inspection of the subject property.

(3) The Department will notify the landowner prior to initiating its monitoring activities.

(4) If the ownership of the subject property has changed since Department approval of the plan, the Department will provide the landowner with a copy of the approved plan.

(5) If, based on its monitoring activities, the Department determines the landowner is not implementing the plan as approved, the Department will notify the landowner in writing and identify the compliance measures that he or she must take within six months.

(6) If, at the end of the six-month period, the landowner is still not implementing the compliance measures required by the Department, the Department will notify the landowner and the appropriate county assessor.

(7) If the property is disqualified or withdrawn from the program and all other special assessment programs, there is a potential additional tax liability (see ORS 308A.430 and 308A.700-308A.733).

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

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635-430-0100

Compatibility with Existing Laws or Ordinances

(1) Department approval of a wildlife habitat conservation and management plan does not authorize violation of federal or state laws or local ordinances, nor does it supersede any requirements to obtain permits or authorizations required by federal or state laws or local ordinances.

(2) New and existing dwellings may be allowed on a lot or parcel subject to wildlife habitat special assessment as provided in ORS 215.799. The fact that a lot or parcel is subject to wildlife habitat special assessment does not make it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel.

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

Stats. Implemented: ORS Ch. 308A, HB 3616, 2003

Hist.: FWC 23-1994, f. & cert. ef. 4-29-94; DFW 11-1998, f. & cert. ef. 2-5-98; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0310

Definitions

For the purpose of OAR 635-430-0300 through 635-430-0430:

(1) "Department" means the Oregon Department of Fish and Wildlife.

(2) "Designation as Riparian Land" means Department approval of a landowner's riparian management plan and agreement for qualifying riparian land, after application and review as specified in OAR 635-430-0300 through 635-430-0430. This designation qualifies the riparian land for exemption or partial exemption from taxation.

(3) "Native vegetation" means vegetation that is indigenous to the subject property or to the physiographic province in which the subject property is located.

(4) "Non-aquatic Vegetation" means perennial vegetation adjacent to the edge of the stream channel, which may be submerged or partially submerged during periods of annual high streamflow, but spends the majority of the year completely out of surface water.

(5) "Private lands" means any real property, except real property in which the legal title is vested in a federal, state or local government entity.

(6) "Regular Cultivation" means the practice of annual or semi-annual tilling of soil, usually in conjunction with the production of various agricultural crops, produce or livestock.

(7) "Riparian" means pertaining to or situated on the edge of the bank of a river or stream.

(a) "Riparian Land" means land situated along the bank of a stream characterized by vegetation and microclimate influenced by perennial and/or intermittent water normally associated with high water tables and/or hydric soils. This area must be sufficient to support conservation or management measures identified in the riparian management plan and agreement.

(b) "Riparian Vegetation" means the aquatic and non-aquatic vegetation adjacent to streams that is dependent upon or tolerant of the presence of water near the ground surface for at least part of the year.

(8) "Riparian Management Plan and Agreement" means a written plan and agreement that specifically describes a segment of stream corridor and the protection or restoration measures necessary to meet the requirements of OAR 635-430-0300 to 635-430-0430.

(9) "Stream" means a natural channel that carries flowing surface water during some portion of the year. For the purposes of OAR 635-430-0300 to 635-430-0430, "stream" includes stream-associated wetlands, beaver ponds, oxbows and side channels if they are connected by surface flow to the stream during a portion of the year. A waterway that has been channelized through human interaction can meet the definition of a "stream" if the waterway still retains natural stream functions or can achieve natural stream functions through restoration activities required in a riparian management plan.

(a) "Intermittent Stream" means any natural stream in a natural channel that flows during a portion of every year but does not have continuous surface flow at all times of the year.

(b) "Perennial Stream" means a natural stream in a natural channel that ordinarily has continuous surface flow at all times of the year.

(c) "Stream-associated wetland" means a wetland that is adjacent and hydrologically connected to any stream.

(10) "Vegetation Restoration Potential" means the physical potential of a specific site to become re-vegetated with native vegetation if adequate protection, management, or restoration actions are implemented.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0310; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0320

Eligibility Criteria

(1) The Department may designate perennial and intermittent streams and the associated riparian lands, as limited by OAR 635-430-0300 to 635-430-0430, as riparian lands if the land meets the eligibility criteria in 2-6 below.

(2)(a) The stream and associated riparian land are outside adopted urban growth boundaries and are planned and zoned as forest or agricultural lands (including rangeland); or

(b) The stream and associated riparian land are no longer outside adopted urban growth boundaries, and/or planned or zoned as forest or agriculture but such lands:

(A) Were outside urban growth boundaries as of July 1, 1997;

(B) Were planned and zoned as forest or agricultural lands as of July 1, 1997;

(C) Are managed as designated riparian lands; and

(D) are otherwise eligible for riparian designation. However, the landowner must file an application with the Department for including such lands in the program no later than five years after the date of the zoning change, or incorporation into an adopted urban growth boundary; or

(c) The stream and associated riparian land are located within the boundaries of a city and urban growth boundary and the governing bodies of both the city and the county in which the land is located have adopted ordinances or resolutions that are in effect as of the date the application required under OAR 635-430-00360 is submitted to the Department that:

(A) Allow the designation of land as riparian land as defined in OAR 635-430-0310(7)(a); and

(B) If possible, describe how the city or county will provide technical assistance to landowners preparing riparian management plans and will monitor compliance with approved plans.

(3) The width of the riparian land proposed for tax exemption is sufficient to provide long-term stream bank stability, erosion control, water quality, large wood recruitment, fish and wildlife habitat protection, conservation or restoration, and other functions deemed important to healthy aquatic habitats.

(4) Riparian vegetation on the riparian land is sufficient to support the functions identified in section (3) of this rule, or if the riparian land currently lacks adequate riparian vegetation, the land has significant vegetation restoration potential.

(5) The landowner has implemented measures specified in an approved riparian management plan and agreement, for the continued protection, conservation or restoration of riparian lands.

(6) The riparian land is on private land.

(7) After the Department approves the land for designation as riparian land and all procedural requirements in OAR 635-430-0300 to 635-430-0430 are met:

(a) Lands described in 635-430-0320(2)(a) and (b) are eligible for exemption from ad valorem taxation under ORS 308A.356.

(b) For tax years beginning on or after July 1, 2001, lands described in 635-430-0320(2)(c) are eligible for partial exemption from ad valorem taxation under ORS 308A.359

Stat. Auth.: ORS 308A.383, 496.138 & 506.119

Stats. Implemented: ORS 308A.350 - 308A.383

Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0315; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0330

Limitations on Designation of Riparian Lands

Department designation of riparian lands for inclusion in the Riparian Tax Incentive Program is subject to the following limitations:

(1)(a) For each tax year beginning before July 1, 2004, the Department may approve for designation as riparian land no more than 200 miles of private stream bank in any county.

(b) In addition to the amount of land approved under section (1)(a) of this rule, each year the Department may approve for designation as riparian land any remaining allocation from the previous year. This remaining allocation equals the difference between 200 miles and the number of miles designated as riparian land during the previous year, plus the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year.

(2) Department designation of urban lands described in OAR 635-430-0320(2)(c) as riparian lands is subject to the following additional limitations:

(a) The Department may only approve applications for land described in OAR 635-430-0320(2)(c) for tax years beginning on or after July 1, 2002.

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(b) The Department may not approve more than 50 applications for land described in OAR 635-430-0320(2)(c) for any tax year. An application that is not approved because of the limitation imposed by this subsection shall be held for consideration for the next tax year.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119
Stats. Implemented: ORS 308A.350 - 308A.383
Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0320; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0350

Healthy Riparian Habitat

The goal of each riparian management plan and agreement is the protection, conservation or restoration of healthy riparian habitat. Department assessment of the current and potential health of riparian habitat will include, but is not limited to, consideration of the following general goals, as consistent with the ecological potential of an individual property:

- (1) Sufficient shade to moderate water and air temperatures;
- (2) Adequate native vegetative cover to reduce streambank erosion, provide organic matter input, enhance water quality, and provide for the delivery of large wood to the stream channel;
- (3) Sufficient in-channel large wood to promote complex stream habitat conditions, such as pools and riffles; and
- (4) Habitat for native fish and wildlife.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119
Stats. Implemented: ORS 308A.350 - 308A.383
Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0330; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0360

Application Process

(1) A landowner seeking enrollment in the Riparian Land Tax Incentive Program must apply to the applicable county assessor and the Department.

(2) An applicant must apply to the county assessor no later than December 31 to receive a reduced assessment during the following tax year (beginning July 1). Applicants can obtain county application forms from the county assessor.

(3) An applicant must submit a riparian management plan to the Department and sign a Riparian Land Tax Incentive Program agreement. Applicants can obtain these forms from the Department.

(4) The riparian management plan must, at a minimum, include the following information:

- (a) Name, mailing address and telephone number of landowner(s);
- (b) Legal description of the subject property: township, range, section and tax lot number(s);
- (c) County in which the subject property is located;
- (d) Name of the stream associated with the riparian land;
- (e) Total streambank miles proposed for enrollment in the program;
- (f) Acreage of land proposed for designation as riparian land;
- (g) A description of the existing vegetation condition on the riparian lands;
- (h) An explanation of the habitat objectives to be achieved on the riparian land by implementing the riparian management plan and agreement consistent with the riparian goals identified in OAR 635-430-0350;
 - (i) The linear length (feet) of unstable streambank (if any);
 - (j) Soil types;
 - (k) Existing use of, or activities on, the riparian land;
 - (l) Proposed use of, or activities on, the riparian land;
 - (m) Existing land use activities on the portion of the property immediately adjacent to the riparian lands;
- (n) Proposed changes in land use activities (if any) on the portion of the property immediately adjacent to the riparian lands; and
- (o) Specific conservation management practices the landowner will implement to meet program objectives and a timeline for implementing these management practices.

(5) The riparian management plan must also contain a map of the subject property with a scale of four-inch per mile or eight-inch per mile (unless otherwise authorized by the Department), that includes the following information:

- (a) Legal description of the subject property: township, range, section and tax lot number(s);
 - (b) Boundaries of the riparian lands proposed for inclusion in the program;
 - (c) Stream name and location; and
 - (d) Property boundaries.
- (6) The Riparian Land Tax Incentive Program agreement must, at a minimum, contain:

(a) Name, mailing address, and telephone number of the landowner(s);

(b) Legal description of the subject property: township, range, section and tax lot number(s);

(c) Name of the county in which the subject property is located;

(d) Name of the stream associated with the riparian land;

(e) Boundaries of the riparian lands proposed for inclusion in the program;

(f) Authorization for the Department to inspect the property for continued compliance with the riparian management plan pursuant to OAR 635-430-0420, or if so requested by the county assessor, pursuant to ORS 308A.374, and following reasonable efforts to give the landowner prior notification;

(g) Landowner's commitment to follow the riparian management plan associated with the property unless a request for withdrawal is submitted to the county assessor; and

(h) Signatures of landowner(s), Department representative and any other participating party.

(7) Applicants are encouraged to seek technical assistance with developing the riparian management plan and implementing management practices from the local offices of the Oregon Department of Fish and Wildlife or the Soil and Water Conservation District.

(8) To amend an existing riparian management plan and/or agreement, the applicant must submit a new plan or agreement to the Department for review and approval pursuant to these rules.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119
Stats. Implemented: ORS 308A.350 - 308A.383
Hist.: FWC 40-1982, f. & ef. 6-29-82; DFW 41-2000, f. 7-28-00, cert. ef. 8-1-00, Renumbered from 635-009-0335; DFW 115-2004, f. & cert. ef. 11-26-04

635-430-0375

Riparian Conservation and Management Practices

Conservation and management practices appropriate to achieve the objectives of OAR 635-430-0350 may include, but are not limited to:

- (1) Protecting existing native vegetation;
- (2) Planting native trees, shrubs, grasses and other native vegetation;
- (3) Removing invasive, non-native vegetation that threatens native plant communities;
- (4) Control of invasive, non-native fish or wildlife that threaten native wildlife species;
- (5) Burning as prescribed by the Department to maintain fire-dependent native vegetation;
- (6) Fencing to protect wildlife habitat or plant communities;
- (7) Increasing habitat diversity by practices such as placing downed, woody material, preserving or creating standing dead trees, creating ponds, or other methods approved by the Department;
- (8) Placing boulders, logs and other appropriate materials in streams to enhance fish habitat;
- (9) Removing buildings, pavements and other man-made features;
- (10) Grading altered land areas to restore original hydrology and natural topography;
- (11) Restoring, enhancing or creating wetlands;
- (12) Establishing vegetative buffers or structural setbacks adjacent to wildlife habitats.

Stat. Auth.: ORS 308A.383, 496.138 & 506.119
Stats. Implemented: ORS 308A.350 - 308A.383
Hist.: DFW 115-2004, f. & cert. ef. 11-26-04

Adm. Order No.: DFW 116-2004(Temp)

Filed with Sec. of State: 12-8-2004

Certified to be Effective: 12-8-04 thru 3-1-05

Notice Publication Date:

Rules Amended: 635-005-0045

Rules Suspended: 635-005-0045(T)

Subject: Amend temporary rule to 1) delay the season opening date for the ocean commercial Dungeness crab fishery north of 45° 46' 00" N. lat. (at Cape Falcon) to the OR/WA border until further notice and 2) prohibit vessels electing to fish south of 45° 46' 00" N. lat. (at Cape Falcon) but north of Sonoma County, California, from fishing in the area north of this line (at Cape Falcon) within the first 30 days after the area north of Cape Falcon opens.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

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), until further notice 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 the day immediately prior to the delayed opening date, yet to be determined, 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 further notice.

(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. within the first 30-days following the delayed opening date yet to be determined and identified in (3)(b).

(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.

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. & ef. 12-1-89; FWC 119-91; 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

Adm. Order No.: DFW 117-2004

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 8-1-04

Rules Adopted: 635-023-0128, 635-023-0134

Rules Amended: 635-004-0018, 635-004-0020, 635-004-0029, 635-004-0033, 635-011-0050, 635-011-0066, 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0125, 635-023-0130, 635-039-0080, 635-039-0090

Rules Repealed: 635-011-0101

Subject: Rule action modifies, adopts and repeals, sport fishing regulations, groundfish recreation and commercial fishery regulations for 2005.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0018

Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the groundfish specifications and management measures for 2005 included in the **Pacific Council News, Volume 28, Number 2, Summer 2004**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, Subpart G (61FR34572, July 2, 1996, as amended** to incorporate the standards in **Vol. 28, No. 2 of the Pacific Council News**). Therefore, persons must consult the **Pacific Council News** and **Federal Regulations** in addition to division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council News and the Federal Regulations may be obtained by contacting Pacific Council News at www.pccouncil.org or at 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-004-0020

Definitions

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

(1) "At-sea processing" means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another whether shoreside or on the water.

(2) "DTS complex" includes Dover sole (*Microstomus pacificus*), thornyhead (*Sebastolobus spp.*), and trawl-caught sablefish (blackcod, *Anoplopoma fimbria*).

(3) "Exclusive economic zone" means the zone between 3-200 nautical miles offshore of the United States.

(4) "Fishing gear" includes:

(a) "Beam trawl" means a trawl which is held open by a fixed beam frame;

(b) "Bobbin trawl" means the same as roller trawl, and is a type of bottom trawl;

(c) "Bottom trawl" means a trawl in which the otter boards or the footrope of the net contact the seabed, and includes Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls described in OAR 635-004-0040(5) is a bottom trawl;

(d) "Chafing gear" means webbing or other material attached to the codend of a trawl net to protect the codend from wear;

(e) "Codend" shall be defined as the last 50 mesh length constituting the terminal, closed end of a trawl. The meshes shall be counted forward of the pursuing tackle which terminates the codend;

(f) "Double-ply mesh" or "Double-bar mesh" means two lengths of twine tied into a single knot;

(g) "Double-walled codend" means a codend constructed of two walls of webbing;

(h) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(i) "Gill net" has the meaning as set forth in OAR 635-042-0010;

(j) "Hook-and-line" means one or more hooks attached to one or more lines;

(k) "Large footrope trawl gear" is a bottom trawl net with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(l) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(m) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(n) "Nontrawl gear" means all legal commercial groundfish gear other than trawl gear;

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(o) "Pelagic trawl" (midwater or off-bottom) means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net;

(p) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(q) "Roller trawl" or "bobbin trawl" are identical, and mean a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which protects the net and footrope during fishing on the seabed. A roller trawl is a type of bottom trawl;

(r) "Seine" means any nonfixed net other than a trawl net or gill net;

(s) "Selective flatfish trawl gear" is a type of small footrope trawl gear. The net must be a two-seamed net. The breastline must not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope and the headrope must be at least 30% longer in length than the footrope. Selective flatfish trawl gear must not have a footrope that is longer than 105 ft (32.26 m) in length.

(t) "Set net" means a stationary, buoyed and anchored gill net or trammel net;

(u) "Single-walled codend" means a codend constructed of a single wall of webbing knitted with single or double-ply mesh;

(v) "Small footrope trawl gear" is a bottom trawl net with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). If used, chafing gear must only be placed on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Other lines or ropes that run parallel to the footrope must not be augmented to violate the footrope size restrictions. For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(w) "Trammel net" means a gill net made with two or more walls joined to a common float line;

(x) "Trawl net" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels. Trawl nets are used both on bottom and off bottom. They may be fished with or without trawl doors. They may employ warps or cables to herd fish. Trawl nets are restricted to beam trawl, bobbin or roller trawl, bottom trawl and pelagic trawl;

(y) "Trawl riblines" means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing;

(z) "Troll" has the meaning as set forth in OAR 635-003-0010;

(aa) "Vertical hook and line (*Portuguese longline*)" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(5) "Groundfish" means all species of ocean food fish defined as groundfish in the **Pacific Coast Groundfish Fishery Management Plan** and in the **Federal Groundfish Regulations, Title 50, Parts 660 and 663**.

(6) "Inland waters" means all waters of the state except the Pacific Ocean.

(7) "Land, landed, or landing" means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

(8) "Length, total" is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(9) Management lines include:

(a) "Cape Arago" means a line extending due west at 43 degrees 20 minutes 50 seconds north latitude;

(b) "Cape Blanco" means a line extending due west at 42 degrees 50 minutes 00 seconds north latitude;

(c) "Cape Falcon" means a line extending due west at 45 degrees 46 minutes 00 seconds north latitude;

(d) "Cape Lookout" means a line extending due west at 45 degrees 20 minutes 15 seconds north latitude;

(e) "Cascade Head" means a line extending due west at 45 degrees 03 minutes 50 seconds north latitude;

(f) "Heceta Head" means a line extending due west at 44 degrees 08 minutes 18 seconds north latitude;

(g) "Humboldt Mountain" means a line extending due west at 42 degrees 40 minutes 30 seconds north latitude;

(h) "Mack Arch" means a line extending due west at 42 degrees 13 minutes 40 seconds north latitude.

(10) "Ocean food fish" includes all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(11) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except in the Columbia River the Pacific Ocean has the definition prescribed in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(12) "Rockfish" includes:

(a) Aurora rockfish, *Sebastes aurora*;

(b) Bank rockfish, *S. rufus*;

(c) Black rockfish, *S. melanops*;

(d) Black and yellow rockfish, *S. chrysomelas*;

(e) Blackgill rockfish, *S. melanostomus*;

(f) Blue rockfish, *S. mystinus*;

(g) Bocaccio, *S. paucispinis*;

(h) Bronzespotted rockfish, *S. gilli*;

(i) Brown rockfish, *S. auriculatus*;

(j) Calico rockfish, *S. dalli*;

(k) California scorpionfish, *Scorpaena quttata*;

(l) Canary rockfish, *Sebastes pinniger*;

(m) Chilipepper, *S. goodei*;

(n) China rockfish, *S. nebulosus*;

(o) Copper rockfish, *S. caurinus*;

(p) Cowcod, *S. levis*;

(q) Darkblotched rockfish, *S. crameri*;

(r) Dusty rockfish, *S. ciliatus*;

(s) Flag rockfish, *S. rubrivinctus*;

(t) Gopher rockfish, *S. carnatus*;

(u) Grass rockfish, *S. rastrelliger*;

(v) Greenblotched rockfish, *S. rosenblatti*;

(w) Greenspotted rockfish, *S. chlorostictus*;

(x) Greenstriped rockfish, *S. elongatus*;

(y) Harlequin rockfish, *S. variegatus*;

(z) Honeycomb rockfish, *S. umbrosus*;

(aa) Kelp rockfish, *S. atrovirens*;

(bb) Longspine thornyhead, *Sebastolobus altivelis*;

(cc) Mexican rockfish, *Sebastes macdonaldi*;

(dd) Olive rockfish, *S. serranoides*;

(ee) Pacific ocean perch, *S. alutus*;

(ff) Pink rockfish, *S. eos*;

(gg) Quillback rockfish, *S. maliger*;

(hh) Redbanded rockfish, *S. babcocki*;

(ii) Redstripe rockfish, *S. proriger*;

(jj) Rosethorn rockfish, *S. helvomaculatus*;

(kk) Rosy rockfish, *S. rosaceus*;

(ll) Rougheye rockfish, *S. aleutianus*;

(mm) Sharpchin rockfish, *S. zacentrus*;

(nn) Shortbelly rockfish, *S. jordani*;

(oo) Shortraker rockfish, *S. borealis*;

(pp) Shortspine thornyhead, *Sebastolobus alascanus*;

(qq) Silvergray rockfish, *Sebastes brevispinis*;

(rr) Speckled rockfish, *S. ovalis*;

(ss) Splitnose rockfish, *S. diploproa*;

(tt) Squarespot rockfish, *S. hopkinsi*;

(uu) Starry rockfish, *S. constellatus*;

(vv) Stripetail rockfish, *S. saxicola*;

(ww) Tiger rockfish, *S. nigrocinctus*;

(xx) Treefish, *S. serriceps*;

(yy) Vermilion rockfish, *S. miniatus*;

(zz) Widow rockfish, *S. entomelas*;

(aaa) Yelloweye rockfish, *S. ruberrimus*;

(bbb) Yellowmouth rockfish, *S. reedi*.

(13) "Sebastes complex" means all rockfish managed by the Pacific Coast Groundfish Fishery Management Plan except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and thornyhead (*Sebastolobus spp.*). The Sebastes complex includes yellowtail rockfish (*Sebastes flavidus*).

(14) "Shore-based (shoreside) processors" means any facility where fish will be processed which is fixed permanently to land.

(15) "Tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish dealer.

(16) "Trip limit" means the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip. A vessel which has landed its cumulative or daily limit may

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continue to fish on the limit for the next legal period as long as the fish are not landed until the next period:

(a) "Daily trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(b) "Cumulative trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits apply to calendar months.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-004-0029

Sorting Required

It is *unlawful* to fail to sort, into the categories listed in 635-004-0033, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, harvest guideline, quota or harvest cap.

Stat. Auth.: ORS 496.138, 496.162, 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 123-1989, f. 12-19-89, cert. ef. 1-1-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish;
- (b) Minor Shelf Rockfish (excluding tiger rockfish and vermillion rockfish);
- (c) Minor Slope Rockfish;
- (d) Black Rockfish;
- (e) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermillion Rockfish;
- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2005, the commercial harvest caps are:

- (a) Black rockfish and blue rockfish combined of 111.9 metric tons, of which no more than 108 metric tons may be black rockfish.
- (b) Other nearshore rockfish, 16.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.
- (3) No vessel may land more than 2,000 pounds of cabezon; 350 pounds of greenling; 3,000 pounds of nearshore rockfish (no more than 900 pounds of which may be species other than black rockfish or blue rockfish)

for commercial purposes during any cumulative catch period described in subsection 635-004-0033(4).

(4) The cumulative catch periods are: January 1 – February 28 (29); March 1 – April 30; May 1 – June 30; July 1 – August 31; September 1 – October 31; and November 1 – December 31.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991 (Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-011-0050

Procedures for Promulgation of Angling Regulations

(1) In accordance with ORS 496.162, Department staff shall continually monitor the status of fish, shellfish, and marine invertebrates and report promptly to the Director and Commission any serious or abnormal changes in health or abundance of the resource.

(2) Except as provided in subsections (2)(a) and (2)(b), the Commission shall adopt annually those rules prescribing seasons, bag limits, method of harvest, and specific restrictions considered necessary to provide optimum recreational and aesthetic benefits to anglers and other citizens;

(a) In the event more restrictive rules are needed to protect or preserve a species or stock experiencing depletion or drastic decline in health or abundance the Commission shall consider adopting rules at its earliest opportunity to prevent further depletion or decline;

(b) In the event more liberal rules are needed to allow anglers to harvest stocks which become more abundant than expected or which would otherwise be wasted, the Commission shall consider adopting rules at its earliest opportunity to prevent waste and provide additional public recreation.

(3) In order to facilitate incorporation of all available information relating to angling regulations, and to reduce the costs associated with promulgating rules to establish regulations and making those regulations available to the public, it is desirable that changes in seasons, bag limits, methods of harvest and specific regulations be made on a biannual basis and that during interim years, angling regulations be adopted without substantive change. In order to so limit substantive changes to angling regulations to the degree practicable, in even numbered years divisible by four, the following standards and procedures shall be followed:

(a) The Department will request proposals for new or modified regulations. Such proposals shall include: identity of sponsor, name of water or species, suggested wording, a stated objective, and reason rule is considered necessary. A standard form for submitting proposals will be available from Department offices by December 1 of the prior year;

(b) Absent extenuating circumstances only proposals received by February 29 will be included in the process described in subsections (3)(c), (3)(d), (3)(e), and (3)(f);

(c) A summary of all angling regulation proposals received by February 29 will be publicized through the news media to identify the issues which are being processed;

(d) Proposals received by February 29 shall be reviewed by Department staff and enforcement personnel. Like proposals may be grouped or consolidated. By May 15 the Department will provide the sponsor of the proposal a summary of this review and relevant comments or suggestions;

(e) After review, sponsors of proposals will be provided the opportunity to discuss the issue with staff. If necessary, each region will hold public meetings to allow opponents and proponents of proposals to be heard.

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The purpose of these meetings is to reach a consensus on proposals if possible. Such meetings will be held prior to August 1;

(f) When consensus cannot be reached between opponents and proponents of a proposal, the proposal shall be presented to the Commission as a disputed proposal. Disputed proposals not bearing 25 signatures or subsequent endorsements may be rejected by the Commission;

(g) A Commission hearing will be held in late summer or early fall to establish angling regulations. All properly submitted angling regulation proposals in compliance with subsections (3)(a) and (3)(b) shall be considered; others may be considered at discretion of Commission;

(h) In determining the merits and necessity of a proposed regulation and in making the decision on adoption, the Commission may consider one or all of the following. The proposed rule should be:

(A) Easily understood, with clearly defined limits or boundaries;

(B) Enforceable;

(C) Consistent with statutory mandates and Department management policies, goals, plans, and rules;

(D) Consistent with biologically sound principles;

(E) Consistent with court orders, and approved agreements between ODFW and other management entities or landowners;

(F) Supported by affected citizens;

(G) Consistent with regulations on similar or nearby waters, unless social or biological circumstances require diversity;

(H) Necessary to achieve an identified objective;

(I) Necessary to balance harvest with reproduction or recruitment;

(J) Necessary to provide angling opportunity to sequential fisheries;

(i) Proposed regulations which fail to meet these conditions may be rejected by the Commission.

(4) Nothing in this rule shall in any way limit any rights conferred under ORS 183.390 and OAR 137-001-0070.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 6-1987, f. & ef. 2-20-87; FWC 26-1987, f. & ef. 6-18-87; FWC 69-1994, f. 9-28-94, cert. ef. 10-1-94; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-011-0066

Authority to Take Fish

In accordance with ORS 496.162 and 506.129, Department staff and designated representatives may take fish necessary for Department programs in the times, places and manner necessary to collect broodstock for STEP and hatchery programs, take for scientific purposes, collect excess hatchery returns, trap and haul juvenile and adult fish, monitor and evaluate various species and stocks of fish and for such other purposes that implement Commission approved basin and species plans.

Stat. Auth.: ORS 496.162, 506.129

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 111-2001, f. & cert. ef. 11-29-01; DFW 117-2001(Temp), f. & cert. ef. 12-20-01 thru 6-14-2002; DFW 19-2002, f. & cert. ef. 3-20-02; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-011-0100

General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2005 Oregon Sport Fishing Regulations** by reference. 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**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-013-0003

Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2004, included in the **Pacific Fishery Management Council — Adopted 2004 Ocean Salmon Management Measures and Impacts, dated April 2004**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the 2005 Oregon Sport Fishing Regulations.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting ODFW at (503) 947-6200.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through 013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2005 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2005 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supercede the published federal regulations and the **2005 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the **Pacific Fishery Management Council** and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-014-0080

Purpose and Scope

(1) The purpose of Division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru

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12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-014-0090

Inclusions and Modifications

The **2005 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003, cert. ef. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-016-0080

Purpose and Scope

(1) The purpose of division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and Division 016 to determine all applicable sport fishing requirements for the Southwest Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-016-0090

Inclusions and Modifications

The **2005 Oregon Sport Fishing Regulations** provide requirements for the Southwest 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**.

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. &

cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; 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 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-017-0080

Purpose and Scope

(1) The purpose of Division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 017 to determine all applicable sport fishing requirements for the Willamette Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-017-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during each lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121, 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00,

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cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-018-0080

Purpose and Scope

(1) The purpose of division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 018 to determine all applicable sport fishing requirements for the Central Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-018-0090

Inclusions and Modifications

The **2005 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 9-9-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-019-0080

Purpose and Scope

(1) The purpose of division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 019 to determine all applicable sport fishing requirements for the Northeast Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-019-0090

Inclusions and Modifications

The **2005 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-021-0080

Purpose and Scope

(1) The purpose of division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 021 to determine all applicable sport fishing requirements for the Southeast Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-021-0090

Inclusions and Modifications

The **2005 Oregon Sport Fishing Regulations** provide requirements for the Southeast 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**.

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

ADMINISTRATIVE RULES

635-023-0080

Purpose and Scope

(1) The purpose of division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates by reference the **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-023-0090

Inclusions and Modifications

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**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 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

635-023-0125

Spring Sport Fishery

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-023-0128

Summer Sport Fishery

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-023-0130

Fall Sport Fishery

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

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-023-0134

Snake River Fishery

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) Sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates; and

(b) **Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC)**, included in the **Pacific Council News**, and to the extent they are consistent with these rules, Title 50 of the **Code of Federal Regulations, Part 300, Subpart E** (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News). Therefore, persons must also consult the Pacific Council News and Federal Regulations, or the **Pacific Halibut Fishery Regulations 2005** as published by IPHC to determine all rules applicable to the taking of halibut.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

635-039-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye

ADMINISTRATIVE RULES

rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

- (A) Yelloweye rockfish, 3.2 metric tons.
- (B) Canary rockfish, 6.8 metric tons.
- (C) Lingcod, 134 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2004 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 382.5 metric tons, of which no more than 342 metric tons may be black rockfish.

- (b) Other nearshore rockfish, 11.4 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

Stat. Auth.: ORS 496.138, 496.146, 497.121, 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

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Adm. Order No.: DFW 118-2004(Temp)

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 1-1-05 thru 5-31-05

Notice Publication Date:

Rules Amended: 635-023-0090

Subject: Amend rules to correct sturgeon sport fishing regulations, length limits and specifications, in the Columbia River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0090

Inclusions and Modifications

(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 available.

[Publications: Publications referenced are from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 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

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Adm. Order No.: DFW 119-2004(Temp)

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 1-1-05 thru 4-15-05

Notice Publication Date:

Rules Amended: 635-004-0027

Subject: Amend rules to set the 2005 harvest quota for the Yaquina Bay commercial roe herring fishery.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-004-0027

Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31;

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15, 2005 is 93 metric tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237;

(d) During the period January 1 through April 15 it is unlawful to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line "jigging"; or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, 506.119, 506.129, & 508.765

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05

Adm. Order No.: DFW 120-2004

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 11-1-04

Rules Amended: 635-004-0005, 635-004-0033, 635-004-0050, 635-039-0080, 635-039-0090

Subject: Amend rules to adopt 2005 groundfish regulations for nearshore fisheries, 2005 regulations for Pacific Halibut fisheries and additional 2005 recreational groundfish regulation changes. House-keeping and technical corrections to the regulations occurred to ensure rule consistency.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0005

Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, **Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC)**, and in addition to the extent they are consistent with these regulations, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), as amended. Therefore, persons must consult the **Federal Regulations** and the annual **Pacific Halibut Fishery Regulations** as published by IPHC in addition to division 004 to determine all rules applicable to halibut fishing requirements. It is *unlawful* to take halibut for commercial purposes except as set by the **IPHC** and in accordance with a valid permit issued by the **IPHC**.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-

2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Nearshore Rockfish;

(b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);

(c) Minor Slope Rockfish;

(d) Black Rockfish;

(e) Blue Rockfish;

(f) Cabezon;

(g) Canary Rockfish;

(h) Greenling;

(i) Tiger Rockfish;

(j) Vermilion Rockfish;

(k) Widow Rockfish;

(l) Yelloweye Rockfish;

(m) Yellowtail Rockfish;

(n) Darkblotched Rockfish;

(o) Pacific Ocean Perch;

(p) Longspine Thornyhead;

(q) Shortspine Thornyhead;

(r) Arrowtooth Flounder;

(s) Dover Sole;

(t) Petrale Sole;

(u) Rex Sole;

(v) Other Flatfish;

(w) Lingcod;

(x) Sablefish;

(y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2005, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 108.7 metric tons, of which no more than 104.8 metric tons may be black rockfish.

(b) Other nearshore rockfish, 12.0 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) For 2005 the following commercial limits apply:

(a) No vessel may land more than 2,000 pounds of cabezon or 350 pounds of greenling during any cumulative catch period described in subsection 635-004-0033(4);

(b) No vessel may land more than 450 pounds of nearshore rockfish species other than black rockfish or blue rockfish during any cumulative catch period described in subsection 635-004-0033(4);

(c) No vessel may land more than 1,000 pounds of nearshore rockfish for commercial purposes during cumulative catch periods January 1 – February 28 or March 1 – April 30;

(d) No vessel may land more than 1,500 pounds of nearshore rockfish for commercial purposes during cumulative catch periods May 1 – June 30 or July 1 – August 31;

(e) No vessel may land more than 800 pounds of nearshore rockfish for commercial purposes during cumulative catch period September 1 – October 31; and

(f) No vessel may land more than 500 pounds of nearshore rockfish for commercial purposes during cumulative catch period November 1 – December 31.

(4) The cumulative catch periods are: January 1 – February 28 (29); March 1 – April 30; May 1 – June 30; July 1 – August 31; September 1 – October 31; and November 1 – December 31.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-

ADMINISTRATIVE RULES

1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05

635-004-0050

Logbook Required

(1) The Department of Fish and Wildlife will provide a logbook to each licensed commercial fishing boat from which ocean food fish other than Dungeness crab are taken by means of a trawl net (including a shrimp trawl net), longline, hook-and-line, or pot. In addition, a logbook shall be provided to each licensed commercial fishing boat taking squid regardless of gear. The skipper of such boat shall be responsible for maintaining the logbook in an accurate and truthful manner in accordance with the instructions contained therein.

(2) Logbooks shall be completed for a fishing trip within one week of landing.

(3) The skipper of the licensed commercial fishing boat shall, upon request of an authorized representative of the Department of Fish and Wildlife, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(4) The agency copy of the logbook shall be surrendered upon request of Department personnel.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0570; FWC 34-1979, f. & ef. 8-22-79, Renumbered from 635-036-0295; FWC 15-1984, f. & ef. 4-5-84; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2004 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); 69 FR 24524 dated May 2004 and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05

635-039-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye

rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

(b) Other nearshore rockfish, 11.4 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the **2005 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass", "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 8 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) Harvest methods and other specifications for marine fish in subsections (5) (a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(e) Sport fisheries for species in subsections (5) (a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

Stat. Auth.: ORS 496.138, 496.146, 497.121, 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef.

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1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05

Adm. Order No.: DFW 121-2004

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 12-15-04

Notice Publication Date: 11-1-04

Rules Amended: 635-006-0850, 635-006-0910, 635-006-0930

Subject: Amend rules to adopt changes in required information at time of application and/or transfer of Developmental Fisheries Permits. Housekeeping and technical corrections to the regulations occurred to ensure rule consistency.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-006-0850

Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMC meeting, and in addition to the extent they are consistent with these rules, Code of Federal Regulations, Title 50 Part 660, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200;

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 1000 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax*, *nuttallii*), native littleneck clams (Protothaca staminea), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997–December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch, is allowed during the closed season notwithstanding OAR 635-005-0020;

(F) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(G) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(H) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH:

(A) Salmon shark (*Lamna ditropis*);

(B) Carp (*Cyprinus carpio*);

(C) Black hagfish (*Eptatretus deani*);

(D) Yellow perch (*Perca flavescens*);

(E) Eelpouts (family *Zoarcidae*);

(F) Brown bullhead (*Ameiurus nebulosus*);

(G) Skilfish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES

(A) Pacific sand crab (*Emerita analoga*);

(B) Freshwater mussels (families *Margaritifera*, *Anodonta*, *Gonidea*, and *Corbicula*);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

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- (E) Fragile urchin (*Allocentrotus fragilis*);
- (F) Sea cucumber (*Parastichopus spp.*).
- (3) The Developmental Fisheries Species List, Category "C," is as follows:

- (a) FISH:
 - (A) Spiny dogfish (*Squalus acanthias*);
 - (B) Soupfin shark (*Galeorhinus zyopterus*);
 - (C) Skate (family *Rajidae*);
 - (D) American shad (*Alosa sapidissima*);
 - (E) Pacific cod (*Gadus macrocephalus*);
 - (F) Pacific flatnose (*Antimora microlepis*);
 - (G) Pacific grenadier (*Coryphaenoides acrolepis*);
 - (H) Jack mackerel (*Trachurus symmetricus*);
 - (I) Chub (Pacific) mackerel (*Scomber japonicus*);
 - (J) Greenstriped rockfish (*Sebastes elongatus*);
 - (K) Redstripe rockfish (*Sebastes proriger*);
 - (L) Shortbelly rockfish (*Sebastes jordani*);
 - (M) Sharpchin rockfish (*Sebastes zacentrus*);
 - (N) Splitnose rockfish (*Sebastes diploproa*);
 - (O) Pacific sanddab (*Citharichthys sordidus*);
 - (P) Butter sole (*Pleuronectes isolepis*);
 - (Q) English sole (*Pleuronectes vetulus*);
 - (R) Rex sole (*Errex zechirus*);
 - (S) Rock sole (*Pleuronectes bilineatus*);
 - (T) Sand sole (*Psettichthys melanostictus*);
 - (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
 - (V) Spotted ratfish (*Hydrolagus colliiei*);
 - (W) Wolf-eel (*Anarrhichthys ocellatus*);
 - (X) Walleye pollock (*Theragra chalcogramma*).

- (b) INVERTEBRATES:

- (A) Red rock crab (*Cancer productus*);
- (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
- (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99; DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04

635-006-0910

Procedures for Issuance, Transfer and Renewal of Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of \$75 except for bay clams which is \$25. The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, the vessel operator, and other information as the Department may require;

(b) Except as listed below, complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue.

(A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and

(B) Applications for new hagfish permits will be accepted on a first-come, first-serve basis.

(c) An application shall be considered complete if it is legible, has all information requested on the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned and, unless it is thereafter resubmitted and deemed complete by the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(e) Applications for new hagfish permits must include a business plan. The plan format is provided by ODFW. The business plan may include, but is not limited to, a description of vessels and gear currently owned or expected to purchase, identification of the market, and a letter of intent to buy from a processor.

(f) The vessel operator designated in subsection (a) above may change up to twice a year, with at least three work days' notice by the permit holder to ODFW, Newport office.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per vessel (or per person for individual permits), for each developmental fishery species gear category;

(b) A permit holder who holds a valid developmental fisheries permit may not apply for any additional permits for the same vessel (or person for an individual permit) and species gear category unless the Department proposes to deny that permit;

(c) If a permit holder who holds a permit at issue either before the Commission or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commission or in court, the permit holder shall immediately surrender one of the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) Except for new hagfish permits, if the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on post-mark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

(b) Except for new hagfish permits, if the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification restrictions set forth in OAR 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permit holder voluntarily turning in a permit.

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(d) A subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (b) of this rule.

(4) Persons to whom permits are issued: Permits shall be issued to an individual person or entity and assigned to a vessel, except when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be reassigned to another vessel owned or leased and controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

(b) To reassign the vessel on a permit, a permit holder shall first apply on a form provided by the Department and shall include a \$25 fee;

(c) If the permit holder is not the registered owner of the vessel to which a permit is being reassigned, a copy of a signed lease agreement with the owner of the vessel must accompany the application. The lease agreement must show the permit holder will be in control of the daily activities of the vessel during the time of the lease.

(d) No reassignment shall be effective until the permit holder has received approval from the Department and an updated permit.

(e) If a permit is reassigned to a vessel under the ownership of other than the permit holder, the permit holder or designated vessel operator must be aboard the vessel during harvest activities under the permit.

(6) Renewal of permits:

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on the form and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete before the deadline listed in (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner;

(d) In addition to timely and complete filing to renew a permit, a permit holder must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permit holder obtained a permit later than July 1 of the prior year, the permit holder shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permit holder shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 2-1996, f. & cert. ef. 1-23-96; FWC 1-1997, f. & cert. ef. 1-16-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 102-2001, f. & cert. ef. 10-23-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 6-2004(Temp), f. 1-28-04, cert. ef. 1-31-04 thru 3-31-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04

635-006-0930

Review of Denials

(1) An individual whose application for issuance, renewal or transfer of the permit required by OAR 635-006-0900 is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission for a hearing for review of the denial. The request shall identify why the permit should be granted.

(2) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit. The Developmental Fisheries Board is designated as a party to the contested case.

(3) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(4) The Commission may waive landing requirements for renewal of a permit if it finds that failure to meet those requirements was due to illness, injury, or circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04

Department of Geology and Mineral Industries

Chapter 632

Adm. Order No.: DGMI 1-2004

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-10-04

Notice Publication Date: 10-1-04

Rules Amended: 632-007-0000, 632-007-0010, 632-007-0020, 632-007-0030

Subject: The rule amends earlier version of rule that specified a certain Oregon Department of Geology & Mineral Industries publication as the map to use for identifying "Further Review Areas" of "Rapidly Moving Landslides." Amended rule defines that maps will be produced in cooperation with state and local jurisdictions as mandated and adopted by agency Governing Board.

Rules Coordinator: Gary W. Lynch—(541) 967-2039, ext. 23

632-007-0000

Purpose

The rules in this Division implement the responsibilities of the Oregon Department of Geology and Mineral Industries under ORS 195.260(4)(a) relating to the mapping of further review areas for rapidly moving landslides.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03; DGMI 1-2004, f. & cert. ef. 12-10-04

632-007-0010

Definitions

(1) "Further review area" for the purpose of this division, means an area of land that may be subject to rapidly moving landslides as specifically mapped by the Oregon Department of Geology and Mineral Industries for the purpose of implementing ORS 195.260(4)(a).

(2) "Rapidly moving landslide" for the purpose of this division, means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel, and is moving at a velocity that is difficult for people to outrun or escape.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03; DGMI 1-2004, f. & cert. ef. 12-10-04

632-007-0020

Further Review Area Maps

(1) The Oregon Department of Geology and Mineral Industries will prepare further review area maps in cooperation with local governments

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and in coordination with the Oregon Department of Forestry. The department will prepare further review area maps only for counties in western Oregon and Hood River County, where appropriate.

(2) The Oregon Department of Geology and Mineral Industries will identify further review areas in maps prepared for that purpose. The Governing Board will adopt the further review area maps by rule. No other maps or parts of maps prepared by the department are further review area maps.

(3) As provided in ORS 195.260, further review area maps are designed to assist local government in determining the need for site-specific reports prior to construction of structures in areas with possible hazard from rapidly moving landslides.

(4) Further review area maps are not designed or intended to indicate levels of site-specific hazard.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03; DGMI 1-2004, f. & cert. ef. 12-10-04

632-007-0030

Effective Date

The rules in this division are effective June 29, 2003.

Stat. Auth.: ORS 516.090

Stats. Implemented: ORS 195.260 & 516.090

Hist.: DGMI 1-2002, f. 12-20-02, cert. ef. 1-1-03; Suspended by DGMI 2-2002(Temp), f. 12-20-02, cert. ef. 1-1-03 thru 6-28-03; DGMI 1-2003, f. 6-27-03, cert. ef. 6-29-03; DGMI 1-2004, f. & cert. ef. 12-10-04

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

Adm. Order No.: OMAP 88-2004

Filed with Sec. of State: 11-24-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 11-1-04

Rules Amended: 410-130-0240

Subject: The Medical-Surgical Services program administrative rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP revised OAR 410-130-0240 to allow providers to bill one unit hourly in addition to the basic units plus patient contact time for neuraxial labor analgesia/anesthesia.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0240

Medical Services

(1) All medical and surgical services requiring prior authorization (PA) are listed in OAR 410-130-0200 PA Table 130-0200-1, and services that are Not Covered/Bundled services are listed in OAR 410-130-0220 Table 130-0220-1. Table 130-0220-1 only contains clarification regarding some services that are not covered. Refer to the Health Services List of Prioritized Services for additional information regarding not covered services.

(2) Acupuncture may be performed by a physician, a physician's employee-acupuncturist under the physician's supervision, or a licensed acupuncturist, and billed using CPT 97780 or 97781.

(3) Anesthesia:

(a) Anesthesia is not covered for procedures that are below the funding line on the Health Services Commission's Prioritized List of Health Services;

(b) Reimbursement is based on the base units listed in the current American Society of Anesthesiology Relative Value Guide plus one unit per each 15 minutes of anesthesia time.

Exception: anesthesia for neuraxial labor analgesia/anesthesia must be billed at the basic units plus one unit for each 15 minutes of patient contact time (insertion, management of adverse events, delivery, removal) plus one unit hourly;

(c) Bill total quantity on one line of the base units plus one unit for each 15 minutes of anesthesia time. For the last fraction of time under 15 minutes, bill one unit for 8-14 minutes. Do not bill a unit for 1-7 minutes of time;

(d) Reimbursement for qualifying circumstances codes 99100-99140 and modifiers P1-P6 is bundled in the payment for codes 00100-01999. Do not add charges for 99100-99140 and modifiers P1-P6 in charges for 00100-01999;

(e) A valid consent form is required for all hysterectomies and sterilizations;

(f) If prior authorization (PA) was not obtained on a procedure that requires PA, then the anesthesia services may not be paid. Refer to OAR 410-130-0200 PA Table 130-0200-1;

(g) Anesthesia services are not payable to the provider performing the surgical procedure except for conscious sedation.

(4) Chiropractic services must be billed using 99202 and 99212 for the diagnostic visits and 98940-98942 for manipulation. Use CPT lab and radiology codes, which most accurately identifies the services performed.

(5) Maternity Care and Delivery:

(a) Use Evaluation and Management codes when providing three or fewer antepartum visits;

(b) For births performed in a clinic or home setting, use CPT codes that most accurately describe the services provided. HCPCS supply code S8415 may be billed in addition to the CPT procedure code. Code S8415 includes all supplies, equipment, staff assistance, birthing suite, newborn screening cards, topical and local anesthetics. Bill medications (except topical and local anesthetics) with HCPCS codes that most accurately describe the medications;

(c) For labor management only, bill 59899 and attach a report;

(d) For multiple births, bill the highest level birth with the appropriate CPT code and the other births under the delivery only code. For example, for total OB with cesarean delivery of twins, bill 59510 for the first delivery and 59514 for the second delivery.

(6) Mental Health and Psychiatric Services:

(a) For Administrative Exams and reports for psychiatric or psychological evaluations, refer to the Administrative Exam rules;

(b) Psychiatrists can be reimbursed by OMAP for symptomatic diagnosis and services, which are somatic (physical) in nature. Contact the local Mental Health Department for covered psychiatric and psychological services;

(c) Mental Health Services — Must be provided by local Mental Health Clinics or a client's Mental Health Organization (MHO). Not payable to private physicians, psychologists, and social workers.

(7) Neonatal Intensive Care Unit (NICU) procedure codes:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Consultations by specialists other than neonatologists and pediatric intensivists are payable in addition to these codes;

(c) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use specific CPT ECMO codes.

(8) Neurology/Neuromuscular — Payment for polysomnographs and multiple sleep latency test (MSLT) are each limited to two in a 12-month period.

(9) Ophthalmology Services — Routine eye exams for the purpose of glasses or contacts are limited to one examination every 24 months for adults. All materials and supplies must be obtained from OMAP's contractor. Refer to the Vision Program Rules for more information.

(10) Special Services and Reports — OMAP will pay for procedure codes 99052 or 99054 only when the service provided is outside the practitioner's usual or scheduled working hours. These services are not payable to emergency room based physicians.

(11) Speech & Hearing:

(a) HCPCS codes V5000-V5299 are limited to speech-language pathologists, audiologists, and hearing aid dealers;

(b) Refer to the Speech and Hearing Program Rules for detailed information;

(c) Payment for hearing aids and speech therapy must be authorized before the service is delivered;

(d) CPT 92593 and 92595 Covered only for children under age 21.

(12) Massage therapy is covered only when provided with other modalities during the same physical therapy session. Refer to Physical and Occupational Therapy Services administrative rules (410-131) for other restrictions.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80, AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices;

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AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89; Renumbered from 461-014-0021 & 461-14-056; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94; Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04 cert. ef. 12-1-04

Adm. Order No.: OMAP 89-2004
Filed with Sec. of State: 11-24-2004
Certified to be Effective: 12-1-04
Notice Publication Date: 11-1-04

Rules Amended: 410-121-0030, 410-121-0040

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. OMAP amended 410-121-0030 to clarify language and update Table 121-0030-1 by adding Kadian to the Long-acting Opioid class. OMAP amended 410-121-0040 to add Singulair to the prior authorization-required list.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0030

Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer-reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, DHS will include their drug in the PDL;

(e) A copy of the current PDL is available on the web at www.dhs.state.or.us/policy/healthplan/guides/pharmacy/.

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will review drug classes and selected drug(s) for the drug classes periodically:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) DHS will not add new drugs to the PDL until they have been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on DHS's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0155) in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, DHS will recalculate the cost of the other FDA-approved drugs in the class using the EAC in effect for retail pharmacies on the first of the month in which DHS reviews that specific drug class less average available rebate. DHS will include drugs with prices under the benchmark drug cost on the PDL.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155.

Table 121-0030-1, PMPDP PDL (updated effective 12/01/2004)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prior authorization (PA) will not be required when the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Office of Medical Assistance Programs.

(2) PA will not be required on over the counter (OTC) covered drugs when prescribed for covered diagnosis.

(3) PA will be required on (1) and (2) above if the Office of Medical Assistance Programs determines a potential client safety risk associated with the prescribed drug.

(4) Prescribing practitioners are responsible for obtaining PA for the following drugs and products:

(a) Isotretinoin (Accutane) and Retinoic Acid (Retin A);

(b) Growth hormone;

(c) Oral Nutritional supplements;

(d) Antihistamines (selected);

(e) Nasal inhalers (selected);

(f) Antifungals (selected);

(g) Weight reduction drugs;

(h) Excessive daily doses;

(i) Excessive drug therapy duration;

(j) Coal tar preparations;

(k) Topical antibiotics;

(l) Topical antivirals (selected);

(m) Topical testosterone;

(n) Dronabinol (marinol);

(o) Drugs with cosmetic indications;

(A) Emollients;

(B) Dermatologicals;

(C) Hair growth products;

(P) Proton Pump Inhibitors (PPI) after eight weeks of acute anti-ulcer therapy;

(q) Gabapentin (Neurontin);

(r) Triptan quantity limits;

(s) FluMist (Influenza Virus Vaccine Live, Intranasal);

(t) Montelukast Sodium (Singulair).

(5) PA will be required for brand name drugs that have two or more generically equivalent products available.

(6) Psychotropic prescriptions for children under the age of six cannot be processed when a default 999999 provider number has been entered.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

ADMINISTRATIVE RULES

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03, cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04, cert. ef. 12-1-04

Adm. Order No.: OMAP 90-2004

Filed with Sec. of State: 11-24-2004

Certified to be Effective: 12-16-04

Notice Publication Date: 11-1-04

Rules Amended: 410-142-0300

Subject: The Hospice Services Rules govern Office of Medical Assistance Programs' payment for services provided to clients. Medicaid hospice rates are calculated based upon the annual hospice rates established by Centers for Medicare and Medicaid Services (CMS). These rates are authorized by section 1814 of the Social Security Act. OMAP received new Hospice rates, effective 10/01/04. Rule 410-142-0300, temporarily amended effective October 1, 2004 to update the Hospice Rates in compliance with federal regulations, is permanently amended.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-142-0300

Billing and Rate Information

(1) Hospice care is defined as a group of services and is therefore paid on a per diem basis dependent upon the level of care being provided. If the client is enrolled in a prepaid health plan, the hospice must contact the plan and bill according to their instructions.

(2) When the client has the "OHP Standard or OHP Plus" benefit package but is not enrolled in a prepaid health plan, bill with the appropriate Revenue Codes using the instructions on how to complete the UB-92.

(3) If the client is enrolled in Medicare Part A, do not bill OMAP unless no Medicare certified Hospice is available.

(4) If the client is enrolled in Medicare Part B, enter NC or MC in Form Locator 84.

(5) If the client is enrolled in Medicare Part A and you are not a Medicare-certified hospice, and there is no Medicare-certified hospice available in the area, enter NC or MC in Form Locator 84.

(6) Submit your claim to OMAP on a hard copy UB-92 or electronically:

(a) Send paper UB-92 claims to: Office of Medical Assistance Programs (OMAP);

(b) For information about electronic billing (EMC), contact OMAP. Electronic billing (EMC) information is also available at OMAP's website, www.dhs.state.or.us.

(7) When billing for hospice services, the provider must bill the usual charge or the rate based upon the geographic location in which the care is furnished, whichever is lower. See Table 142-0300: (Hospice Rate Chart, Revised 10/01/04. Rates were calculated per CMS State Agency Letter dated August 11, 2004.)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 47-1998, f. & cert. ef. 12-1-98; OMAP 40-1999, f. & cert. ef. 10-1-99; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 55-2001(Temp) f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 65-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 41-2002(Temp), f. & cert. ef. 10-1-02 thru 3-15-03; OMAP 15-2003, f. & cert. ef. 2-28-03; OMAP 80-2003(Temp), f. & cert. ef. 10-10-03 thru 3-15-04; OMAP 86-2003, f. 11-25-03, cert. ef. 12-1-03; OMAP 66-2004, f. 9-13-04, cert. ef. 10-1-04; OMAP 79-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; OMAP 90-2004, f. 11-24-04, cert. ef. 12-16-04

Adm. Order No.: OMAP 91-2004(Temp)

Filed with Sec. of State: 12-3-2004

Certified to be Effective: 12-3-04 thru 5-7-05

Notice Publication Date:

Rules Amended: 410-050-0860

Subject: The tax rate stated in Temporary rule 410-050-0860 is inconsistent with the Provider Tax rate stated on the Tax collection form and set by the DHS Director. The actual tax rate is higher than

the stated rate. The rate was stated originally as .93 percent. The correct rate is .95 percent. The amendment to this temporary rule corrects this error, published to be effective 11/09/04.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-050-0860

Director Determines Rate of Tax

(1) The tax rate is determined by the Director.

(2) The tax rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax rate for the period beginning July 1, 2004 is 0.95 percent.

(3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the Hospitals as to the effective date of the rate reduction.

(4) A Hospital is not guaranteed that any additional moneys paid to the Hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the Hospital.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 91-2004(Temp), f. & cert. ef. 12-3-04 thru 5-7-05

Adm. Order No.: OMAP 92-2004(Temp)

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-10-04 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.

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) Second solid organ transplants are not covered except for acute graft failure that occurs during the original hospitalization for transplantation.

(d) Transplants which have not been prior authorized for payment by OMAP or the client's managed health care plan;

(e) Transplants which do not meet the guidelines for an emergency transplant in OAR 410-124-0040;

(f) Transplants which are not described as covered in OAR 410-141-0480 and 410-141-0520.

ADMINISTRATIVE RULES

(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

(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

Adm. Order No.: OMAP 93-2004(Temp)

Filed with Sec. of State: 12-10-2004

Certified to be Effective: 12-10-04 thru 5-15-05

Notice Publication Date:

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. OMAP temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This temporary filing is to immediately update Transmittal #37, with Title XIX State Agency Letter Number 04-05, changes to the list, effective for services rendered on or after October 28, 2004, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 04-05, with changes to be effective October 28, 2004, and is available for downloading on OMAP's Website, (contact OMAP for most current website address). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-

ADMINISTRATIVE RULES

1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05

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

Adm. Order No.: MHD 6-2004
Filed with Sec. of State: 12-3-2004
Certified to be Effective: 1-1-05
Notice Publication Date: 10-1-04
Rules Repealed: 309-046-0230
Subject: Most Chapter 309, Division 046, Child Foster Care rules were moved to Chapter 411, Division 346 and major revisions were made to the content of those rules. This rulemaking action permanently repeals 309-046-0230.
Rules Coordinator: Lynda Dyer—(503) 945-6398

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Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 36-2004
Filed with Sec. of State: 12-1-2004
Certified to be Effective: 12-1-04
Notice Publication Date: 11-1-04
Rules Adopted: 333-100-0057, 333-100-0080, 333-101-0003, 333-102-0040, 333-102-0190, 333-102-0247, 333-102-0350, 333-102-0355, 333-102-0360, 333-102-0365, 333-105-0003, 333-105-0050, 333-105-0075, 333-105-0420, 333-105-0430, 333-105-0440, 333-105-0450, 333-105-0460, 333-105-0470, 333-105-0480, 333-105-0490, 333-105-0500, 333-105-0510, 333-105-0520, 333-105-0530, 333-105-0540, 333-105-0550, 333-105-0560, 333-105-0570, 333-105-0580, 333-105-0590, 333-105-0600, 333-105-0610, 333-105-0620, 333-105-0630, 333-105-0640, 333-105-0650, 333-105-0660, 333-105-0670, 333-105-0680, 333-105-0690, 333-105-0700, 333-105-0710, 333-105-0720, 333-105-0730, 333-105-0740, 333-105-0750, 333-105-0760, 333-106-0750, 333-116-0025, 333-116-0035, 333-116-0055, 333-116-0057, 333-116-0059, 333-116-0105, 333-116-0107, 333-116-0165, 333-116-0265, 333-116-0495, 333-116-0515, 333-116-0525, 333-116-0573, 333-116-0577, 333-116-0583, 333-116-0585, 333-116-0587, 333-116-0605, 333-116-0905, 333-116-0910, 333-116-0915, 333-118-0800, 333-120-0015, 333-120-0017, 333-120-0215
Rules Amended: 333-100-0001, 333-100-0005, 333-100-0060, 333-100-0065, 333-100-0070, 333-101-0001, 333-101-0010, 333-102-0001, 333-102-0005, 333-102-0010, 333-102-0015, 333-102-0020, 333-102-0025, 333-102-0030, 333-102-0035, 333-102-0075, 333-102-0101, 333-102-0103, 333-102-0105, 333-102-0110, 333-102-0120, 333-102-0125, 333-102-0130, 333-102-0135, 333-102-0200, 333-102-0203, 333-102-0235, 333-102-0245, 333-102-0250, 333-102-0255, 333-102-0260, 333-102-0265, 333-102-0270, 333-102-0275, 333-102-0285, 333-102-0290, 333-102-0293, 333-102-0300, 333-102-0305, 333-102-0310, 333-102-0315, 333-102-0327, 333-

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Subject: To retroactively update and maintain compatibility with Nuclear Regulatory Commission regulations for radioactive materials, a requirement of our Agreement State status. Additional changes utilize guidance from the Suggested State Regulations for the Control of Radiation published by the Conference of Radiation Control Program Directors. These rule changes were previously submitted to the Secretary of State's office and became effective on March 27, 2003. These rules are identical to the rules previously filed with the Secretary of State's office on March 27, 2003. The following is a general description of the retroactive changes.

333-100 General Provisions: Added several new definitions, added maintenance of records and deliberate misconduct, text clarification and/or minor corrections.

333-101 Registration of Radiation Machines, General License Radioactive Materials, Licensing of Radiation Services, and Accreditation of Hospital Radiology Inspectors: Added definitions, changing radiation units to Standard International units.

333-102 Licensing of Radioactive Material: Added several new definitions, expanded and clarified Scope, clarification of license types, specifically identifies information required by general licensee, additional requirements for certain measuring, gauging or controlling devices, added General License to Install Devices Generally Licensed, added new Application for Specific Licenses, changed General Requirements for the Issuance of Specific Licenses, moved radiography licensing requirements to Division 333-105, added Records and Material Transfer Reports, changed Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Radioactive Material for Medical Use Under Divi-

sion 116, deleted Manufacture and Distribution of Generators or Reagent Kits for Preparation of Radiopharmaceutical Containing Radioactive Material, deleted Filing Application for Specific Licenses, changes to Specific Terms and Conditions of License, adding Financial Assurance and Recordkeeping for Decommissioning, added Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas, added requirements to section on reciprocity, added Reporting Requirements, added Records, added Right to Cause the Withholding or Recall of Byproduct Material, added Third Party Method, other clarifications and editorial corrections.

333-103: Clarification of applicability in Annual Registration Fee for General Licenses and Devices.

333-105: Major re-write to include certification of industrial radiographers using radioactive sources.

333-106: Added definitions, changes in fluoroscopy training and usage requirements, changes in mammography requirements, correction of formulas and tables.

333-111: Added three-year frequency for training.

333-116: Change in Scope, new and edited definitions, added Application for License, Amendment, or Renewal, changed notification requirements, exemptions for Broad Scope A licensees, added License Issuance, added Specific Exemptions, additional requirements for Radiation Safety Officer, additional requirements for Statement of Authorities and Responsibilities, changes for Supervision, added Written Directives, added Procedures for Administrations Requiring a Written Directive, clarified requirements for Possession, Use, Calibration and Check of Dose Calibrators, added Possession, Use Calibration, and Check of Instruments to Measure Dosages of Alpha- or Beta-emitting Radionuclides, changes to Assay of Radiopharmaceutical Doses, added new sources to Authorization for Calibration and Reference Source, added Release of Individuals Containing Radiopharmaceuticals or Implants, added requirements for compounding radiopharmaceuticals, changes to Use of Radiopharmaceuticals for Therapy, expanded Teletherapy to include Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit, change in requirements for Installation, Maintenance, Adjustment, and Repair of therapy units, added Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units, changes to Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units, added Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit, added Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units, changes to Dosimetry Equipment, clarification for Full Calibration Measurement, added Full Calibration Measurements on Remote Afterloader Units, added Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units, added Periodic Spot-checks for Remote Afterloader Units, added Additional Technical Requirements for Mobile Remote Afterloader Units, added Five-year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units, added Therapy-related Computer Systems, added Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units, other minor clarifications and editorial corrections.

333-118: Several changed and new definitions, changes to Transportation of Radioactive Material, General License Requirements, Previously Approved Packages, U.S. Department of Transportation Specification Container, updated table of A1 and A2 quantities.

333-119: Added requirement for posting public notice, delete requirement for providing removable plastic sheets, operator training required within 12 months, removed date expired requirements, clarified token use.

333-120: added definitions, changed radiation measurement units to Standard International units, added information dose calculations for fluoroscopy, change in monitoring requirements, added Location of Individual Monitoring Devices, clarified requirements for Con-

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trol of Access To certain Radiation Areas, added requirements for storage (securing) radiation sources, clarification of posting requirements, change in radiation survey requirements for package receipt, other minor clarification and editorial corrections.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-100-0001

Scope

Except as otherwise specifically provided, these rules apply to all persons who acquire receive, possess, use, transfer, own, or dispose of any source of radiation; provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission.

NOTE: Attention is directed to the fact that state regulation of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission and to 10 CFR Part 150 of the Commission's regulations.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-100-0005

Definitions

As used in these rules, these terms have the definitions set forth below. Additional definitions used only in a certain Division will be found in that Division.

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

(3) "Accelerator-produced material" means any material made radioactive by a particle accelerator.

(4) "Act" means Oregon Revised Statutes 453.605 to 453.807.

(5) "Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq), defined as one disintegration per second, and the curie (Ci), defined as 3.7×10^{10} disintegrations per second.

(6) "Adult" means an individual 18 or more years of age.

(7) "Agency" means Radiation Protection Services of Oregon Health Services.

(8) "Agreement State" means any state with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under subsection 274b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(9) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(10) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of licensed material, exist in concentrations:

(a) In excess of the derived air concentrations (DAC's) specified in appendix B, Table I, to 10 CFR Part 20.1001 to 20.2401, or;

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

(11) "ALARA" (acronym for "As Low As Reasonably Achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

(12) "Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

(13) "Annual" means occurring every year or within a consecutive twelve month cycle.

(14) "Annual Limit on Intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B to 10 CFR Part 20.1001 to 20.2401.

(15) "As Low As Reasonably Achievable" see "ALARA".

(16) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Agency.

(17) "Becquerel" (Bq) means the International System of Units (SI) unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps).

(18) "Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations, of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

(19) "Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(20) "Byproduct material" means:

(a) Any radioactive material, except special nuclear material, yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction process. Underground ore bodies depleted by such solution extraction operations do not constitute "byproduct material" within this definition.

(21) "Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed for determining calendar quarters except at the beginning of a calendar year.

(22) "Calibration" means the determination of

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

(b) The strength of a source of radiation relative to a standard.

(23) "CFR" means Code of Federal Regulations.

(24) "Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

(25) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days, for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of these rules, "lung class" or "inhalation class" are equivalent terms.

(26) "Clinical laboratory" means a laboratory licensed pursuant to ORS 438.110 to 438.140.

(27) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(28) "Committed dose equivalent" (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(29) "Committed effective dose equivalent" (HE, 50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues (HE,50 = $\sum w_T HT,50$).

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(30) "Contamination" (Radioactive) means: deposition or presence of radioactive material in any place where it is not desired, and particularly in any place where its presence can be harmful. The harm may be in compromising the validity of an experiment or a procedure, or in being a source of danger to persons. Contamination may be divided into two types: Fixed and removable. Removable contamination may be transferred easily from one object to another by light rubbing or by the use of weak solvents such as water or alcohol. Removable contamination is evaluated and recorded in units of microcuries or dpm. Fixed contamination is not easily transferred from one object to another and requires mechanical or strong chemicals to remove it from its current location. Fixed contamination is evaluated and recorded in units of mR/hr.

(31) "Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations or transformations per second (dps or tps).

(32) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(33) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits (a) release of the property for unrestricted use and termination of license or (b) Release of the property under restricted conditions and termination of the license.

(34) "Deep dose equivalent" (Hd), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm²).

(35) "Depleted uranium" means source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(36) "Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B to 10 CFR Part 20.1001 to 20.2401.

(37) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(38) "Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

(39) "Dose equivalent" HT means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem (see "Rem"). (See OAR 333-100-0070(2) for SI equivalent sievert.)

(40) "Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purposes of these rules, "limits" is an equivalent term.

(41) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment. [(HE,50 = _WTHT,50).]

(42) "Effective dose equivalent (HE)" means the sum of the products of the dose equivalent to the organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated (HE = _wTHT).

(43) "Electronic product" means any manufactured product or device or component part of such a product or device that is capable of generating or emitting electromagnetic or sonic radiation such as, but not limited to, X-rays, ultrasonic waves, microwaves, laser light or ultraviolet light.

(44) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(45) "Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(46) "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee.

(47) "Explosive material" means any chemical compound, mixture, or device that produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(48) "Exposure" means (a) the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram. (b) being exposed to ionizing radiation or to radioactive material.

(49) "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(50) "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

(51) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(52) "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm²).

(53) "Fixed gauge" means a measuring or controlling device that is intended to be mounted at a specific location, stationary, and not moved, that is, not portable.

(54) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(55) "General license" means a license granted by rule, in contrast to an issued license, to acquire, own, possess, use, or transfer radioactive material or a device that contains radioactive material.

(56) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(57) "Gray" (Gy) means the International System of Units (SI), unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (100 rad). (See OAR 333-100-0070(2))

(58) "Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.

(59) "Healing arts" means (a) the professional disciplines authorized by the laws of this state to use X-rays or radioactive material in the diagnosis or treatment of human or animal disease. For the purposes of this agency, they are Medical Doctors, Osteopaths, Dentists, Veterinarians, Chiropractors, and Podiatrists; or (b) any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

(60) "High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 centimeters from any source of radiation or from any surface that the radiation penetrates.

(61) "Human use" means the internal or external administration of radiation or radioactive material to human beings.

(62) "Individual" means any human being.

(63) "Individual monitoring" means:

(a) The assessment of dose equivalent by the use of devices designed to be worn by an individual;

(b) The assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or
(c) The assessment of dose equivalent by the use of survey data.

(64) "Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(65) "Inhalation class" (see "Class").

(66) "Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine

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compliance with rules, regulations, orders, requirements, and conditions of the Agency.

(67) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(68) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(69) "Ionizing radiation" means any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. It includes any or all of the following: Alpha particles, beta particles, electrons, positrons, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, fission fragments and other atomic and sub-atomic particles; but not sound or radio waves, or visible, infrared, or ultra-violet light.

(70) "Laser" means any device which, when coupled with an appropriate laser energy source, can produce or amplify electromagnetic radiation by the process of controlled stimulated emission.

(71) "License" means a license issued by the Agency in accordance with rules adopted by the Agency.

(72) "Licensed material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license granted or issued by the Agency. For the purpose of meeting the definition of a Licensing State by the Conference of Radiation Control Program Directors, Inc. (CRCPD), Naturally Occurring and Accelerator Produced Radioactive Material (NARM) refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for Licensing State designation purposes.

(73) "Licensee" means any person who is licensed by the Agency in accordance with these rules and the Act.

(74) "Licensing state" means any state with rules or regulations equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of NARM.

(75) "Limits" (dose limits) means the permissible upper bounds of radiation doses.

(76) "Lost or missing licensed or registered source of radiation" means licensed or registered source(s) of radiation whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(77) "Lung class" (see "Class").

(78) "Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in section Division 118 of this Chapter.

(79) "Member of the public" means an individual, except when that individual is receiving an occupational dose.

(80) "Minor" means an individual less than 18 years of age.

(81) "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(82) "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material.

(83) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

(84) "Naturally-occurring radioactive material" (NORM) means any nuclide that is found in nature as a radioactive material (i.e., not technologically produced).

(85) "Natural thorium" means thorium-232 in equilibrium with all decay products.

(86) "Natural uranium" means a mixture of the uranium isotopes 234, 235 and 238 (approximately 0.7 weight percent uranium-235 and the remainder by weight essentially uranium-238), found in nature, that is neither enriched nor depleted in the isotope uranium 235.

(87) "Nonstochastic effect" means a health effect that varies with the dose and a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

(88) "Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as "special form radioactive material". See "Special form".

(89) "NRC" is the acronym for Nuclear Regulatory Commission.

(90) "Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(91) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for a licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received from background radiation, or as a patient from medical practices, or from voluntary participation in medical research programs, or as a member of the public.

(92) "Package" means packaging together with its radioactive contents as presented for transport.

(93) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

(94) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other State or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing.

(95) "Personnel monitoring equipment" means devices such as film badges, pocket dosimeters, and thermoluminescent dosimeters designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual. See "Individual monitoring devices".

(96) "Pharmacist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy. (See also Authorized Nuclear Pharmacist).

(97) "Physician" means an individual licensed by the Oregon State Board of Medical Examiners to dispense drugs in the practice of medicine.

(98) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

NOTE: Although there is an annual occupational radiation dose limit, additional dose is permitted provided the situation is planned in advance and a justification is provided that the extra dose is necessary. There is a limit to planned special exposures (PSEs) of 1 times the annual limit in any year and 5 times the annual limit in a lifetime. This translates to: [Table not included. See ED. NOTE.]

(99) "Portable gauge" means a measuring or controlling device that is intended to be portable, that is, not fixed to a specific location. All portable gauges require a specific license (there is no general license granted for portable generally licensed devices in the State of Oregon).

(100) "Public dose" means the dose received by a member of the public by exposure to sources of radiation from licensed or registered operations. Public dose does not include occupational dose, or dose received from background radiation, or dose received as a patient from medical practices, or dose from voluntary participation in medical research programs.

(101) "Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 130 °F (54.4 °C). A pyrophoric solid is any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(102) "Qualified expert" means an individual, approved by the Agency, who has demonstrated, pursuant to these rules, that he/she possesses the knowledge, skills, and training to measure ionizing radiation, to evaluate radiation parameters, to evaluate safety techniques, and to advise regarding radiation protection needs. The individual shall:

(a) Be certified in the appropriate field by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics or the American Board of Nuclear Medicine Science; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, health physics, or medical physics and have completed 1 year of documented, full time training in the appropriate field and also 1 year of documented, full time work experience under the supervision of a qualified expert in the appropriate field. To meet this requirement, the individual shall have performed the tasks required of a qualified expert during the year of work experience; or

(c) Receive approval from the Department for specific activities.

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(103) "Quality factor" (Q) means the modifying factor (listed in Tables 1004(b).1 and 1004(b).2 of 10 CFR Part 20.1004 provided at the end of this Division) that is used to derive dose equivalent from absorbed dose.

(104) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(105) "Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray). See OAR 333-100-0070(2) for SI equivalent gray.

(106) "Radiation" means:

(a) Ionizing radiation including gamma rays, X-rays, alpha and beta particles, protons, neutrons, and other atomic or nuclear particles or rays;

(b) Any electromagnetic radiation which can be generated during the operations of electronic products and which the Agency has determined to present a biological hazard to the occupational or public health and safety but does not include electromagnetic radiation which can be generated during the operation of an electronic product licensed by the Federal Communications Commission;

(c) Any sonic, ultrasonic or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and which the Agency has determined to present a biological hazard to the occupational or public health and safety.

(107) "Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(108) "Radiation machine" means any device capable of producing radiation except those which produce radiation only from radioactive material.

(109) "Radiation safety officer" means (a) an individual who has the knowledge, responsibility, and authority to apply appropriate radiation protection rules; (b) the representative of licensee management, authorized by the Agency, and listed on the specific license as the radiation safety officer, who is responsible for the licensee's radiation safety program.

(110) "Radioactive material" means any solid, liquid, or gas that emits radiation spontaneously. Radioactive material, as used in these rules, includes

(a) Byproduct material, as defined in OAR 333-100-0005(19)(a), naturally occurring radioactive material, and accelerator produced material; and

(b) Source material and byproduct material, as defined in OAR 333-100-0005(19)(b).

(111) "Radioactive waste" means radioactive material that is unwanted or is unusable, as defined in division 50 of OAR 345. No radioactive material may be disposed of in Oregon except as provided in division 50 of Chapter 345.

(112) "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

(113) "Reference Man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of the Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(114) "Registrant" means any person who is registered with the Agency and is legally obligated to register with the Agency pursuant to these rules and the Act.

(115) "Registration" means the identification of any material or device emitting radiation, and the owner of such material or device shall furnish information to the Agency in accordance with the rules adopted by the Agency.

(116) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189 and Parts 390-397.

(117) "Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert).

(118) "Research and development" means (a) Theoretical analysis, exploration, or experimentation; or (b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and

processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(119) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(120) "Restricted area" means an area to which access is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(121) "Roentgen" means the special unit of exposure. One roentgen (R) equals 2.58×10^{-4} Coulombs/kilogram of air (see "Exposure" and Division 120).

(122) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(123) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(124) "Sealed source" means radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(125) "Sealed Source and Device Registry" means the national registry that contains all the registration certificates, generated by both the U.S. Nuclear Regulatory Commission and Agreement States, that summarize the radiation safety information for sealed sources and devices and describe the licensing and use conditions approved for the product.

(126) "Shallow dose equivalent" (Hs), which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of 1 square centimeter.

(127) "SI" means the abbreviation for the International System of Units.

(128) "Sievert" means the International System of Units (SI), unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem). See OAR 333-100-0070(2).

(129) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(130) "Source material" means material, in any physical or chemical form, including ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(131) "Source material milling" means any activity that results in the production of byproduct material, as defined by the definition in OAR 333-100-005(19)(b), "Byproduct material".

(132) "Source of radiation" means any radioactive material or any device or equipment emitting, or capable of producing, radiation. Source of radiation, pursuant to this rule, includes, but is not limited to, radiation facilities, radiation producing machines, radiation producing devices, radioactive material sealed and unsealed form (normal form and special form), and radioactive material uses.

(133) "Special form radioactive material" means radioactive material that satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one dimension not less than five millimeters (0.2 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, and a special form encapsulation designed in accordance with the Nuclear Regulatory Commission requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. Any other special form encapsulation either designed or constructed after April 1, 1998, must meet requirements of this definition applicable at the time of its design or construction.

(134) "Special nuclear material" means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

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(b) Any material artificially enriched by any of the foregoing but does not include source material.

(135) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula: *

$$\frac{* 175 \text{ (grams contained U-235)}}{\text{(grams Pu)}} + \frac{50 \text{ (grams U-233)}}{1 \ 350 \ 200 \ 200}$$

(136) "Specific activity of a radionuclide" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(137) "Stochastic effect" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.

(138) "Supervision" as used in these rules, shall mean the responsibility for, and control of, the application, quality, radiation safety and technical aspects of all sources of radiation possessed, used and stored through authorization granted by the agency.

(139) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations, and measurements of levels of radiation or concentrations of radioactive material present.

(140) "Termination" means (a) the end of employment with the licensee or registrant or, in the case of individuals not employed by the licensee or registrant, the end of work assignment in the licensee's or registrant's restricted area in a given calendar quarter, without expectation or specific scheduling of re-entry into the licensee's or registrant's restricted area during the remainder of that calendar quarter or (b) the closure of a registered or licensed facility and conclusion of licensed or registered activities, pursuant to a registration or specific license.

(141) "Test" means the process of verifying compliance with an applicable rule.

(142) "These rules," mean all parts of the Oregon Administrative Rules promulgated under ORS 453.605 through 453.807.

(143) "Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(144) "Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in OAR 333-120-650(1)(d).

(145) "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one meter from the external surface of the package.

(146) "U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

(147) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

NOTE: AOre@ refers to fuel cycle materials pursuant to 10 CFR Part 150.

(148) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of these rules, Auncontrolled area@ is an equivalent term.

(149) "Uranium — depleted, enriched" means:

(a) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes;

(b) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(150) "Validation certificate" means the official document issued upon payment to the Agency of the appropriate fee listed in division 103 of these rules. The license or registration is subject and void without the annual validation certificate.

(151) "Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.)

(152) "Waste" means radioactive waste.

(153) "Week" means 7 consecutive days starting on Sunday.

(154) "Weighting factor" wT for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of wT are: [Table not included. See ED. NOTE.]

(a) 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

(b) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, wT = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(155) "Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(156) "Worker" means an individual engaged in work under a license or registration issued by the Agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(157) "Working level" (WL) means any combination of short-lived radon progeny in 1 liter of air that will result in the ultimate emission of 1.3 x 10⁵ MeV of potential alpha particle energy. The short-lived radon-222 progeny are polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220 the progeny are: polonium-216, lead-212, bismuth-212, and polonium-212.

(158) "Working level month" (WLM) means an exposure to 1 working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.)

(159) "Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1987, f. & ef. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; Administrative Reformating 12-8-97; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-100-0057

Maintenance of Records

Each record required by this Division shall be legible throughout the retention period specified by each Agency rule. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.685 & 453.761

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

ADMINISTRATIVE RULES

333-100-0060

Inspections

(1) Each licensee and registrant shall afford to the Agency at all reasonable times opportunity to inspect sources of radiation and radioactive material and the premises and facilities wherein such sources of radiation and radioactive material are used or stored.

(2) Each licensee and registrant shall make available to the Agency for inspection, upon reasonable notice, records maintained pursuant to the rules in this Chapter.

(3) Within the available resources of the Agency, X-Ray Machine Registrants shall be inspected at the following frequency based upon the class of X-Ray machine(s) registered: [Table not included. See ED. NOTE.]

NOTE: Nothing in this section affects the fee schedule in ORS 453.670 for X-Ray machine registrants.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.685 & 453.761

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 16-1994, f. & cert. ef. 6-27-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-100-0065

Tests

Each licensee and registrant shall perform, or permit the Agency to perform, such tests as the Agency deems appropriate or necessary for the administration of the rules in this Division and divisions 101, 105, 106, 108, 109, 112, 113, 115, 116, 117, 119, and 121 of this Chapter including, but not limited to, tests of:

(1) Sources of radiation and radioactive material;

(2) Facilities wherein sources of radiation and radioactive material are used or stored;

(3) Radiation detection and monitoring instruments; and,

(4) Other equipment and devices used in connection with the utilization or storage of licensed or registered sources of radiation and radioactive material.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.685 & 453.752

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-81-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-100-0070

Units of Exposure and Dose

The Metric Conversion Act of 1975 (PL 94-168) urged the increasing awareness and use of the International System of Units (SI). The generally accepted regulatory values in the narrative portions of this document are followed by the SI equivalents in parentheses. Where appropriate, schedules and appendices are provided with notes concerning conversion factors. The inclusion of the SI equivalent is for informational purposes only.

(1) The unit of exposure is the coulomb per kilogram (C/kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) The units of radiation dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (100 rad);

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 Gy);

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

(d) Sievert is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(e) As used in these regulations, the quality factors for converting absorbed dose to dose equivalent are shown in 10 CFR 20 part 20.1004 Table 1004 (b).1.

(3) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rem per hour or sieverts per hour, as provided in paragraph (b) of this section, 1 rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from 10 CFR 20 part 20.1004 Table 1004(b).2 (at the end of this division) to convert a measured tissue dose in gray or rad to dose equivalent in sievert rem. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 - 453.635

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-100-0080

Deliberate Misconduct

(1) Any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee, who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part; may not:

(a) Engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Agency; or

(b) Deliberately submit to the Agency, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Agency.

(2) A person who violates paragraph (1)(a) or (1)(b) of this rule may be subject to enforcement action in accordance with OAR 333-100-0035.

(c) For purposes of paragraph (1)(a) of this rule, deliberate misconduct by a person means an intentional act or omission that the person knows:

(A) Would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Agency; or

(B) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 - 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-101-0001

Purpose and Scope

(1) This Division provides for the registration of radiation machines, general license radioactive materials, and for the licensing of persons providing radiation machine, radioactive material, or tanning installation, consultation, servicing, and/or services, and hospital radiology inspectors performing hospital X-ray machine inspections, unless such activities are subject to other Divisions of these Rules.

(2) In addition to the requirements of this Division, all licensees, registrants, and accredited individuals are subject to the applicable provisions of other portions of these rules.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; HD 3-1996, f. & cert. ef. 8-9-96; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-101-0003

Definitions

(1) "Facility" means the location, building, vehicle, or complex under one administrative control, at which one or more devices or sources of radiation (X-ray, radioactive materials, or non-ionizing radiation) are installed.

(2) "Health Physics Consultant" means a person, business, facility, or institution providing health physics knowledge and skills for a fee. A health physics consultant may not use or possess radioactive material without specific license authorization pursuant to OAR 333-102-0200.

(3) "Inoperable" means disabling equipment such that ionizing radiation cannot be produced. This is accomplished by removing the X-ray tube, removal of the control unit, removal of the power supply or physical removal of the power cord on a free standing unit.

(4) "Storage" means a condition in which a device or source is not being used for an extended period of time, and has been made inoperable.

(5) "Vendor" means a person, business, facility, or institution providing a product or service for a fee. Radiation vendors include machine salespersons, repair and technical personnel, or marketing representatives who sell, demonstrate, or market x-ray machines or tanning beds and provide advice, consultation, service, or technical information to registrants.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.685 & 453.761

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-101-0010

Exemptions

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this division, providing dose equivalent rate averaged over an area of 10 square centimeters does not exceed 5 μ Sv (0.5 millirem) per hour at five centimeters from any accessible surface of such equipment. The production, testing or factory servicing of such equipment shall not be exempt.

(2) Radiation machines while in transit or inoperable are exempt from the requirements of this division. For the purposes of registration and fees, the Agency considers an X-ray unit to be inoperable only if the machine's X-ray tube (insert) has been removed or the machine disassembled. With the X-ray tube in place, and the machine assembled, the unit is considered to be operable. If a machine is "in storage," it must be registered and charged a registration fee. However, an "inoperable" machine need not be registered or assessed a fee.

(3) Domestic television receivers are exempt from the requirements of this division.

(4) Electron microscopes are exempt from the requirements of this division, provided that the dose equivalent rate, averaged over an area of 10 square centimeters, does not exceed 5 μ Sv (0.5 millirem) per hour at five centimeters from any accessible surface of the equipment.

NOTE: Electron microscope: A type of microscope which uses electrons to produce magnified images and may therefore produce ionizing radiation incidental to its use.

(5) Electron beam welding machines and electron beam furnaces are exempt from the requirements of this division, provided that the dose equivalent rate, averaged over an area of 10 square centimeters, does not exceed 5 μ Sv (0.5 millirem) per hour at five centimeters from any accessible surface of the equipment.

(6) Persons licensed under OAR 333-102-0200 or equivalent specific licenses rules under an Agreement State or the U.S. Nuclear Regulatory Commission are exempt from this requirement.

Stat. Auth.: ORS Ch. 453.605 - 453.807

Stats. Implemented: ORS 453.625, & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0001

Purpose and Scope

(1) This division prescribes rules applicable to all persons in the State of Oregon governing licensing of radioactive material, and for exemptions from licensing requirements. No person shall receive, produce, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license pursuant to this division or divisions 105, 113, 115, 116, 117, or 121 of this chapter.

(2) In addition to the requirements of division 102, all licensees are subject to applicable requirements in divisions 100, 103, 111, 118, and 120 of this chapter. The requirements of this division are in addition to, and not in substitution for, other requirements of this chapter. In any conflict between the requirements in this division and a specific requirement in another division of the rules in this chapter, the specific requirement governs.

(3) This division establishes general licenses for the possession and use of source material and depleted uranium, for radioactive material contained in certain items, and for ownership of radioactive material.

(4) This division gives notice to all persons who knowingly provide to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this Division, that they may be individually subject to Agency actions pursuant to OAR 333-100-0035 or 333-100-0040.

(5) This division prescribes requirements for the issuance of specific licenses to persons who manufacture or initially transfer items containing radioactive material for sale or distribution to persons granted a general license by this Division or to persons authorized by the US Nuclear Regulatory Commission to distribute to persons exempted from licensing requirements, and it prescribes certain rules governing holders of these licenses. In addition, this Division prescribes requirements for the issuance of specific licenses to persons who introduce radioactive material into a product or material owned by or in the possession of the licensee or another and rules governing holders of such licenses. Further, this division describes procedures and prescribes requirements for the issuance of certificates of registration (governing radiation safety information about a product) to manufacturers or initial transferors of sealed source or devices containing sealed sources, which are to be used by persons specifically

licensed under this division or equivalent regulations of an Agreement State or the US Nuclear Regulatory Commission.

(6) The Agency may engage the services of qualified persons in order to assist the Agency in meeting the requirements of this Chapter, including, but not limited to, evaluating information that may be required under OAR 333-102-0200(6).

(7) Information provided to the Agency by an applicant for a license or by a licensee or information required by statute or by the Agency's rules, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(8) Each applicant or licensee shall notify the Agency of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety. An applicant or licensee violates this rule only if the applicant or licensee fails to notify the Agency of information that the applicant or licensee has identified as having a significant implication for public health and safety. Notification shall be provided to the Agency within two working days of identifying the information. This requirement is not applicable to information that already is required to be provided to the Agency by other reporting or updating requirements.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0005

Source Material

(1) Any person is exempt from this division to the extent that such person receives, possesses, uses, owns or transfers source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution or alloy.

(2) Any person is exempt from this division to the extent that such person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided that, except as authorized in a specific license, such person shall not refine or process such ore.

(3) Any person is exempt from this division to the extent that such person receives, possesses, uses or transfers:

(a) Any quantities of thorium contained in:

(A) Incandescent gas mantles;

(B) Vacuum tubes;

(C) Welding rods;

(D) Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;

(E) Germicidal lamps, sun lamps and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium;

(F) Rare earth metals and compounds, mixtures and products containing not more than 0.25 percent by weight thorium, uranium or any combination of these; or

(G) Personnel neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium.

(b) Source material contained in the following products:

(A) Glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material;

(B) Piezoelectric ceramic containing not more than two percent by weight source material;

(C) Glassware containing not more than 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass or ceramic used in construction;

(D) Glass enamel or glass enamel frit containing not more than 10 percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983.

(c) Photographic film, negatives and prints containing uranium or thorium;

(d) Any finished product or part fabricated of, or containing tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four (4) percent by weight and that this exemption shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

(e) Uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles or stored or handled in connection with installation or removal of such counterweights, provided that:

ADMINISTRATIVE RULES

(A) The counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, authorizing distribution by the licensee pursuant to 10 CFR Part 40;

(B) Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";

NOTE: The requirements specified in OAR 333-102-0005(3)(e)(B) and 333-102-0005(3)(e)(C) need not be met by counterweights manufactured prior to December 31, 1969 provided, that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and are impressed with the legend required by 10 CFR 40.13(c)(5)(ii) in effect on June 30, 1969, which read CAUTION — RADIOACTIVE MATERIAL — URANIUM.

(C) Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED"; and

(D) This exemption shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering.

(f) Natural or depleted uranium metal used as shielding constituting part of any shipping container, provided that:

(A) The shipping container is conspicuously and legibly impressed with the legend "CAUTION — RADIOACTIVE SHIELDING — URANIUM"; and

(B) The uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of 1/8 inch (3.2 mm).

(g) Thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) The shaping, grinding or polishing of such lens or manufacturing processes other than the assembly of such lens into optical systems and devices without any alteration of the lens; or

(B) The receipt, possession, use or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

(h) Uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 185 Bq (0.005 uCi) of uranium; or

(i) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(B) The thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(4) The exemptions in OAR 333-102-0005(3) do not authorize the manufacture of any of the products described.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1987, f. & ef. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0010

Exempt Concentrations

(1) Except as provided in OAR 333-102-0010(2), any person is exempt from this Division to the extent that such person receives, possesses, uses, transfers, owns or acquires products containing radioactive material introduced in concentrations not in excess of those listed in 10 CFR Part 30.70 Schedule A.

(2) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under OAR 333-102-0010(1) or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State, or Licensing State except in accordance with a specific license issued pursuant to OAR 333-102-0245 or the general license granted by OAR 333-102-0340.

NOTE: 10 CFR Part 30.70 Schedule A is available from DHS-Oregon Health Services, Radiation Protection Services.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0010

Exempt Concentrations

(1) Except as provided in OAR 333-102-0010(2), any person is exempt from this Division to the extent that such person receives, possesses, uses, transfers, owns or acquires products containing radioactive mate-

rial introduced in concentrations not in excess of those listed in 10 CFR Part 30.70 Schedule A.

(2) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under OAR 333-102-0010(1) or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State, or Licensing State except in accordance with a specific license issued pursuant to OAR 333-102-0245 or the general license granted by OAR 333-102-0340.

NOTE: 10 CFR Part 30.70 Schedule A is available from DHS-Oregon Health Services, Radiation Protection Services.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0015

Certain Items Containing Radioactive Material

(1) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from these rules to the extent that he or she receives, possesses, uses, transfers, owns or acquires the following products:

NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(A) 25 millicuries (925 MBq) of tritium per timepiece;

(B) Five millicuries (185 MBq) of tritium per hand;

(C) 15 millicuries (555 MBq) of tritium per dial (when used, bezels shall be considered as part of the dial);

(D) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(E) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(F) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial (when used, bezels shall be considered as part of the dial);

(G) 0.15 microcurie (5.55 kBq) of radium per timepiece;

(H) 0.03 microcurie (1.11 kBq) of radium per hand;

(I) 0.09 microcurie (3.33 kBq) of radium per dial (when used, bezels shall be considered as part of the dial);

(J) The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(i) For wrist watches, 0.1 millirad (one Gy) per hour at 10 centimeters from any surface;

(ii) For pocket watches, 0.1 millirad (one Gy) per hour at one centimeter from any surface;

(iii) For any other timepiece, 0.2 millirad (two Gy) per hour at 10 centimeters from any surface.

(K) One microcurie (37 kBq) of radium-226 per timepiece in timepieces acquired prior to June 1, 1977.

(b) Lock illuminators containing not more than 15 millicuries (555 MBq) of tritium or not more than two millicuries (74 MBq) of promethium-147 installed in automobile locks. The radiation dose rate from each lock illuminator containing promethium-147 will not exceed one millirad (10 Gy) per hour at one centimeter from any surface when measured through 50 milligrams per square centimeter of absorber;

(c) Precision balances containing not more than one millicurie (37 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part;

(d) Automobile shift quadrants containing not more than 25 millicuries (925 MBq) of tritium;

(e) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas;

(f) Thermostat dials and pointers containing not more than 25 millicuries (925 MBq) of tritium per thermostat;

(g) Electron tubes: Provided, That each tube does not contain more than one of the following specified quantities of radioactive material:

(A) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or 10 millicuries (370 MBq) of tritium per any other electron tube;

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- (B) One microcurie (37 kBq) of cobalt-60;
- (C) Five microcuries (185 kBq) of nickel-63;
- (D) 30 microcuries (1.11 MBq) of krypton-85;
- (E) Five microcuries (185 kBq) of cesium-137; or
- (F) 30 microcuries (1.11 MBq) of promethium-147.

(G) And provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10 Gy) per hour at one centimeter from any surface when measured through seven (7) milligrams per square centimeter of absorber.

NOTE: For purposes of, 333-102-0015(1)(g) "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents.

(h) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(A) Each source contains no more than one exempt quantity set forth in 10 CFR Part 30.71 Schedule B; and

(B) Each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 10 CFR Part 30.71 Schedule B provided that the sum of such fractions shall not exceed unity.

(C) For americium-241, 0.05 microcuries (1.85 kBq) is considered an exempt quantity under 333-102-0015(8).

(i) Spark gap irradiators containing not more than one microcurie (37 kBq) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three gallons per hour (11.4 liters per hour).

(2) The exemptions contained in this rule shall not authorize any of the following:

(a) The manufacture of any product listed;

(b) The application or removal of radioactive luminous material to or from meters and timepieces or hands and dials therefor;

(c) The installation into automobile locks of illuminators containing tritium or promethium-147 or the application of tritium to balances of precision or parts thereof;

(d) Human use, or the use in any device or article, except timepieces, which is intended to be placed on or in the human body;

(e) As applied to radioactive material exempted under OAR 333-102-0015(2)(e), the production, packaging, repackaging or transfer of radioactive material for purposes of commercial distribution or the incorporation of radioactive material into products intended for commercial distribution.

NOTE: 10 CFR Part 30.71 Schedule B is available from the Oregon Health Services, Radiation Protection Services.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, ORS 453.625 & ORS 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0020

Resins Containing Scandium-46, Designed for Sand Consolidation in Oil Wells

Any person is exempt from these rules to the extent that such person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. Such resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the Agency or any Agreement State to the manufacturer of such resins pursuant to licensing requirements equivalent to those in sections 32.16 and 32.17 of 10 CFR Part 32 of the regulations of the U.S. Nuclear Regulatory Commission. This exemption does not authorize the manufacture of any resins containing scandium-46.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0025

Gas and Aerosol Detectors Containing Radioactive Material

(1) Except for persons who manufacture, process, produce or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license and from the rules in this division and in divisions 105, 113, 115,

116, 117, 120, and 121 of this chapter to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been manufactured, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.26 of 10 CFR Part 32; or a Licensing State pursuant to OAR 333-102-0260, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

NOTE: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under OAR 333-102-0025(1), provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of OAR 333-102-0260.

(3) Gas and aerosol detectors containing NARM previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under OAR 333-102-0025(1), provided that the device is labeled in accordance with the specific license authorizing distribution and provided further that they meet the requirements of OAR 333-102-0260.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0030

Self-Luminous Products Containing Radioactive Material

(1) Except for persons who manufacture, process, produce or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license and from the rules in this division and in divisions 105, 113, 115, 116, 117, 120, and 121 of this chapter to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been manufactured, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.26 of 10 CFR Part 32; or a Licensing State pursuant to OAR 333-102-0260, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

NOTE: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under OAR 333-102-0025(1), provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of OAR 333-102-0260.

(3) Gas and aerosol detectors containing NARM previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under OAR 333-102-0025(1), provided that the device is labeled in accordance with the specific license authorizing distribution and provided further that they meet the requirements of OAR 333-102-0260.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0035

Exempt Quantities

(1) Except as provided in OAR 333-102-0035(2) and 333-102-0035(3), any person is exempt from these rules to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in 10 CFR Part 30.71 Schedule B.

(2) This rule does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution or the

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incorporation of radioactive material into products intended for commercial distribution.

(3) Any person who possesses radioactive material received or acquired under the general license formerly provided in OAR 333-102-0105(2) is exempt from the requirements for a license set forth in this part to the extent that such person possesses, uses, transfers or owns such radioactive material. Such exemption does not apply for radium-226.

(4) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 10 CFR Part 30.71 Schedule B, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under OAR 333-102-0035 or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.18 of 10 CFR Part 32 or by the Agency pursuant to OAR 333-102-0255, which license states that the radioactive material may be transferred by the licensee to persons exempt under this rule or the equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State.

NOTE: Authority to transfer possession or control by the manufacturer, processor or producer or any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

NOTE: 10 CFR Part 30.71 Schedule B is available from DHS-Oregon Health Services, Radiation Protection Services.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-2985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0040

In Vivo Testing in Humans for H. Pylori Using Carbon-14 Labeled Urea

(1) Except as provided in 333-102-0040(3) and 333-102-0040(4), any person is exempt from the requirements for a specific license pursuant to this division and division 116 of this chapter provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 microcurie) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

NOTE: "Nominal variation" as used in this context means $\pm 10\%$ of the reported per capsule dose.

(2) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to division 102 of this chapter.

(3) Any person who desires to manufacture, prepare, process, produce, package, repack, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to 10 CFR 32.21.

(4) Nothing in this rule relieves persons from complying with applicable FDA, other Federal, and State requirements governing receipt, administration, and use of drugs.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0075

Types of Licenses

Licenses for radioactive materials are of two types: General and specific.

(1) General licenses provided in this division are granted as being effective without the filing of applications with the Agency or the issuance of licensing documents to particular persons, except Depleted Uranium subject to OAR 333-102-0103, Measuring, Gauging, and Controlling devices subject to 333-102-0115, and In Vitro Clinical or Laboratory Testing subject to 333-102-0130.

(2) Specific licenses require the submission of an application to the Agency and the issuance of a specific licensing document by the Agency. The licensee is subject to all applicable portions of these rules as well as any limitations specified in the licensing document. Specific licenses are issued to named persons upon applications filed pursuant to OAR 333-102-0200 and divisions 105, 113, 115, 116, 117, and 121 of this chapter.

(3) General licenses granted by 333-102-0103, 333-102-0115, 333-102-0117, and 333-102-0130 require the submission of an application to the Agency for registration pursuant to 333-101-0007, payment of a fee in

accordance with 333-103-0015, and the issuance of a registration (licensing document or general license acknowledgment) by the Agency.

(4) General licenses are subject to 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), 333-100-0065 (Tests), 333-102-0305(1) through 333-102-0305(8) Terms and Conditions of Licenses, 333-102-0330 (Transfers), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and Divisions 103, 111, 118, and 120 of this Chapter unless indicated otherwise in the language of the general license.

NOTE: Attention is directed particularly to the provisions of the regulations in Division 120 of this chapter that relate to the labeling of containers and notification of incidents.

(5) Any record required by this Division must be legible throughout the retention period specified by each Agency rule. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as letters, stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.655

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0101

General Licenses — Source Material

A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than 15 pounds (6.82 kg) of source material at any one time for research, development, educational, commercial or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive or possess more than a total of 150 pounds (68.2 kg) of source material in any one calendar year.

(1) Persons who receive, possess, use, or transfer source material pursuant to the general license granted by OAR 333-102-0101(1) are prohibited from administering source material, or the radiation therefrom, either externally or internally to human beings except as may be authorized by the Agency in a specific license.

(2) Persons who receive, possess, use or transfer source material pursuant to the general license granted by OAR 333-102-0101(1) are exempt from the provisions of divisions 111 and 120 of this chapter to the extent that such receipt, possession, use or transfer is within the terms of such general license; provided, however, that this exemption shall not be deemed to apply to any such person who also is in possession of source material under a specific license issued pursuant to this division.

(3) A general license is hereby granted authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to receive, possess, use or transfer source material.

(4) Persons who receive, acquire, possess or use source material pursuant to the general license granted by OAR 333-102-0101(1) shall develop and maintain procedures to establish physical control over the source material and prevent transfer of such source material to persons not authorized to receive the source material.

(5) A person who receives, acquires, possesses or uses source material pursuant to the general license granted by OAR 333-102-0101(1):

(a) Shall not introduce such source material, in any form, into a chemical, physical, or metallurgical treatment or process;

(b) Shall not abandon such source material; and

(c) Shall transfer or dispose of such source material only by transfer in accordance with the provisions of OAR 333-102-0330 or 333-120-0500.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1987, f. & ef. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0103

General Licenses — Depleted Uranium in Industrial Products and Devices

(1) A general license is hereby granted to receive, acquire, possess, use or transfer, in accordance with the provisions of OAR 333-102-0103(2), 333-102-0103(3), 333-102-0103(4) and 333-102-0103(5), depleted urani-

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um contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(2) The general license in OAR 333-102-0103(1) applies only to industrial products or devices that have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to OAR 333-102-0235 or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an Agreement State that authorizes manufacture of the products or devices for distribution to persons granted a general license by the U.S. Nuclear Regulatory Commission or an Agreement State.

(3) Persons who receive, acquire, possess or use depleted uranium pursuant to the general license established by 333-102-0103(1) shall apply for registration of the general license pursuant to OAR 333-101-0007, and submit the required fee pursuant to 333-103-0015. Applicants will receive a validation certificate from the Agency application for registration shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium.

(a) The general licensee shall provide the following information in accordance with the registration application required by OAR 333-101-0007 and such other information as may be required by that form:

(A) Name and address of the general licensee;

(B) A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in OAR 333-102-0103(1) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) Name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in 333-102-0103 (3)(b).

(b) The general licensee possessing or using depleted uranium under the general license established by OAR 333-102-0103(1) shall report any changes in information in writing to the Agency within 30 days after the effective date of such change.

(4) A person who receives, acquires, possesses or uses depleted uranium pursuant to the general license established by OAR 333-102-0103(1):

(a) Shall not introduce such depleted uranium, in any form, into a chemical, physical or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(b) Shall not abandon such depleted uranium;

(c) Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of OAR 333-102-0330. In the case where the transferee receives the depleted uranium pursuant to the general license granted by OAR 333-102-0103(1), the transferor shall furnish the transferee a copy of this rule and a copy of the general license registration application required by 333-101-0007. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 333-102-0103(1), the transferor shall furnish the transferee a copy of this rule and a copy of the general license registration application required by 333-101-0007 accompanied by a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this rule;

(d) Within 30 days of any transfer, shall report in writing to the Agency the name and address of the person receiving the depleted uranium pursuant to such transfer; and

(e) Shall not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 110.

(5) Any person receiving, acquiring, possessing, using or transferring depleted uranium pursuant to the general license established by OAR 333-102-0103(1) is exempt from the requirements of divisions 111 and 120 of this chapter with respect to the depleted uranium covered by that general license.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0105

Certain Devices and Equipment

A general license is hereby granted to transfer, receive, acquire, own, possess and use radioactive material incorporated in the following devices or equipment that have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer

by the U.S. Nuclear Regulatory Commission for use pursuant to section 31.3 of 10 CFR Part 31. This general license is subject to the provisions of OAR 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), and 333-100-0065 (Tests), 333-102-0010(2) (Exempt Concentrations), 333-102-0305(1) through 333-102-0305(7) (Terms and Conditions of Licenses), 333-102-0330 (Transfer of Material), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and Division 111, 118, and 120 of this Chapter.

NOTE: Attention is directed particularly to the provisions of Division 120 of this Chapter that relate to the labeling of containers (OAR 333-120-0430 and 333-120-0440).

(1) Static Elimination Devices. Devices designed for use as static eliminators that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries (18.5 MBq) of polonium-210 per device;

(2) Ion Generating Tubes. Devices designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries (18.5 MBq) of polonium-210 per device or a total of not more than 50 millicuries (1.85 GBq) of hydrogen-3 (tritium) per device.

NOTE: Different general licenses are issued in this Division, each of which has its own specific conditions and requirements.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.635

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0110

Luminous Safety Devices for Aircraft

(1) A general license is hereby granted to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(a) Each device contains not more than 10 curies (370 GBq) of tritium or 300 millicuries (11.1 GBq) of promethium-147; and

(b) Each device has been manufactured, assembled or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Agency or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in 10 CFR Part 32.53.

(2) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in OAR 333-102-0110(1) are exempt from the requirements of divisions 111 and 120 of this chapter except that they shall comply with the provisions of 333-120-0700 and 333-120-0710.

(3) This general license does not authorize the manufacture, assembly or repair of luminous safety devices containing tritium or promethium-147.

(4) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(5) This general license is subject to the provisions of OAR 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), and 333-100-0065 (Tests), 333-102-0305(1) through 333-102-0305(7) (Terms and Conditions of Licenses), 333-102-0330 (Transfer of Material), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and Division 118 of this Chapter.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.635

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0120

Ownership of Radioactive Material

A general license is hereby granted to own radioactive material without regard to quantity. Notwithstanding any other provisions of this Division, this general license does not authorize the manufacture, production, transfer, receipt, possession or use of radioactive material.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.635

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-102-0125

Calibration and Reference Sources

(1) A general license is hereby granted to those persons listed in OAR 333-102-0125(1)(a) and (1)(b) to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of 333-102-0125(4) and 333-102-0125(5), americium-241, plutonium, and/or radium-226, in the form of calibration or reference sources:

(a) Any person who holds a specific license issued by the Agency that authorizes receipt, possession, use, and transfer of radioactive material; and

(b) Any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission that authorizes receipt, possession, use, and transfer of special nuclear material.

(2) A general license is hereby granted to own, receive, possess, use and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of 333-102-0125(4) and (5) to any person who holds a specific license issued by the Agency that authorizes receipt, possession, use, and transfer of radioactive material.

(3) A general license is hereby granted to own, receive, possess, use and transfer radium-226 in the form of calibration or reference sources in accordance with the provisions of 333-102-0125(4) and (5) to any person who holds a specific license issued by the Agency that authorizes receipt, possession, use, and transfer radioactive material.

(4) The general licenses in OAR 333-102-0125(1), (2), and (3) apply only to calibration or reference sources that have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. Nuclear Regulatory Commission pursuant to section 32.57 of 10 CFR Part 32 or section 70.39 of 10 CFR Part 70 or that have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Agency, any Agreement State or Licensing State pursuant to licensing requirements equivalent to those contained in section 32.57 of 10 CFR Part 32, or section 70.39 of 10 CFR Part 70.

(5) The general licenses provided in OAR 333-102-0125(1), (2) and (3) are subject to the provisions of 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), 333-100-0065 (Tests), 333-102-0305(1) through 333-102-0305(8) Terms and Conditions of Licenses, 333-102-0330 (Transfers), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and Divisions 111, and 120 of this Chapter. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to these general licenses:

(a) Shall not possess at any one time, at any one location of storage or use, more than five microcuries (185 kBq) each of americium-241, of plutonium-238, plutonium-239, or of radium-226 in such sources; and

(b) Shall not receive, possess, use or transfer such source unless the source or the storage container, bears a label which includes one of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, as appropriate:

(A) The receipt, possession, use, and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241) (PLUTONIUM) DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE. _____ Name of manufacturer or importer

NOTE: Show only the name of the appropriate material.

(B) The receipt, possession, use, and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of any Licensing State. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS RADIUM-226. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE. _____ Name of manufacturer or importer

(c) Shall not transfer, abandon or dispose of such source except by transfer to a person authorized by a specific license from the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to receive the source;

(d) Shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 that might otherwise escape during storage; and

(e) Shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(6) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241, plutonium, or radium-226.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625

Hist.: HD 4-1085, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0130

General License for Use of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing

(1) A general license is hereby granted to any physician, veterinarian, clinical laboratory, or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with OAR 333-102-0130(2), (3), (4), (5) and (6), the following radioactive materials in prepackaged units for use in in Vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(a) Iodine-125 in units not exceeding 10 microcuries (370 kBq) each for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals;

(b) Iodine-131, in units not exceeding 10 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals;

(c) Carbon-14, in units not exceeding 10 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals;

(d) Hydrogen-3 (tritium) in units not exceeding 50 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals;

(e) Iron-59 in units not exceeding 20 microcuries (740 kBq) each for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals;

(f) Selenium-75, in units not exceeding 10 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals;

(g) Mock iodine-125 reference or calibration sources, in units not exceeding 0.05 microcuries of iodine-129 and 0.005 microcuries of americium-241 each for use in in vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals.

(2) A person shall not receive, acquire, possess, use or transfer radioactive material under the general license granted by section OAR 333-102-0130(1) unless that person:

(a) Has filed the required Agency application for registration pursuant to OAR 333-101-0007 and submitted the registration fee pursuant to 333-103-0015 and received from the Agency a validated license with certification number assigned, or

(b) Has a license that authorizes the medical use of byproduct material that was issued under OAR 333-116 of this chapter.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by section 333-102-0130(1) of this rule shall comply with the following:

(a) The general licensee shall not possess at any one time, at any one location of storage or use a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 and/or iron-59 in excess of 200 microcuries (7.4 MBq);

(b) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection;

(c) The general licensee shall use the radioactive material only for the uses authorized by OAR 333-102-0130(1);

(d) The general licensee shall dispose of the mock iodine-125 reference or calibration sources described in 333-102-0130(1)(g) of this rule as required by OAR 333-120-0500 and 333-102-0130(6);

(e) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the Agency, the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State, nor transfer the radioactive material in any man-

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ner other than in the unopened, labeled shipping container as received from the supplier.

(4) The general licensee shall not receive, acquire, possess or use radioactive material pursuant to OAR 333-102-0130(1):

(a) Except as prepackaged units that are labeled in accordance with the provisions of an applicable specific license issued by the U.S. Nuclear Regulatory Commission, any Agreement State or any Licensing State that authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), selenium-75, cobalt-57, iron-59 or mock iodine-125 for distribution to persons generally licensed under section (1) of this rule or its equivalent; and

(b) Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(A) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

Name of Manufacturer

(B) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

Name of Manufacturer

(5) The registrant possessing or using radioactive material granted by the general license of section OAR 333-102-0130(1) shall report in writing to the Agency any changes in the information furnished on the required Agency form. The report shall be furnished within 30 days after the date of such change.

(6) Any person using radioactive material pursuant to the general license granted by OAR 333-102-0130(1) is exempt from the requirements of Divisions 111 and 120 of this chapter with respect to radioactive material covered by that general license, except that such persons using mock iodine-125 described in OAR 333-102-0130(1)(g) shall comply with provisions of OAR 333-120-0500, 333-120-0700 and 333-120-0710.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0135

Ice Detection Devices

(1) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 50 microcuries (1.85 MBq) of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Agency or an Agreement State to the manufacturer of such device pursuant to licensing requirements equivalent to those in section 32.61 of 10 CFR Part 32.

(2) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license granted by OAR 333-102-0135(1):

(a) Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Agency, the U.S. Nuclear Regulatory Commission or any other Agreement State to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of OAR 333-120-0500;

(b) Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(c) Are exempt from the requirements of Divisions 111 and 120 of this Chapter except that such persons shall comply with the provisions of OAR 333-120-0500, 333-102-0700, and 333-120-0710.

(3) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 in ice detection devices.

(4) This general license is subject to the provisions of OAR 333-100-0005, Definitions; 333-100-0025, Exemptions; 333-100-0030, Additional Requirements; 333-100-0055, Records; 333-100-0060(1) and 333-100-0060(2), Inspections; 333-100-0065, Tests; 333-102-0305(1) through 333-102-0305(8), Terms and Conditions of Licenses; 333-102-0330, Transfers; 333-102-0335, Modification, Revocation, and Termination of Licenses; and Division 118 of this Chapter.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0190

Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Agency. Information contained in previous applications, statements or reports filed with the Agency, the US Nuclear Regulatory Commission, or an Agreement State or a Licensing State or the Atomic Energy Commission may be incorporated by reference, provided that the reference is clear and specific.

(2) The Agency may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Agency to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's or licensee's behalf.

(4) An application for a license filed pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this Chapter will be considered also as an application for licenses authorizing other activities for which licenses are required by the Act, provided that the application specifies the additional activities for which licenses are requested and complies with rules of the Agency and the US Nuclear Regulatory Commission as to applications for such licenses.

(5) Each new application for a radioactive material license shall be accompanied by the fee prescribed by OAR 333-103-0010. No fee will be required to accompany an application for renewal or amendment of a license, except as provided in 333-103-0010.

(6) An application for a license to receive and possess radioactive material for the conduct of any activity that the Agency has determined, pursuant to Subpart A of Part 51 of 10 CFR (Environmental Protection Regulations applicable to materials licensing), will significantly affect the quality of the environment, shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to Subpart A of 10 CFR Part 51.

(7) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

(a) Identify the source or device by manufacturer and model number as registered with the US Nuclear Regulatory Commission under 10 CFR Part 32.210 or with an Agreement State; or

(b) Contain the information identified in 10 CFR Part 32.210(c).

(8) As provided by OAR 333-102-0200, certain applications for specific licenses filed under this division and divisions 105, 113, 115, 116, 117, and 121 of this Chapter must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning as follows:

NOTE: If a renewal application was submitted on or before July 27, 1990, the decommissioning information may follow the renewal application but must be submitted prior to the license being issued.

(9)(a) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in 10 CFR 30.72, Schedule C — Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release," must contain either:

(A) An evaluation showing that the maximum dose to a person off-site due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(B) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under OAR 333-102-0190(9)(a)(A) of this section:

(A) The radioactive material is physically separated so that only a portion could be involved in an accident;

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(B) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) The release fraction in the respirable size range would be lower than the release fraction shown in 10 CFR Part 30.72 (Schedule C — Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release) due to the chemical or physical form of the material;

(D) The solubility of the radioactive material would reduce the dose received;

(E) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in 10 CFR Part 30.72;

(F) Operating restrictions or procedures would prevent a release fraction as large as that shown in 10 CFR Part 30.72; or

(G) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under paragraph (9)(a)(B) of this section must include the following information:

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the Agency; also responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee also shall commit to notify the Agency immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supercede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the Agency.

(J) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises although recommended is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of

exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(M) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, title III, Pub. L. 99-499, if applicable to the applicant's activities at the proposed place of use of the byproduct material.

(d) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to Agency. The licensee shall provide any comments received within the 60 days to the Agency with the emergency plan.

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

Stat. Auth.: ORS Ch. 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0200

General Requirements for the Issuance of Specific Licenses

An application for a specific license, will be approved if:

(1) The application is for a purpose authorized by the Act;

(2) The applicant is qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property;

(3) The applicant's proposed equipment and facilities are adequate to protect health and minimize danger to life or property;

(4) The applicant satisfies any applicable special requirements contained Divisions 102, 105, 113, 115, 116, 117, or 121 of this chapter; and

(5) In the case of an application for a license to receive and possess radioactive material for the conduct of any activity which the Agency determines will significantly affect the quality of the environment, the Agency Manager or designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Subpart A of Part 51 of 10 CFR, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess byproduct material in such plant or facility. As used in this rule, the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values. Upon a determination that an application meets the requirements of the Act, and the rules of the Agency, the Agency will issue a specific license authorizing the possession and use of radioactive material (Radioactive Materials License").

(6) Financial assurance and recordkeeping for decommissioning must meet the requirements of 10 CFR 30.35 and 30.36.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.655 & 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0203

Definitions

The following definitions apply for Radioactive Material Licenses issued pursuant to this Division and divisions 105, 113, 115, 117, and 121 of this chapter:

NOTE: Unless otherwise specified in this rule, the licenses described in this rule are limited by conditions of the radioactive materials license issued pursuant to OAR 333-102-0200, and other applicable rules in this chapter.

(1) "Analytical Leak Test" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(a), authorizing possession of environmental samples, sealed source leak-test, contamination wipe, etc. samples for radioanalytical measurements. This license does not authorize collection of samples, or decommissioning or decontamination activities.

(2) "Assets" means anything of material value or usefulness. In the context of a materials license, assets include all existing capital, effects, possessions, and belongings and all probable future economic benefits obtained or controlled by a particular entity.

(3) "Basic License" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing the receipt, possession, use, trans-

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fer, and disposal of sources of radiation or radioactive materials incident to gauge service, teletherapy service, medical afterloader service, and other licensed service activities; pre-packaged waste pickup (not packaging), storage of materials prior to license termination, instrument quality control servicing or calibration (excluding activities authorized by OAR 333-103-0010(2)(m)), or other minor activities not otherwise specified in these rules, such as authorization for "systems", as defined in these rules, pursuant to that definition.

(4) "Beneficiating" means subjecting a product to any process that will increase or concentrate any component (including the radioactive materials) to benefit the product;

(5) "Brachytherapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(c) authorizing the use of brachytherapy sources for in vivo application of radiation in accordance with 333-116-0420. Brachytherapy includes radioactive material sealed sources in seeds, needles, plaques, or other localized medical devices, but excludes remote afterloaders.

(6) "Broad Scope A" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(d), authorizing activities in 333-102-0900(1)(a), under the authority of a Radiation Safety Committee.

(7) "Broad Scope B" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(e) authorizing activities described in 333-102-0900(1)(b), under the authority of a Radiation Safety Officer.

(8) "Broad Scope C" means a facility-specific license issued pursuant to 333-103-0010(2)(f) authorizing activities described in 333-102-0900(1)(c), under the authority of an authorized user.

(9) "commencement of construction" means any clearing of land, excavation or other substantial action related to a proposed activity for specific licensing that would adversely affect the natural environment of a site.

(10) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(11) "Decontamination and Decommissioning" means (a) a facility specific license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that result in returning a site to its original pre-license condition prior to termination of licensed activities; (b) activities performed pursuant to OAR 333-102-0335 on any portion of a site prior to license termination.

(12) "Diagnosis" means examination, determination, identification, study, or analysis of a medical condition.

(13) "Distribution" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(g), authorizing transfer or distribution (sale) of general or specific license radioactive material to persons granted a general license or issued a specific license, or, in the case of NARM, to persons exempt from the rules in this chapter.

(14) "Exempt Source" means radioactive material, exempt from the rules in this Chapter.

(15) "Facility" means location of licensed activities under the direct control of licensee management. If a "Facility", as used in this Division, includes multiple separate addresses, the Agency may determine how the scope of licensed activities, pursuant to OAR 333-102-0295, 333-102-0300, 333-102-0305, 333-102-0315, 333-102-0320, or 333-102-0325, is authorized.

(16) "Fixed Gauge" means a source-specific license for measuring, gauging, or controlling devices pursuant to OAR 333-103-0010(2)(h). The fixed gauge license also includes X-Ray & Hybrid Gauges pursuant to Division 115 of this chapter, that contain both X-Ray sources and radioactive sealed sources.

(17) "General license" means a granted license, as opposed to an issued license, effective under these rules, to acquire, own, possess, use, or transfer radioactive material or a device that contains radioactive material.

(18) "General License Depleted Uranium" means the general license granted subject to receipt of the registration application pursuant to 333-101-0007, and fee, pursuant to 333-103-0015, for depleted uranium used for shielding or counter weights and issued pursuant to 333-102-0103.

(19) "General License Device" means the general license granted subject to receipt of the registration application pursuant to 333-101-0007, and fee, pursuant to 333-103-0015, for measuring, gauging, or controlling devices granted the general license by 333-102-0015.

(20) "General License In Vitro Laboratory" means the general license granted by OAR 333-102-0130, subject to receipt of the registration application pursuant to OAR 333-101-0007, and fee, pursuant to 333-103-0015, for in vitro materials granted a general license by 333-102-0130.

(21) "General License Source Material" means the general license granted for use and possession of source material pursuant to OAR 333-102-0101.

(22) "General License for "Certain Devices and "Equipment" means the general license granted for use and possession of devices consisting for not more than 500 microcuries of polonium-210 or not more than 50 millicuries of tritium (H-3) per device, pursuant to 10 CFR 31.3.

(23) "General License for Luminous Devices for Aircraft" means the general license granted for use and possession of devices containing not more than 10 curies of tritium or not more than 300 millicuries of promethium-147.

(24) "General license for Ownership of Radioactive Material and Limits of Possession" means the general license granted to own material that is not necessarily possessed; conversely, material that is possessed is, by grant of general license, not necessarily owned, pursuant to the general license in OAR 333-102-0120.

(25) "General License for Calibration and Reference sources" means the general license granted to possess not more than five (5) microcuries (185 kBq) of americium-241, plutonium-238, plutonium-239, or radium-226, pursuant to the general license in OAR 333-102-0125.

(26) "General License for Ice Detection Devices" means the general license granted to possess not more than fifty (50) microcuries (1.85 MBq) of strontium-90, pursuant to the general license in OAR 333-102-0135.

(27) "Generators and kits" means "Imaging and Localization."

(28) "Healing Arts Specific License" means a specific license authorizing activities in division 116 of this chapter.

(29) "High Doserate Remote Afterloader" means a source-specific license issued pursuant to OAR 333-103-0010(2)(i) authorizing the use of sources in accordance with 333-116-0475, which may be either mobile or stationary, and which deliver a doserate in excess of 2 Gray (200 rad) per hour at the point or surface where the dose is prescribed. A device may be designated as being high, medium, or pulsed dose remote afterloader or mobile high, medium, or pulsed doserate remote afterloader.

(30) "Hybrid Gauge" means a fixed gauging device that contains both a sealed source and an x-ray source, pursuant to Division 115 of this Chapter.

(31) "In Vitro Laboratory" means a Healing Arts facility-specific license, under management of a physician or Healing Arts specialist, issued pursuant to OAR 333-103-0010(2)(k) authorizing the use of prepackaged radioactive materials in quantities greater than those authorized by the General License granted by OAR 333-102-0130(2).

(32) Imaging and Localization means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(j) authorizing the use of generators and kits for nuclear medicine imaging and localization in accordance with 333-116-0320 or positron emission tomography studies in accordance with 333-116-0800 through 333-116-0880.

(33) "Industrial Radiography" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(l) authorizing activities in division 105 of this chapter.

(34) "Instrument Calibration" means a source-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(m) for sources of radiation used to calibrate instruments.

(35) "Investigational New Drug" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(n) authorizing the use of any investigational product or device approved by the US Food and Drug Administration (FDA) for human use research, diagnosis, or therapy, in accordance with the rules in this chapter.

(36) "Irradiator-Other" means an irradiator with greater than 10,000 curies (370 TBq) licensed pursuant to OAR 333-103-0010(2)(w) and 333-103-0010(7), designed to produce extremely high dose rates as authorized by division 121 of this chapter.

(37) "Irradiator Self-shielded or Other — Less than 10,000 Curies" means a source-specific license issued pursuant to OAR 333-103-0010(2)(o) authorizing self-shielded irradiators, including blood irradiators, panoramic irradiators, and converted teletherapy units, with less than 10,000 Ci (370 TBq) activity.

(38) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(39) "Lot Tolerance Percent Defective" means, expressed in percent defective, the poorest quality in an individual inspection lot that should be accepted.

(40) "Low Doserate Remote Afterloader Device" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(b) authorizing devices 333-116-0475, which remotely deliver a doserate of less than 2 Gray (200 rad) per hour at the point or surface where the dose is prescribed.

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(41) "Manufacturing or Compounding" means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(p) authorizing manufacture, fabrication, assembly, construction, combining, processing, concentrating, beneficiating, or processing items or products using or containing radioactive materials into a finished product containing radioactive material in accordance with applicable requirements in division 102 of this chapter.

(42) "Manufacturing or Compounding and Distribution" (Manufacturing and Distribution) means "Manufacturing or Compounding" pursuant to OAR 333-102-0203(31) and "Distribution", pursuant to OAR 333-102-0203(12). Manufacturing activities and distribution activities require separate specific licenses.

(43) "Mobile Nuclear Medicine Service" means a facility-specific Healing Arts license issued pursuant to OAR 333-116-0120 authorizing the medical use of radioactive material at specified temporary locations.

(44) "Naturally occurring radioactive material (NORM)" means radioactive material in the uranium or thorium decay series existing in nature in concentrations less than 0.05% source material.

(45) "Net working capital" means current assets minus current liabilities.

(46) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(47) "Neutron Howitzer" means a device that contains a sealed source containing Special Nuclear Material (see definition in OAR 333-100-0005(127)), that generates neutrons that are used for analytical, teaching, or research purposes.

(48) "Neutron Production" denotes a process in which neutrons are produced, either by natural or artificial means.

(49) "NORM (no processing)" means a facility-specific license pursuant to OAR 333-103-0010(2)(n) authorizing possession, use, and transfer of NORM in accordance with division 117 of this chapter.

NOTE: NORM licenses authorize licensable quantities of radioactive material in the uranium or thorium decay series. Licensable quantities of NORM are derived from disposal limits in Division 50 of Chapter 345 of the Oregon Administrative Rules (OAR). Except for Division 50 exemptions, any material that contains NORM requires a specific license. Zircon sand is used as the NORM model for licensing purposes. Quantities of zircon sand in excess of 20,000 pounds in a year constitute a licensable quantity of NORM. NORM materials that are not zircon are based on the zircon model.

(50) "Nuclear Laundry" means a laundry facility designed specifically to clean or launder clothing contaminated with licensed radioactive materials. Nuclear Laundry facilities must have process and waste management control procedures to prevent reconcentrating of licensed materials in sewers, drains, premises, and the environment. Nuclear Laundry activities are authorized pursuant to OAR 333-103-0010(2)(w), "Radioactive Material Not Otherwise Specified Facility", see 333-102-0203(61).

(51) "Nuclear Pharmacy" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(s) for activities authorized by 333-102-0285 and the Oregon Board of Pharmacy rules, to compound Radiopharmaceutical and distribute (sell or transfer) to persons specifically licensed to receive such compounds or products.

NOTE: Nuclear Pharmacies, pursuant to policy provisions of OAR 345 division 50 may collect syringes containing residual licensed material from spent patient doses, since the syringe is considered to be a transport device under the administrative control of the pharmacy rather than the licensed material transferred as the dose. Residual licensed material may be considered either to be exempt pursuant to Table 1 of division 50 or under the authority of a division license if the receding licensee stores syringes for decay. In either case, the division license should specify which disposal method is being used by the pharmacy and licensee to avoid compatibility conflicts with division 50 requirements.

(52) "Other Measuring Device" means a source-specific license issued pursuant to OAR 333-103-0010(2)(t), authorizing analytical instruments, gas chromatograph electron capture detectors, and other non-portable analytical instruments, including those devices that contain multiple sources but are configured and used as a 'system', in accordance with the definition in 333-102-0203(73).

NOTE: General license gas chromatograph detectors that formerly were granted a general license by OAR 333-102-0115, but which required a registration fee pursuant to 333-103-0015(2)(b), now are subject to the specific license in 333-103-0010(2)(t).

(53) "Pool-type irradiator" means an irradiator with greater than 10,000 curies (370 TBq) in which water provides the radiation shielding, authorized in accordance with division 121 of this chapter.

(54) "Portable Gauge" means a source-specific license issued pursuant to OAR 333-103-0010(2)(u) for sources used in devices that can be transported and used at temporary job sites.

NOTE: Any device that meets the definition of 'portable gauge' and is transported or used at temporary job sites within the state of Oregon, requires an application for and issuance of an Oregon specific license subject to OAR 333-103-0010(2)(u).

(55) "Positron Emission Tomography" (PET) means a licensed healing arts activity authorized by 333-116-0800 and included in the facility

specific license issued pursuant to OAR 333-103-0010(2)(j). PET nuclides, which are NARM, are subject to all Oregon rules.

(56) "Possession or storage of industrial wastes containing radioactive material" means activities subject to division 110 of this chapter for the production or storage of wastes that are exempt from division 50 of OAR 345 facility siting requirements, and were generated under a current NRC, Agreement State, or Licensing State specific radioactive materials license.

(57) "Possession or storage of uranium tailings" means activities incidental to uranium processing or milling operations resulting in the production of tailings.

(58) "Principal activities" means activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(59) "Processing" means chemically or physically changing a licensed material from one physical form to another form or specie (e.g., breaking an ore down into its components resulting in "tailings"; milling a raw licensed material and combining to form another product or material. See "Beneficiating"; "Manufacturing or Compounding".

(60) "Radiation Source" means source of radiation (see definition of "Source of radiation" in OAR 333-100-0005).

(61) "Radioactive Material Not Otherwise Specified Facility" means a license issued pursuant to OAR 333-103-0010(2)(w) authorizing activities that includes, but are not limited to, complex licensable activities such as facility decontamination and decommissioning, nuclear laundry activities, uranium mill tailings storage, storage of industrial wastes containing radioactive materials, large irradiator management, and other complex activities not otherwise specified in these rules.

(62) "Radioactive Materials License" means the document, pursuant to OAR 333-102-0300, issued after an application, pursuant to OAR 333-102-0295, has been accepted as adequate, that specifies radioactive materials, use authorizations, safety procedures, and use locations.

(63) "Radiopharmaceutical Therapy" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(v) authorizing the use of Radiopharmaceutical for therapy in accordance with OAR 333-116-0360.

(64) "Remote Afterloader" means a medical device that moves a sealed source to an interstitial (in vivo) location without exposing the practitioner to the radiation dose. Remote afterloader sources may be manipulated using computer software and engineering techniques.

(65) "Research & Development" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(x) authorizing research and development activities, as defined in OAR 333-100-0005(112), but does not authorize additional specific sources of radiation, which must be licensed separately pursuant to OAR 333-103-0010 and 333-103-0015.

(66) "Responsible Representative" means the person designated as having responsibility for general license device or general license material; the person management has selected to certify general license inventory; and the individual responsible to the Agency and to management to ensure that all regulatory elements are adequate.

(67) "Sealed source/device evaluation" means the review of a licensee's prototype source or device prior to registration by the Nuclear Regulatory Commission in the Sealed Source and Device Catalog.

NOTE: The Agency no longer has authority to review sources or devices. All source or device reviews must be forwarded to the NRC for review. Authority to conduct device or source evaluations was rescinded by the NRC in 1998.

(68) "Site Area Emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

(69) "Sealed Sources for Diagnosis" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(y) authorizing the use of sealed sources for diagnosis in accordance with OAR 333-116-0400.

(70) "Special Nuclear Material (sealed)" means a source-specific license issued pursuant to OAR 333-103-0010(2)(aa), authorizing the use, possession, or transfer of sealed sources (special form) containing special nuclear material, as defined in OAR 333-100-0005(134)(See "Neutron Howitzer"; "Neutron Production".)

(71) "Special Nuclear Material (unsealed)" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(bb), authorizing the use, possession, or transfer of unsealed (normal form) special nuclear material, as defined in OAR 333-100-0005(134).

(72) "Specific license radioactive material" means radioactive material that requires authorization in a specific license document pursuant to

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OAR 333-102-0075(2) where materials must be annotated on the specific license, and validated with a specific license fee pursuant to 333-103-010(2)(a) through 333-103-0010(2)(hh) (see "Radioactive Materials License").

(73) "System", as used in this chapter, means multiple separate (individual) sources of radiation (sealed radioactive sources), which together, rather than independently, achieve a desired functionality. Such "system" is subject to one specific license fee or general license registration fee, as the case may be.

(74) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(75) "Teletherapy" means a Healing Arts source-specific license issued pursuant to OAR 333-103-0010(2)(cc) authorizing teletherapy procedures in accordance with OAR 333-116-0480. This license also includes other high dose rate external beam therapy devices such as the "gamma knife."

(76) "Temporary job site" means any location, where specific license material is used that is either:

- (a) Not the specific location of the licensee if an in-state licensee; or
- (b) Any location in the State if an out-of-state specific licensee pursuant to a specific radioactive materials license.

NOTE: Persons authorized for temporary jobsites in Oregon must have a specific license for such activities.

(77) "Therapy" means a process that is meant to be restorative, promotes healing, or is beneficial to a patient in a healing arts context.

(78) "Unique" means a specific license issued pursuant to OAR 333-103-0010(2)(dd) to Agencies in the Oregon Health Services.

(79) "Uptake and Dilution" means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ee) authorizing activities in 333-116-0300 for uptake, dilution, and excretion studies.

(80) "Use and Possession of Source Material" means a facility-specific radioactive materials license issued pursuant to OAR 333-103-0010(2)(z) to possess, use, process, or transfer source material, as defined in OAR 333-100-0005(123), in quantities greater than general license quantities or in concentrations greater than 0.05 percent source material.

NOTE: This definition was amended to avoid confusion between the definition of "source material" in Division 100 of this Chapter and the specific license (billable object) in division 103 of this chapter.

(81) Use of Xenon Gas means a Healing Arts facility-specific license issued pursuant to OAR 333-103-0010(2)(ff) authorizing the use of Xe-133 for diagnosis pursuant to OAR 333-116-0280;

(82) "Waste Packaging" means a facility-specific license issued pursuant to OAR 333-103-0010(2)(gg), authorizing packaging, collection, storage, and transfer of radioactive waste. This specific license does not authorize storage of radioactive wastes, but does authorize temporary job sites.

(83) "Well Logging" means a license issued pursuant to OAR 333-103-0010(2)(hh) authorizing the possession, use, transfer, or disposal of sources of radiation used for well logging activities authorized by division 113 of this chapter.

NOTE: Unless specifically authorized in this rule or in a radioactive materials license that authorizes temporary job sites, specific licenses shall be used only at one authorized site.

Stat. Auth.: ORS 453.605 - ORS 453.807

Stats. Implemented: ORS 453.625, ORS 453.635 & ORS 453.665

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0235

Requirements for License to Manufacture, or Initially Transfer Radioactive Material Contained in Devices Granted a General License Under OAR 333-102-0115

(1) An application for a specific license to manufacture, or initially transfer devices containing radioactive material, excluding special nuclear material, to persons granted a general license by OAR 333-102-0115 or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(a) The applicant satisfies the general requirements of OAR 333-102-0200;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) The device can be safely operated by persons not having training in radiological protection;

(B) Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device; and it is unlikely that any person will receive in one (1) year a dose in excess of 10 percent of the annual limits specified in OAR 333-120-0100; and

(C) Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in Column IV of the table in 10 CFR Part 32.24 :

(i) Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye 150 mSv (15 rem)

(ii) Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one (1) square centimeter 2 Sv (200 rem)

(iii) Other organs 500 mSv (50 rem)

(c) Each device bears a durable, legible, clearly visible label or labels approved by the Agency, which contain in a clearly identified and separate statement:

(A) Instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(B) The requirements, or lack of requirement, for leak testing, or for testing of any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(C) The information called for in the following statement in the same or substantially similar form:

The receipt, possession, use and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of a State with which the U.S. Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION — RADIOACTIVE MATERIAL

(Name of manufacturer or initial transferor)

NOTE: Devices licensed under 10 CFR Part 32.51 prior to January 19, 1975 may bear labels authorized by the regulations in effect on January 1, 1975. The model, serial number, and name of manufacturer, or initial transferor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(2) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or both, the applicant shall include in this application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices, and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Agency will consider information that includes, but is not limited to:

(a) Primary containment (source capsule);

(b) Protection of primary containment;

(c) Method of sealing containment;

(d) Containment construction materials;

(e) Form of contained radioactive material;

(f) Maximum temperature withstood during prototype tests;

(g) Maximum pressure withstood during prototype tests;

(h) Maximum quantity of contained radioactive material;

(i) Radiotoxicity of contained radioactive material; and

(j) Operating experience with identical devices or similarly designed and constructed devices.

(3) In the event the applicant desires that the general licensee under OAR 333-102-0115, or under equivalent rules of the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State, be authorized to install the device, collect the sample to be analysed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and the bases for these estimates. The submitted information must demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of 10 percent of the annual limits specified in OAR 333-120-0100.

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(4) Prior to transfer of a device to a person granted a general license by OAR 333-102-0115(1), the licensee shall:

(a) Furnish a copy of the general license contained in OAR 333-102-0115 to each person to whom the licensee directly, or through an intermediate person, transfers radioactive material in a device for use pursuant to the general license contained in OAR 333-102-0115;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State's rules equivalent to OAR 333-102-0115. Alternatively, a copy of the general license contained in OAR 333-102-0115 shall be furnished to each person to whom directly, or through an intermediate person, is transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission, the Agreement State or the Licensing State. If a copy of the general license in OAR 333-102-0115 is furnished to such person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State under requirements substantially the same as those in OAR 333-102-0115;

(c) Report to the Agency all transfers of such devices to persons for use under the general license in OAR 333-102-0115. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Agency and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact and relationship to the intended user. If no transfers have been made to persons granted a general license by OAR 333-102-0115 during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within 30 days after the end of each quarter;

(d) Furnish reports to other agencies

(A) Report to the U.S. Nuclear Regulatory Commission all transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in section 31.5 of 10 CFR Part 31. Reports must be submitted on the NRC form "Transfers of Industrial Devices Report" or on a clear and legible report containing all of the data required by the form. The required information includes:

(i) The identity of each general licensee by name and address;

(ii) The name and phone number of the person designated by the general licensee to be responsible for ensuring compliance with the appropriate regulations and requirements;

(iii) The date of transfer; the type, model number, and serial number of the device transferred; and

(iv) The quantity and type of byproduct material contained in the device.

(v) If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report must include the same information for each intermediate person, and clearly designate that person as an intermediate person.

(vi) If the device transferred replaced another returned by the general licensee, report also the type, model number, and serial number of the one returned.

(vii) If no transfers have been made to persons generally licensed under 10 CFR 31.5 or OAR 333-102-0115 during the reporting period, the report must so indicate.

(viii) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(ix) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(B) Report to the responsible Agreement or Licensing State agency all transfers of such devices to persons for use under a general license in an Agreement State's regulations equivalent to OAR 333-102-0115. Such reports shall identify all of the information in 333-102-0235(4)(d), including each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact and relationship to the intended user. The report shall be submitted within 30 days after the end of each calendar quarter in which such device is transferred to the person granted a general license;

(e) If no transfers have been made to U.S. Nuclear Regulatory Commission's licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission;

(f) If no transfers have been made to persons granted a general license within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency;

(g) Keep records showing the name, address and the point of contact for each general licensee to whom directly, or through an intermediate person is transferred radioactive material in devices for use pursuant to the general license provided in OAR 333-102-0115 or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records should show the date of each transfer, the isotope and the quantity of radioactive material in each device transferred, the identity of any intermediate person and compliance with the reporting requirements of 333-102-0235(4)(h). Records required by this rule must be maintained for a period of three years following the estimated useful life of the device or the date of final disposition, if known;

(h) Furnish a list of the services that only can be performed by a specific licensee, and information on acceptable disposal options, including estimated costs of disposal, to each person to whom he directly, or through an intermediate person, transfers radioactive material in a device for use under the general license granted in 333-102-0115;

(i) Furnish the name, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained. If a copy of the general license in OAR 102-0115 is furnished to such person, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State.

(j) Label each device transferred if more than one year after the effective date of this rule in accordance with the labeling requirements in § 32.51(a)(3) through (5).

(k) If a notification of bankruptcy has been made under § 30.34(h) or the license is to be terminated, provide, upon request, to the NRC and to any appropriate Agreement State, records of final disposition required under § 32.52(c).

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

Stat. Auth.: ORS 453.605 - ORS 453.807

Stats. Implemented: ORS 453.625, ORS 453.635 & ORS 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0245

Introduction of Radioactive Material in Exempt Concentrations into Products or Materials, and Transfer of Ownership or Possession: Requirements for License

An application for a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the radioactive material: will be approved if the applicant:

(1) Satisfies the general requirements specified in OAR 333-102-0200;

(2) Provides a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material, and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioisotopes in the product or material at the time of transfer;

(3) Provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in 10 CFR Part 30.70 Schedule A, that reconcentrating of the radioactive material in concentrations exceeding those in 10 CFR Part 30.70 Schedule A is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

NOTE: 10 CFR Part 30.70 Schedule A referred to or incorporated by reference in this rule is attached to this Division or available from the Health Division.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-102-0247

Records and Material Transfer Reports

(1) Each person licensed under OAR 333-102-0245 shall maintain records of transfer of material and file a report with the Agency.

(2) The report shall identify the:

(a) Type and quantity of each product or material into which radioactive material has been introduced during the reporting period;

(b) Name and address of the person who owned or possessed the product or material, into which radioactive material has been introduced, at the time of introduction;

(c) The type and quantity of radionuclide introduced into each such product or material; and

(d) The initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee.

(3) The licensee shall file the report within 30 days following:

(a) Five years after filing the preceding report; or

(b) Filing an application for renewal of the license under OAR 333-102-0315; or

(c) Notifying the Agency under OAR 333-102-0305(5) of the licensee's decision to permanently discontinue activities authorized under the license issued under OAR 333-102-0245.

(4) The report must cover the period between the filing of the preceding report and the occurrence specified in paragraphs OAR 333-102-0247(3)(a), (b), or (c). If no transfers of radioactive material have been made under 333-102-0245 during the reporting period, the report shall so indicate.

(5) The licensee shall maintain the record of a transfer for a period of one year after the event is included in a report to the Agency.

(6) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under 10 CFR Part 30.14 or equivalent regulations of an Agreement State, except in accordance with a license issued pursuant to 10 CFR Part 32.11 or the general license provided in 10 CFR Part 150.20 (reciprocity).

Stat. Auth.: ORS Ch. 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0250

Manufacture and Distribution of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing Under a General License

An application for a specific license to manufacture or distribute radioactive material for use under the general license specified in OAR 333-102-0130 or equivalent will be approved if:

(1) The applicant satisfies the general requirements specified in OAR 333-102-0200;

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

(a) Carbon-14 in units not exceeding 10 microcuries (370 kBq) each;

(b) Cobalt-57 in units not exceeding 10 microcuries (370 kBq) each;

(c) Hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 MBq) each;

(d) Iodine-125 in units not exceeding 10 microcuries (370 kBq) each;

(e) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each;

(f) Iodine-131 in units not exceeding 10 microcuries (370 kBq) each;

(g) Iron-59 in units not exceeding 20 microcuries (740 kBq) each;

(h) Selenium-75 in units not exceeding 10 microcuries (370 kBq) each.

(3) Each prepackaged unit bears a durable, clearly visible label:

(a) Identifying the radioactive contents as to chemical form and radionuclide and indicating that the amount of radioactivity does not exceed 10 microcuries (370 kBq) of iodine-125, iodine-131, carbon-14, cobalt-57 or selenium-75; 50 microcuries (1.85 MBq) of hydrogen-3 (tritium); 20 microcuries (740 kBq) of iron-59; or mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and

(b) Displaying the radiation caution symbol described in OAR 333-120-0400 and the words, CAUTION, RADIOACTIVE MATERIAL and Not for Internal or External Use in Humans or Animals.

(4) One of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(a) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

Name of manufacturer

(b) This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

Name of manufacturer

(5) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements in OAR 333-120-0500 of this Chapter.

Stat. Auth.: ORS Ch. 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0255

Licensing the Distribution of Radioactive Material in Exempt Quantities

(1) An application for a specific license to distribute NARM to persons exempted from these rules pursuant to OAR 333-102-0035 will be approved if:

(a) The radioactive material is not contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) The radioactive material is in the form of processed chemical elements, compounds or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product or device intended for commercial distribution; and

(c) The applicant submits copies of prototype labels and brochures and the Agency approves such labels and brochures.

(2) The license issued under this rule is subject to the following conditions:

NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) No more than 10 exempt quantities shall be sold or transferred in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity;

(b) Each exempt quantity shall be separately and individually packaged. No more than 10 such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to OAR 333-102-0035. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem (five μ Sv) per hour;

(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

(A) Identifies the radionuclide and the quantity of radioactivity; and

(B) Bears the words Radioactive Material.

(d) In addition to the labeling information required by OAR 333-102-0255(2)(c), the label affixed to the immediate container, or an accompanying brochure, shall:

(A) State that the contents are exempt from Licensing State requirements;

(B) Bear the words, Radioactive Material — Not for Human Use — Introduction into Foods, Beverages, Cosmetics, Drugs or Medicinals or into Products Manufactured for Commercial Distribution is Prohibited — Exempt Quantities Should Not Be Combined; and

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(C) Set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(3) Each person licensed under this rule shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under OAR 333-102-0035 or the equivalent rules of any Agreement State or Licensing State and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the Agency. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to this rule during the reporting period, the report shall so indicate.

NOTE: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.
Stat. Auth.: ORS Ch. 453.605 - 453.807
Stats. Implemented: ORS 453.605 & 453.665
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0260

Licensing the Incorporation of Naturally Occurring and Accelerator-Produced Radioactive Material into Gas and Aerosol Detectors

An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under OAR 333-102-0025 will be approved if the application satisfies requirements equivalent to those contained in section 32.26 of 10 CFR Part 32. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie (3.7 kBq).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625 & 453.665
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0265

Special Requirements for the Manufacture, Assembly or Repair of Luminous Safety Devices for Use in Aircraft

An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons granted a general license by OAR 333-102-0110 will be approved if:

- (1) The applicant satisfies the general requirements specified in OAR 333-102-0200; and
- (2) The applicant satisfies the requirements of sections 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 of 10 CFR Part 32 or their equivalent.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605, 453.655 & 453.665
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0270

Special Requirements for License to Manufacture Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Granted a General License by OAR 333-102-0125

An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons granted a general license by OAR 333-102-0125 will be approved if:

- (1) The applicant satisfies the general requirement of OAR 333-102-0200; and
- (2) The applicant satisfies the requirements of sections 32.57, 32.58, 32.59, and 32.102 of 10 CFR Part 32 and section 70.39 of 10 CFR Part 70 or their equivalent.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605, 453.625 & 453.665
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0275

Licensing the Manufacture and Distribution of Ice Detection Devices

An application for a specific license to manufacture and distribute ice detection devices to persons granted a general license by OAR 333-102-0135 will be approved if:

- (1) The applicant satisfies the general requirements of OAR 333-102-0200;
- (2) The criteria of sections 32.61, 32.62, 32.103, and 32.110 of 10 CFR Part 32 are met.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.605, 453.625 & 453.665
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0285

Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Radioactive Material for Medical Use Under Division 116

(1) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing radioactive material for use by persons authorized pursuant to Division 116 of this Chapter will be approved if:

- (a) The applicant satisfies the general requirements specified in OAR 333-102-0200;
- (b) The applicant submits evidence that the applicant is at least one of the following:
 - (A) Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;
 - (B) Registered or licensed with a state agency as a drug manufacturer;
 - (C) Licensed as a pharmacy by a State Board of Pharmacy; or
 - (D) Operating as a nuclear pharmacy within a Federal medical institution.

(b) The applicant submits information on the radionuclide, chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

- (c) The applicant satisfies the following labeling requirements:
 - (A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words CAUTION, RADIOACTIVE MATERIAL or DANGER, RADIOACTIVE MATERIAL; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.
 - (B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words CAUTION, RADIOACTIVE MATERIAL or DANGER, RADIOACTIVE MATERIAL and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by paragraph OAR 333-102-0285(1)(b)(C) or (D) of this rule:

- (a) May prepare radioactive drugs for medical use, as defined in OAR 333-116-0020(14), provided that the radioactive drug is prepared either by an authorized nuclear pharmacist, as specified in paragraph (2)(b) and (2)(c), or an individual under the supervision of an authorized nuclear pharmacist as specified in 10 CFR 35.25.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

- (A) This individual qualifies as an authorized nuclear pharmacist as defined in OAR 333-116-0020,
- (B) This individual meets the requirements specified in OAR 333-116-0910 and 333-116-0915 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist, or
- (C) This individual is designated as an authorized nuclear pharmacist in accordance with paragraph 333-116-0285(2)(c).

(c) The actions authorized in paragraphs 333-116-0285(2)(a) and (b) are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist (as defined in OAR 333-116-0020(23)) as an authorized nuclear pharmacist if the individual is identified

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as of December 2, 1994, as an authorized user on a nuclear pharmacy license issued by the Agency pursuant to this Division.

(e) Shall provide to the Division a copy of each individual's certification by the Board of Pharmaceutical Specialties, the Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to paragraphs OAR 333-102-0285(2)(b)(A) and (C), the individual to work as an authorized nuclear pharmacist.

(3) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(a) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

(4) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

NOTE: Although the Agency does not regulate the manufacture and distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radiopharmaceuticals containing radioactive material as a part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material, who desires to have the reagent kits approved by the Agency for use by persons licensed for medical use pursuant to OAR 333-116 or by persons authorized under a group license, or equivalent, by the U.S. Nuclear Regulatory Commission or any other Agreement State, may submit the pertinent information specified in this rule.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.665

Hist.: HD 4-1985, f. & cf. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0290

Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use

(1) An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Division 116 of this Chapter for use as a calibration or reference source or for the uses listed in OAR 333-116-0400 and 333-116-0420 will be approved if:

(a) The applicant satisfies the general requirements in OAR 333-102-0200.

(b) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(A) The radioactive material contained, its chemical and physical form and amount;

(B) Details of design and construction of the source or device;

(C) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) For devices containing radioactive material, the radiation profile of a prototype device;

(E) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(F) Procedures and standards for calibrating sources and devices;

(G) Legend and methods for labeling sources and devices as to their radioactive content; and

(H) Instructions for handling and storing the source or device from the radiation safety standpoint; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device. Provided, that instructions that are too lengthy for such a label may be summarized on the label and printed in detail on a brochure that is referenced on the label.

(c) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, date of assay and a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the (name of source or device) to persons licensed to use radioactive material identified in OAR 333-116-0190, 333-116-0400, or 333-116-0420, as appropriate, and to per-

sons who hold an equivalent license issued by an Agreement State or the US Nuclear Regulatory Commission.

(2) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months,

(a) The applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(b) In determining the acceptable interval for test of leakage of radioactive material, the Agency will consider information that includes, but is not limited to:

(A) Primary containment or source capsule;

(B) Protection of primary containment;

(C) Method of sealing containment;

(D) Containment construction materials;

(E) Form of contained radioactive material;

(F) Maximum temperature withstood during prototype tests;

(G) Maximum pressure withstood during prototype tests;

(H) Maximum quantity of contained radioactive material;

(I) Radiotoxicity of contained radioactive material; and

(J) Operating experience with identical sources or devices similarly designed and constructed sources or devices.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.665

Hist.: HD 4-1985, f. & cf. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0293

Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-Volume Applications

(1) An application for a specific license to manufacture industrial products or devices containing depleted uranium for use pursuant to OAR 333-102-0103 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State will be approved if:

(a) The applicant satisfies the general requirements specified in OAR 333-102-0200;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10 percent of the limits specified in OAR 333-120-0100 of these rules; and

(c) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the Agency will approve an application for a specific license under this rule only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The Agency may deny any application for a specific license under this rule if the end use(s) of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to 333-102-0293(1) shall:

(a) Maintain the level of quality control required by the license in the manufacture of the industrial product or device; and in the installation of the depleted uranium into the product or device.

(b) Label or mark each unit to:

(A) Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium and the quantity of depleted uranium in each product or device; and

(B) State that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State.

(c) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: Depleted Uranium.

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(A) Furnish a copy of the general license contained in OAR 333-102-0103 to each person to whom he transfers depleted uranium in a product or device for use pursuant to the general license contained in OAR 333-102-0103; or

(B) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to OAR 333-102-0103 and a copy of the U.S. Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in OAR 333-102-0103 to each person to whom he transfers depleted uranium in a product or device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in OAR 333-102-0103.

(d) Report to the Agency all transfers of industrial products or devices to persons for use under the general license in OAR 333-102-0103. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Agency and the general licensee, the type and model number of device transferred and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons granted a general license by OAR 333-102-0103 during the reporting period, the report shall so indicate.

(e) Report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in section 40.25 of 10 CFR Part 40.

(A) Report to the responsible state agency all transfers of devices manufactured and distributed pursuant to OAR 333-102-0115 for use under a general license in that state's regulations equivalent to OAR 333-102-0103.

(B) Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person.

(C) If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission, and

(f) If no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency.

(g) Keep records showing the name, address and point of contact for each general licensee to whom he transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in OAR 333-102-0101(4) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained until inspection by the Agency and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred and compliance with the report requirements of 333-102-0293(9).

(h) Licensees required to submit emergency plans by OAR 333-102-0190(9) shall follow the emergency plan approved by the Commission. The licensee may change the plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to affected offsite response organizations within six months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan may not be implemented without application to and prior approval by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605, 453.625 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0300

Issuance of Specific Licenses

(1) Upon a determination that an application meets the requirements of the Act and these rules, the Agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The Agency may incorporate in any license at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to this Division as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require such reports and the keeping of such records and to provide for such inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss of theft of material subject to this Division.

(3) Whenever the Agency denies an application for a new license or a license renewal, the Agency will notify the applicant in writing stating the grounds for denial. Upon denial, the applicant may request a hearing pursuant to OAR 333-102-0345.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.655

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0305

Specific Terms and Conditions of License

(1) Each license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations and orders of the Agency.

(2) No license issued or granted pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter nor any right shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(3) Each person licensed by the Agency pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall confine the use and possession of the radioactive material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall carry with it the right to receive, acquire, own, and possess radioactive material. Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of division 118 of this chapter

(4) Each license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall be deemed to contain the provisions set forth in section 183b-d., inclusive, of the Act, whether or not these provisions are expressly set forth in the license.

(5) The Agency may incorporate, in any license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter, at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material as it deems appropriate or necessary in order to:

(a) Promote the common defense and security;

(b) Protect health or to minimize danger to life or property;

(c) Protect restricted data;

(d) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

(6) Licensees required to submit emergency plans by OAR 333-102-0200(10) shall follow the emergency plan approved by the Agency. The licensee may change the approved plan without Agency approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Agency and to affected offsite response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Agency.

(7) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall test the generator eluates for molybdenum-99 breakthrough in accordance with OAR 333-116-0330. The licensee shall record the results of each test and retain each record for three years after the record is made.

(8)(a) Each general licensee subject to the registration requirement in OAR 333-101-0007 and each specific licensee shall notify the Agency in writing immediately following the filing of a voluntary or involuntary peti-

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tion for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101 (14)) controlling the licensee or listing the license or licensee as property of the estate; or

(C) An affiliate (as that term is defined in 11 U.S.C. 101 (2)) of the licensee.

(b) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(9) Sealed sources or detector cells containing licensed material shall not be opened or sources removed from source holders or detector cells by the licensee.

(10) No licensee shall acquire licensed radioactive material in a sealed source or in a device that contains a sealed source unless the source or device has been registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or with an Agreement State.

(11) Any sealed source fabricated by a licensee shall be registered, inspected, and tested for construction defects, leakage, and contamination prior to any use or transfer as a sealed source in accordance with requirements in 10 CFR 32.210.

(12) Each licensee shall conduct a physical inventory at intervals not to exceed six months to account for all radioactive material received and possessed by licensee. Inventories shall include the types and quantities of radioactive material, location of materials, date of receipt, and the date of the inventory; and for sealed sources, the inventory shall include the types and quantities of sealed sources, sealed source manufacturer, model number, serial number, date of receipt, condition of sealed sources, and the date of the inventory. Records of the inventories required by OAR 333-102-0305(12) shall be kept until inspection by the agency.

(13) Each licensee shall transport radioactive material or deliver radioactive material to a carrier for transport in accordance with the provisions of Parts 170 through 189 of Title 49, Code of Federal Regulations and in accordance with division 118 of this chapter, "Transportation of Radioactive Material."

(14) Each licensee possessing a device licensed pursuant to OAR 333-103-0010(2)(h) shall perform an inspection of all devices at intervals not to exceed six months. Inspections shall include condition of labeling and posting of each radiation device, and corrective actions taken if any; condition of shutter operation, if applicable, of each device, and corrective actions taken if any; and location of each device. Records of the inspections required by OAR 333-102-0305(14) shall be kept until inspection by the agency.

(15) No licensee shall open or remove radioactive material from sealed sources or detector cells containing licensed radiation sources.

(16) No person shall repair, modify, dismantle, or effect any change in licensed devices or radiation sources, nor modify nor alter labels affixed to licensed devices by the manufacturer

(17) Installation, initial radiation survey, relocation, removal from service, maintenance, and repair of fixed gauging devices containing radioactive sealed sources, and installation, replacement, and disposal of sealed sources shall be performed only by persons specifically authorized by the Agency, the U.S. Nuclear Regulatory Commission, or another Agreement state to perform such services. Records of all surveys shall be maintained for inspection by the Radiation Protection Agency.

(18) If the licensee has previously determined that monitoring for internal exposure pursuant to OAR 333-120-0130, 333-120-0210, or 333-120-0320 is required, the data and results of this evaluation shall be placed in the worker's exposure records and included the worker's Oregon Form Z report.

(19) Testing for Leakage or Contamination of Sealed Sources shall be in accordance with requirements in OAR 333-120-0460. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, a sealed source or detector cell received from another person shall not be put into use until tested.

(20) Detector cells shall be used only in conjunction with a properly operating temperature control mechanism that prevents foil temperatures from exceeding manufacturer's specifications. Exhaust from detector cells shall be vented to keep exposures to personnel and the public as low as reasonably achievable pursuant to OAR 333-120-180.

(21) Licensees who possess sealed sources used for testing at field sites shall possess at such locations transport documents, a current copy of the specific radioactive materials license, specific license validation certi-

icates, the current leak test certificate, and the licensee's operating and emergency procedures. Licensed materials stored in an unrestricted area shall be secured from unauthorized removal from the place of storage in accordance with provisions of OAR 333-120-0250 and 333-120-0260.

(22) Any specific licensee is authorized to receive, possess, use, transfer, and import up to 999 kilograms of uranium contained as shielding for specific licensed radioactive material authorized by license.

(23) A licensee may store, pursuant to OAR 333-120-0500, radioactive waste with a physical half-life of less than 65 days, for decay-in-storage, before disposal in ordinary trash, provided that:

(a) Waste to be disposed of by storage-for-decay shall be held for decay a minimum of 10 half-lives; and

(b) Prior to disposal in ordinary trash, decayed waste shall be surveyed with an instrument that will properly record background radiation dose, to confirm that the radioactivity cannot be distinguished from background. All radiation labels shall be removed or obliterated; and

(c) Notwithstanding OAR 333-102-305(22)(a) iodine-125 waste in microcurie amounts may be held for a minimum of five half-lives. Such waste must be surveyed with an appropriate instrument prior to disposal to confirm that waste is indistinguishable from background.

(24) Licensed materials in an unrestricted area and not in storage shall be tended under the constant surveillance and immediate control of the licensee.

(25) Except as otherwise specified in a radioactive materials license, the licensee shall have available and follow the instructions contained in the manufacturer's instruction manual for the chromatography device.

(26) In lieu of using the conventional radiation caution colors (magenta or purple on yellow background) as provided in OAR 333-120-0400(2) of the Oregon Rules for the control of Radiation, the licensee is hereby authorized to label detector cells and cell baths, containing licensed radioactive material and used in gas chromatography devices, with conspicuously etched or stamped radiation caution symbols without a color requirement.

(27) If a radiography licensee plans to use, during normal industrial radiographic operations subject to division 105 of this chapter, two or more exposure devices at one jobsite, the licensee shall require at least one Radiographer or Radiographer Instructor authorized user for each exposure device, and the total number of authorized personnel (radiographers and assistant radiographers) at the temporary jobsite shall not be less than $n+1$ where n =the number of cameras.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0310

Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas

(1)(a) Except as provided in OAR 333-102-0310(1)(b), each specific license shall expire at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under 333-102-0315 before the expiration date stated in the existing license (or, for those licenses subject to paragraph 333-102-0310(1)(b), before the deemed expiration date in that paragraph). If an application for renewal has been filed before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Agency makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license that has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph OAR 333-102-0310(1)(c), shall be deemed to have an expiration date that is five years after the expiration date stated in the current license.

(c) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph OAR 333-102-0310(1)(b):

(A) Specific licenses for which, on February 15, 1996, an evaluation or an emergency plan is required in accordance with OAR 333-102-0190(9);

(B) Specific licenses whose holders are subject to the financial assurance requirements specified in OAR 333-102-0306, and on February 15, 1996, the holders either:

(i) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

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(ii) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(C) Specific licenses whose holders are listed in the SDMP List published in NUREG 1444, Supplement 1 (November 1995);

(D) Specific licenses who need an environmental assessment or environmental impact statement pursuant to Subpart A of Part 51 and OAR 333-102-0200(5);

(E) Specific licenses whose holders have not had at least one Agency inspection of licensed activities before February 15, 1996;

(F) Specific licenses whose holders, as the result of the most recent Agency inspection of licensed activities conducted before February 15, 1996, have been:

(i) Cited for a serious health and safety noncompliance;

(B) Subject to an Order issued by the Agency; or

(ii) Subject to a Confirmatory Action Letter issued by the Agency.

(G) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under OAR 333-102-0315.

(2) Each specific license revoked by the Agency expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Agency Order.

(3) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Agency notifies the licensee in writing that the license is terminated. During this time, the licensee shall--

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release in accordance with Agency requirements.

(4) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in OAR 333-100-0045, each licensee shall provide notification to the Agency in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with Agency requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (7)(a), and begin decommissioning upon approval of that plan if:

(a) The license has expired pursuant to paragraph OAR 333-102-310(1) or (2); or

(b) The licensee has decided to permanently cease principal activities, as defined in OAR 333-102-0203(59), at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Agency requirements; or

(c) No principal activities under the license have been conducted for a period of 24 months; or

(d) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Agency requirements.

(5) Coincident with the notification required by OAR 333-102-310(4), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to OAR 333-102-0306 in conjunction with a license issuance or renewal or as required by this rule. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to OAR 333-102-0310(7)(d)(E).

(a) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(b) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Agency.

(6) The Agency may grant a request to extend the time periods established in OAR 333-102-0310(4) if the Agency determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to 333-102-0310(4). The schedule for decommissioning set forth in 333-102-0310(4) may not commence until the Agency has made a determination on the request.

(7)(a) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The Agency may approve an alternate schedule for submittal of a decommissioning plan required pursuant to OAR 333-102-0310(4) of this section if the Agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in paragraph (g)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(A) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) A description of planned decommissioning activities;

(C) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) A description of the planned final radiation survey; and

(E) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(F) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in OAR 333-102-0310(9).

(e) The proposed decommissioning plan will be approved by the Agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(8)(a) Except as provided in OAR 333-102-0310(9), licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(b) Except as provided in OAR 333-102-0310(9), when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(9) The Agency may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Agency determines that the alternative is warranted by consideration of the following:

(a) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(b) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(c) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors which the Agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(10) As the final step in decommissioning, the licensee shall--

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

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(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, Subpart E. The licensee shall, as appropriate:

(A) Report levels of gamma radiation in units of millisieverts (micro-roentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters — removable and fixed — for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(11) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Agency determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c)(A) A radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, Subpart E; or

(B) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, Subpart E.

(d) The licensee has kept records of receipt, transfer, and disposal of radioactive material, pursuant to OAR 333-100-0055 that meet the following criteria:

(A) The licensee shall retain each record of receipt of radioactive material as long as the material is possessed and for three years following transfer or disposal of the material.

(B) The licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another Part of the rules in this chapter dictates otherwise.

(C) The licensee who disposed of the material shall retain each record of disposal of byproduct material until the Agency terminates each license that authorizes disposal of the material.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0315

Application for Renewal of Licenses

(1) Application for renewal of a specific license must be filed in accordance with OAR 333-102-0190.

(2) In any case in which a licensee, not less than 30 days prior to expiration of the existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until final action by the Agency.

(3) Unless otherwise specified, specific licenses shall expire after five (5) years.

(4) The Agency shall require reapplication when the license expires.

(5) The Agency may grant, upon written request from a licensee, extension of the license expiration date up to five (5) years from the original expiration date. Notwithstanding any licensee request, the Agency is not required, and may deny, any license extension, based on review of licensed activities.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0327

Specifically Licensed Items — Registration of Product Information

(1) Any manufacturer or initial distributor of a sealed source or device containing a sealed source whose product is intended for use under a specific license may submit a request to the Agency for evaluation of radiation safety information about its product and for its registration.

(2) The request for review must be made in duplicate and sent to the Manager, Radioactive Materials Licensing Program, Oregon Health Services, Radiation Protection Services, Suite 260, 800 N.E. Oregon Street, Portland, Oregon 97232.

(3) The request for review of a sealed source or a device must include sufficient information about the design, manufacture, prototype testing, quality control program, labeling, proposed uses and leak testing and, for a

device, the request must also include sufficient information about installation, service and maintenance, operating and safety instructions, and its potential hazards, to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(4) The Agency normally evaluates a sealed source or a device using radiation safety criteria in accepted industry standards. If these standards and criteria do not readily apply to a particular case, the Agency formulates reasonable standards and criteria with the help of the manufacturer or distributor. The Agency shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(5) After completion of the evaluation, the Agency, after review by the U.S. Nuclear Regulatory Commission, issues a certificate of registration to the person making the request. The certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(6) The person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(a) The statements and representations, including quality control program, contained in the request; and

(b) The provisions of the registration certificate.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.635

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0330

Transfer of Material

(1) No licensee shall transfer radioactive material except as authorized pursuant to this rule.

(2) Except as otherwise provided in the license and subject to the provisions of 333-102-0330(3) and 333-102-0330(4), any licensee may transfer radioactive material:

(a) To the Agency;

NOTE: A licensee may transfer radioactive material to the Agency only after receiving prior approval in writing from the Agency.

(b) To the U.S. Department of Energy;

(c) To any person exempt from the rules in this Division to the extent permitted under such exemption;

(d) To any person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Agency, the U.S. Nuclear Regulatory Commission, any Agreement State or any Licensing State, or to any person otherwise authorized to receive such material by the Federal Government or any agency thereof, the Agency, an Agreement State or a Licensing State; or

(e) As otherwise authorized by the Agency in writing.

(3) Before transferring radioactive material to a specific licensee of the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form and quantity of radioactive material to be transferred.

(4) Any of the following methods for the verification required by 333-102-0330(3) are acceptable:

(a) The transferor may possess and read a current copy of the transferee's specific license or registration certificate;

(b) The transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date; provided, that the oral certification is confirmed in writing within 10 days;

(d) The transferor may obtain other information compiled by a reporting service from official records of the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration;

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(e) When none of the methods of verification described in OAR 333-102-0330(4)(a) through 333-102-0330(4)(d) are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Agency, the U.S. Nuclear Regulatory Commission, the licensing agency of an Agreement State or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of division 118 of this chapter.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0335

Modification, Revocation and Termination of Licenses

(1) The terms and conditions of each license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this Chapter shall be subject to amendment, revision or modification or by reason of amendments to the Act, or by reason of rules, regulations and orders issued in accordance with the terms of the Act by the Agency.

(2) Any license may be revoked, suspended or modified, in whole or in part, for any material false statement in the application or any statement of fact required under section 182 of the Act, or because of conditions revealed by such application or statement of fact or any report, record or inspection or other means that would warrant the Agency to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act or of any rule, regulation or order of the US Nuclear Regulatory Commission or the Agency.

(3) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended or revoked unless, prior to the institution of proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(4) The Agency may terminate a specific license upon request submitted by the licensee to the Agency in writing.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0340

Reciprocal Recognition of Licenses

(1) Subject to these rules, any person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or a licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within this state for a period not in excess of 180 days in any calendar year, provided that:

(a) The licensing document does not limit the activity authorized by such document to specified installations or locations;

(b) The out-of-state licensee has notified the Agency using the Agency Reciprocity Application form at least three days prior to engaging in such activity and has paid the applicable registration fee pursuant to OAR 333-103-0030. Such notification shall indicate the location, period and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Agency, obtain permission to proceed sooner. The Agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license granted by OAR 333-102-0340(1)(a);

(c) The out-of-state licensee complies with all applicable rules of the Agency and with all the terms and conditions of the licensing document, except any such terms and conditions that [which] may be inconsistent with applicable rules of the Agency or laws of the State of Oregon;

(d) The out-of-state licensee supplies such other information as the Agency may request; and

(e) The out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in OAR 333-102-0340(1)(a) except by transfer to a person:

(A) Specifically licensed by the Agency or by the U.S. Nuclear Regulatory Commission to receive such material; or

(B) Exempt from the requirements for a license for such material under OAR 333-102-0010(2).

(2) Notwithstanding the provisions of OAR 333-102-0340(1), any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR 31.6 or equivalent regulations of an Agreement State, authorizing the holder of the license to manufacture, transfer, install or service a device described in OAR 333-102-0115(1) within the State of Oregon is hereby granted a general license to install, transfer, demonstrate or service such a device in this state provided that:

(a) Such person shall register the general license pursuant to OAR 333-101-0007;

(b) File a report with the Agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this state. Each such report shall identify each general licensee to whom such device is transferred by name and address, the type of device transferred and the quantity and type of radioactive material contained in the device;

(c) Ensure that the device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specific license issued to such person by the U.S. Nuclear Regulatory Commission or an Agreement State;

(d) Ensure that any labels required to be affixed to the device under rules of the licensing authority also include the statement "Removal of this label is prohibited"; and

(e) The holder of the specific license shall furnish to each general licensee to whom such device is transferred, or on whose premises such a device is installed, a copy of the general license contained in OAR 333-102-0115 or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Agency may withdraw, limit or qualify its acceptance of any specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission or an Agreement State, or any product distributed pursuant to such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

(4) The out-of-state licensee shall at all times during work at any work location within the state have available the pertinent licensing document, the applicable sections of the State of Oregon radiation regulations, a complete source inventory, pertinent U.S. Department of Transportation documentation, leak test records, instrument calibration records, personnel training records, and necessary documentation required by applicable special requirements of these regulations.

(5) While working in Oregon, the out-of-state licensee shall notify the Agency (in writing, indicating date and court) immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title II (bankruptcy) of the United States code by or against:

(a) The licensee;

(b) An entity (as that term is defined in II U.S.C 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as that term is defined in II U.S.C. 101(2)) of the licensee.

(6) The out-of-state licensee shall notify the Agency within 1 hour after arrival at the actual work location within the state and notification within 1 hour after any change of work location within the state.

(7) If multiple work crews or persons work concurrently at more than one work location under a general license granted pursuant to OAR 333-102-0340, each day worked at each location shall count toward the limit of 180 days in a calendar year.

(8) The Agency may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by the U. S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or any product distributed pursuant to such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

(9) Each general licensee granted authorization to conduct activities within the State of Oregon pursuant to OAR 333-102-0340, based upon an acceptable licensing document, will receive acknowledgment from the Department. This acknowledgment shall be kept at the site of use.

(10) Each general licensee granted authorization to conduct activities within the state of Oregon pursuant to OAR 333-102-0340 based upon an acceptable licensing document is subject to the reciprocity fee and may be inspected by the Agency. The fee for the general license granting reciprocity shall:

(a) Be charged as provided by division 103 of this chapter; and

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(b) Shall not be charged more often than once during each calendar year.

(11) Each general licensee operating within the state under reciprocity in areas of exclusive federal jurisdiction shall comply with the applicable provisions of 10 CFR 150.20.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0350

Reporting Requirements

(1) Immediate report. Each licensee shall notify the Agency as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(2) Twenty-four hour report. Each licensee shall notify the Agency within 24 hours after the discovery of any of the following events involving licensed material:

(a) An unplanned contamination event that:

(A) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(B) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of Secs. 20.1001-20.2401 of 10 CFR part 20 for the material; and

(C) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(b) An event in which equipment is disabled or fails to function as designed when:

(A) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(B) The equipment is required to be available and operable when it is disabled or fails to function; and

(C) No redundant equipment is available and operable to perform the required safety function.

(c) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(d) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(A) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of Secs. 20.1001-20.2401 of 10 CFR part 20 for the material; and

(B) The damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of this rule must be made as follows:

(a) Licensees shall make reports required by paragraphs OAR 333-102-0350(1) and 333-102-0350(2) by telephone to the Agency. To the extent that the information is available at the time of notification, the information provided in these reports must include:

NOTE: The 24-hour telephone number for the Agency is 503-731-4014.

(A) The caller's name and call back telephone number;

(B) A description of the event, including date and time;

(C) The exact location of the event;

(D) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(E) Any personnel radiation exposure data available.

(b) Written report. Each licensee who makes a report required by paragraph OAR 333-102-0350(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be Faxed or sent to the Agency with Attention to Radioactive Materials Manager, 800 NE Oregon Street, Portland, OR 97232. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of this rule apply to licensees subject to the notification requirements in OAR 333-102-0200(5).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0355

Records

(1) Each person who receives radioactive material pursuant to a license issued in accordance with the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall keep records showing the receipt, transfer, and disposal of the radioactive material as follows:

(a) The licensee shall retain each record of receipt of radioactive material as long as the material is possessed and for three years following transfer or disposal of the material.

(b) The licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another division of the rules in this chapter dictates otherwise.

(c) The licensee who disposed of the material shall retain each record of disposal of radioactive material until the Agency terminates each license that authorizes disposal of the material.

(2) The licensee shall retain each record that is required by the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter or by license condition for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified by rule or license condition, the record must be retained until the Agency terminates each license that authorizes the activity that is subject to the record-keeping requirement.

(3)(a) Records that must be maintained pursuant to this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Agency rules. The record also may be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(b) If there is a conflict between the Agency's rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter, license condition, or other written Agency approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter for such records shall apply unless the Agency, pursuant to OAR 333-102-0003, has granted a specific exemption from the record retention requirements specified in the rules in this division or divisions 105, 113, 115, 116, 117, and 121 of this chapter.

(4) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, shall forward the following records to the Agency Office:

(a) Records of disposals of licensed material made prior to January 28, 1981; and

(b) Records required by OAR 333-120-0620(2)(d).

NOTE: Prior to EFSC rules burial of small quantities of licensed materials in soil was permitted without specific Agency authorization.

(5) If licensed activities are transferred or assigned in accordance with OAR 333-102-0305(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) Records of disposal of licensed material made under OAR 333-120-0510 (including burials authorized before January 28, 1981, 333-120-0520, 333-120-0530, 333-120-0540; and

(b) Records required by 120-0620(2)(d).

(6) Prior to license termination, each licensee shall forward the records required by OAR 333-102-0306(7) to the Agency Office.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

ADMINISTRATIVE RULES

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0360

Right to Cause the Withholding or Recall of Byproduct Material

The Agency may cause the withholding or recall of byproduct material from any licensee who is not equipped to observe or fails to observe such safety standards to protect health as may be established by the Agency, or who uses such materials in violation of law or regulation of the Agency, or in a manner other than as disclosed in the application therefore or approved by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-102-0365

Third Party Method

If the applicant consents, the Agency may enter into third party agreements for the applicant to engage and pay for the services of a third party contractor to prepare an environmental impact analysis required by OAR 333-102-0295 and/or to furnish an opinion of independent experts, satisfactory to the Agency, in respect to the completeness and adequacy of any information or data furnished by the applicant and on any aspect of the applicant's project or effects thereof.

(1) When the license applicant pays for a third party agreement, the monies paid for the consultant shall not be considered as specific license fees, pursuant to OAR 333-103-0010 of this Chapter.

(2) In proceeding under the third party agreement, the Agency shall carry out the following practices:

(a) Such contractor shall be chosen solely by the Agency.

(b) The Agency shall manage the contract.

(c) The consultant shall be selected based on the consultant's ability and relevant and applicable work experience and an absence of conflict of interest. Third party contractors shall be required to execute a disclosure statement showing that they have no financial or other conflicting interest in the outcome of the project.

(d) The Agency shall specify the information to be developed and supervise the gathering, analysis and presentation of the information. The Agency shall have sole authority for approval and modification of the statement, analysis, and conclusions included in third party's report.

(e) The Agency has the single right of refusal of the final application, and the Agency is not obligated to approve the application or issue a license.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-103-0015

Annual Registration Fee for General Licenses and Devices

(1) Any general license granted by the Agency shall be validated annually by the general license registration fee listed in section (2) of this rule, unless otherwise exempted by subsection (2)(e) of this rule. General License registration fees as defined in OAR 333-103-0003(2)(b) shall:

(a) Validate each general licensed source of radiation due July 1 of each year for sources of radiation; and

(b) Validate each new application to register general license material pursuant to OAR 333-101-0007; and

(2) The general licenses appearing in the following fee schedule shall be registered on the appropriate Agency form and shall be validated annually by a general license registration fee:

(a) Each healing arts facility that uses radioactive material for In Vitro laboratory or clinical testing authorized by OAR 333-102-0130: \$100

(b) Each radiation source in a generally license measuring, gauging or controlling device authorized pursuant to OAR 333-102-0115(1), except for radioactive material contained in devices designed and manufactured for the purpose of producing light or an ionized atmosphere pursuant to 333-102-0105: \$100

(c) Each general licensee possessing or using depleted uranium for the purpose of providing a concentrated mass in a small volume of the product or device pursuant to OAR 333-102-0103: \$100

(d) Each General Licensee possessing or using source material for research, development, educational, commercial or operational purposed pursuant to OAR 333-102-0101: \$150

(e) General licenses not specifically identified in subsections (a), (b) and (c) of this section are exempt from the payment of an annual general license registration fee.

(f) Each out-of-state or NRC specific licensee granted a general license pursuant to OAR 333-102-0340 to conduct activities within the state of Oregon for a period not to exceed 180 days in a calendar year shall pay a registration validation fee as required by OAR 333-103-0030(6).

(3) Notwithstanding subsection (2)(f) of this rule, the general license fee shall be due and payable on or before July 1 of each year.

(4) A certificate of validation for the then current fiscal year shall be provided by the Agency. The certificate for the then current fiscal year shall be retained by the licensee and attached to the general license.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.757

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 13-1988, f. 6-7-88, cert. ef. 7-1-88; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1991, f. & cert. ef. 10-1-91; HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0001

Purpose

This Division prescribes requirements for the industrial use of sources of radiation and radiation safety requirements for persons using these sources of radiation in industrial radiography.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665 & 453.635

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0003

Scope

The provisions and requirements of this division are in addition to, and not in substitution for, other requirements of these rules. In particular, the general requirements of divisions 100, 101, 102, 111, 118, and 120 of this Chapter apply to applicants, licensees, and registrants subject to this division. division 102 and 118 of these rules apply to licensing and transportation of radioactive material and division 101 of these rules applies to the registration of radiation machines. Except for sections that are applicable only to sealed radioactive sources, both radiation machines and sealed radioactive sources are covered by this division. This rule does not apply to medical uses addressed in division 116.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.665 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0005

Definitions

As used in this Division, the following definitions apply:

(1) "Annual refresher safety training" means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, as a minimum, a review of radiation safety aspects of industrial radiography, any results of internal audits, Agency inspections, new procedures or equipment, new or revised regulations, and accidents or errors that have been observed. The review shall also provide opportunities for employees to ask safety questions.

(2) "ANSI" means the American National Standards Institute.

(3) "Associated equipment" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube and collimator when it is used as an exposure head.

(4) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet so shielded that every location on the exterior meets the dose limits for individual members of the public as specified in OAR 333-120-0180;

(5) "Cabinet X-ray system" means an X-ray system with the X-ray tube installed in an enclosure hereinafter termed a cabinet, that is independent of existing architectural structures except the floor. The cabinet x-ray system is intended to contain at least that portion of a material being irradiated, provide radiation attenuation and exclude personnel from its interior during generation of radiation. This definition includes X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals and in similar facilities. An X-ray tube used within a shielded part of a building, or X-ray equipment that may temporarily or occasionally incorporate portable shielding, is not considered a cabinet X-ray system.

(6) "Camera" see "Radiographic exposure device".

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(7) "Certifiable cabinet x-ray system" means an existing uncertified x-ray system that has been modified to meet the certification requirements specified in 21 CFR 1020.40.

(8) "Certified cabinet X-ray system" means an X-ray system that has been certified in accordance with 21 CFR 1020.40.

(9) "Certifying entity" means an independent certifying organization meeting the requirements in Appendix A of Division 105 or an Agreement State regulatory program meeting the requirements in Appendix A, Sections II and III.

(10) "Collimator" means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size, shape, and direction of the radiation beam

(11) "Control drive cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

(12) "Control drive mechanism" means a device that enables the source assembly to be moved into and out of the exposure device.

(13) "Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

(14) "Drive cable" see "Control cable".

(15) "Exposure head" means a device that locates the gamma radiography sealed source in the selected working position. An exposure head also is known as a source stop or end cap.

(16) "Field station" means a facility from which sources of radiation may be stored or used and from which equipment is dispatched.

(17) "Guide tube" (projection sheath) means a flexible or rigid tube, or "J" tube, for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

(18) "Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process, and includes taking radiographs, calibration of survey instruments, operational and performance testing of survey instruments and devices, film development, posting of radiation areas, preparing radiographic sources for transport, set-up of radiography equipment, posting of records and radiation area surveillance, etc., as applicable. In addition the Radiation Safety Officer experience shall include source exchange and source retrieval. Excessive time spent in only one or two of these areas, such as film development or radiation area surveillance, should not be counted toward the 2000 hours of hands-on experience required for a radiation safety officer in 333-105-0520 or the hands-on experience for a radiographer as required by 333-105-0530.

(19) "Independent certifying organization" means an independent organization that meets all of the criteria of Appendix A of this part.

(20) "Industrial radiography" means a nondestructive examination of the structure of materials using ionizing radiation to make radiographic images .

(21) "Lay-barge radiography" means industrial radiography performed on any water vessel used for laying pipe.

(22) "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(23) "Offshore platform radiography" means industrial radiography conducted from a platform over a body of water.

(24) "Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

(25) "Personal supervision" means supervision in which the radiographer is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the radiographer's assistant and in such proximity that immediate assistance can be given if required.

(26) "Pigtail" see "Source assembly".

(27) "Pill" see "Sealed source".

(28) "Practical examination" means a demonstration through application of the safety rules and principles in industrial radiography including use of all procedures and equipment to be used by radiographic personnel.

(29) "Projection sheath" see "Guide tube".

(30) "Projector" see "Radiographic exposure device".

(31) "Radiation safety officer for industrial radiography" means an individual with the responsibility for the overall radiation safety program on behalf of the licensee or registrant and who meets the requirements of 333-105-0520.

(32) "Radiographer" means any individual who performs or who, in attendance at the site where sources of radiation are being used, personally

supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these rules and the conditions of the license or registration.

(33) "Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met the radiation safety, testing, and experience criteria in 333-105-0530.

(34) "Radiographer's assistant" means any individual who, under the direct supervision of a radiographer, uses radiographic exposure devices, sources of radiation, related handling tools or radiation survey instruments in industrial radiography.

(35) "Radiographer instructor" means any radiographer who has been authorized by the Agency to provide on-the-job training to radiographer trainees in accordance with OAR 333-105-0530(3).

(36) "Radiographer trainee" means any individual who, under the direct supervision of a radiographer instructor, uses sources of radiation, related handling tools or radiation survey instruments during the course of his instruction.

(37) "Radiographic exposure device" (also called a camera or a projector) means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved or otherwise changed from a shielded to unshielded position for purposes of making a radiographic exposure.

(38) "Radiographic operations" means all activities performed with a radiographic exposure device, or with a radiation machine. Activities include using, transporting (except when being transported by common or contract carriers), storing at a temporary job site, performing surveys to confirm the adequacy of boundaries, setting up equipment, and any activity inside restricted area boundaries. Transporting a radiation machine is not considered a radiographic operation.

(39) "Radiographic personnel" means any radiographer, radiographer's assistant, radiographer instructor or radiographer trainee.

(40) "Radiography" see "Industrial radiography."

(41) "Residential location" means any area where structures in which people lodge or live are located and the grounds on which such structures are located including, but not limited to, houses, apartments, condominiums and garages.

(42) "S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device.

(43) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(44) "Shielded position" means the location within the radiographic exposure device, source changer, or storage container that, by manufacturer's design, is the proper location for storage of the sealed source.

(45) "Shielded room radiography using radiation machines" means industrial radiography using radiation machines, which is conducted in an enclosed room, the interior of which is not occupied during radiographic operations, which is so shielded that every location on the exterior meets conditions for an unrestricted area as specified in OAR 333-120-0180, and the only access to which is through openings that are interlocked so that the radiation machine will not operate unless all openings are securely closed.

(46) "Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

(47) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices. They also may be used for transporting and storing sealed sources.

(48) "Storage area" means any location, facility or vehicle that is used to store and secure a radiographic exposure device, a radiation machine, or a storage container when it is not used for radiographic operations. Storage areas are locked or have a physical barrier to prevent accidental exposure, tampering with or unauthorized removal of the device, container, source, or machine.

(49) "Storage container" means a device in which sealed sources are secured or stored.

(50) "Temporary jobsite" means any location where radiographic operations are performed and where sources of radiation may be stored other than those location(s) of use authorized on the license or registration.

(51) "Transport container" means a package that is designed to provide radiation safety and security when sealed sources are transported and which meets all applicable requirements of the U.S. Department of Transportation.

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(52) "Underwater radiography" means radiographic operations performed when the radiographic exposure device or radiation machine and/or related equipment are beneath the surface of the water.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0050

Exemptions

(1) Uses of certified and certifiable cabinet x-ray systems are exempt from the requirements of this Division except for the following:

(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:

(A) No registrant shall permit any individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit. Records that demonstrate compliance with this subparagraph shall be maintained for Agency inspection until disposal is authorized by the Agency.

(B) Tests for proper operation of interlocks must be conducted and recorded at intervals not to exceed six months. Records of these tests shall be maintained for Agency inspection until disposal is authorized by the Agency.

(C) The registrant shall perform an evaluation of the radiation dose limits to determine compliance with OAR 333-120-0180, 333-120-0190 and 21 CFR 1020.40, Cabinet X-Ray Systems (39 Federal Register 12986, April 10, 1974), at intervals not to exceed one year. Records of these evaluations shall be maintained for Agency inspection for two years after the evaluation.

(b) Certified cabinet X-ray systems shall be maintained in compliance with 21 CFR 1020.40, Cabinet X-Ray Systems (39 Federal Register 12986, April 10, 1974), and no modification shall be made to the system unless prior Agency approval has been granted.

(2) Industrial uses of lixiscopes are exempt from the requirements of this Division if the dose rate 18 inches from the source of radiation to any individual does not exceed 2 millirem per hour. Devices that exceed this limit shall meet the applicable requirements of this division and the licensing or registration requirements of division 101 or division 102 of these rules, as applicable.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0075

Licensing and Registration Requirements for Industrial Radiography Operations

The Agency will approve an application for a specific license for the use of licensed material or a registration for use of radiation machines if the applicant meets the following requirements:

(1) The applicant satisfies the general requirements specified in OAR 333-101-0005 for radiation machine facilities or 333-102-0200 for radioactive material, as applicable, and any special requirements contained in this Division;

(2) The applicant submits an adequate program for training radiographers and radiographer's assistants that meets the requirements of 333-105-0530:

(a) After July 1, 2003, the applicant need not describe the initial training and examination program for radiographers in the subjects outlined in 333-105-0530(7).

(b) From December 1, 2002 to July 1, 2003, the applicant may affirm that all individuals acting as industrial radiographers will be certified in radiation safety by a certifying entity before commencing duty as radiographers. This affirmation substitutes for a description of its initial training and examination program for radiographers in the subjects outlined in 333-105-0530(7).

(3) The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid;

(4) The applicant submits written operating and emergency procedures as described in 333-105-0540;

(5) The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographer's assistant at intervals not to exceed 6 months as described in 333-105-0530(5);

(6) The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in

industrial radiography, including specified delegation of authority and responsibility;

(7) The applicant submits the qualifications of the individual(s) designated as the radiation safety officer as described in 333-105-0520(1);

(8) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing the test. The description must include the:

(a) Methods of collecting the samples;

(b) Qualifications of the individual who analyzes the samples;

(c) Instruments to be used; and

(d) Methods of analyzing the samples.

(9) If the applicant intends to perform calibrations of survey instruments and alarming ratemeters, the applicant must describe methods to be used and the experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 333-105-0450 and 333-105-0560(7)(d);

(10) The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations;

(11) The applicant identifies the location(s) where all records required by this and other Divisions of these rules will be maintained;

(12) If a license application includes underwater radiography, a description of:

(a) Radiation safety procedures and radiographer responsibilities unique to the performance of underwater radiography;

(b) Radiographic equipment and radiation safety equipment unique to underwater radiography; and

(c) Methods for gas-tight encapsulation of equipment; and

(13) If an application includes offshore platform and/or lay-barge radiography, a description of:

(a) Transport procedures for radioactive material to be used in industrial radiographic operations;

(b) Storage facilities for radioactive material; and

(c) Methods for restricting access to radiation areas.

(14) A license or registration will be issued if 333-105-0075(1) through (13), as applicable, are met.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0420

Performance Requirements for Industrial Radiography Equipment

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(1) Each radiographic exposure device, source assembly or sealed source, and all associated equipment must meet the requirements specified in American National Standard Institute, N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981);

(2) In addition to the requirements specified in 333-105-0420(1), the following requirements apply to radiographic exposure devices, source changers, source assemblies and sealed sources;

(a) The licensee shall ensure that each radiographic exposure device has attached to it a durable, legible, clearly visible label bearing the:

(A) Chemical symbol and mass number of the radionuclide in the device;

(B) Activity and the date on which this activity was last measured;

(C) Model or product code and serial number of the sealed source;

(D) Name of the manufacturer of the sealed source; and

(E) Licensee's name, address, and telephone number.

(b) Radiographic exposure devices intended for use as Type B packages must meet the applicable transportation requirements of division 118 of these rules.

(c) Modification of radiographic exposure devices, source changers, and source assemblies and associated equipment is prohibited, unless approved by the Agency or other approval body.

(3) In addition to the requirements specified in 333-105-0420(1) and (2), the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers;

(a) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

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(b) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(c) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(d) Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words:

"DANGER—RADIOACTIVE."

The label may not interfere with the safe operation of the exposure device or associated equipment.

(e) The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.

(f) Guide tubes must be used when moving the source out of the device.

(g) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during industrial radiography operations.

(h) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980.

(i) Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(4) All radiographic exposure devices and associated equipment in use after January 10, 1996, must comply with the requirements of this section; and

(5) As an exception to 333-105-0420(1), equipment used in industrial radiographic operations need not comply with § 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can reasonably exert on the lever or crankshaft of the drive mechanism.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0430

Limits on External Radiation Levels From Storage Containers and Source Changers

The maximum exposure rate limits for storage containers and source changers are 2 millisieverts (200 mrem) per hour at any exterior surface, and 0.1 millisieverts (10 mrem) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0440

Locking of Sources of Radiation, Storage Containers and Source Changers

(1) Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (If a keyed lock, the key must be removed at all times) when not under the direct surveillance of a radiographer or a radiographer's assistant except at permanent radiographic installations as stated in 333-105-0580. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

(2) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (If a keyed lock, the key must be removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

(3) The control panel of each radiation machine shall be equipped with a lock that will prevent the unauthorized use of an x-ray system or the accidental production of radiation. The radiation machine shall be kept

locked and the key removed at all times except when under the direct visual surveillance of a radiographer or a radiographer's assistant.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0450

Radiation Survey Instruments

(1) The licensee or registrant shall keep sufficient calibrated and operable radiation survey instruments at each location where sources of radiation are present to make the radiation surveys required by this division and by division 120 of these rules. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 mrem) per hour through 0.01 sievert (1 rem) per hour.

(2) The licensee or registrant shall have each radiation survey instrument required under 333-105-0450(1) calibrated:

(a) At energies appropriate for use and at intervals not to exceed 6 months or after instrument servicing, except for battery changes;

(b) For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 millisieverts (2 and 1000 mrem) per hour; and

(c) So that an accuracy within plus or minus 20 percent of the true radiation dose rate can be demonstrated at each point checked.

(3) The licensee or registrant shall maintain records of the results of the instrument calibrations in accordance with 333-105-0620.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0460

Leak Testing and Replacement of Sealed Sources

(1) The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing of any sealed source must be performed by persons authorized to do so by the Agency, the Nuclear Regulatory Commission, or another Agreement State.

(2) The opening, repair, or modification of any sealed source must be performed by persons specifically authorized to do so by the Agency, the Nuclear Regulatory Commission, or another Agreement State.

(3) Testing and recordkeeping requirements.

(a) Each licensee who uses a sealed source shall have the source tested for leakage at intervals not to exceed 6 months. The leak testing of the source must be performed using a method approved by the Agency, the Nuclear Regulatory Commission, or by another Agreement State. The wipe sample should be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 becquerel (0.005 microCurie) of radioactive material on the test sample and must be performed by a person specifically authorized by the Agency, the Nuclear Regulatory Commission, or another Agreement State to perform the analysis.

(b) The licensee shall maintain records of the leak tests in accordance with 333-105-0630.

(c) Unless a sealed source is accompanied by a certificate from the transferor that shows that it has been leak tested within 6 months before the transfer, it may not be used by the licensee until tested for leakage. Sealed sources that are in storage and not in use do not require leak testing, but must be tested before use or transfer to another person if the interval of storage exceeds 6 months.

(4) Any test conducted pursuant to 333-105-0460(2) and 333-105-0460(3) that reveals the presence of 185 Becquerel (0.005 microCurie) or more of removable radioactive material must be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with Agency rules. A report must be filed with the Agency within 5 days of any test with results that exceed the threshold in this paragraph, describing the equipment involved, the test results, and the corrective action taken.

(5) Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of 185 becquerel (0.005 microCurie) of radioactive material on the test sample and must be performed by a person specifically authorized by the Agency, the Nuclear Regulatory Commission, or another Agreement

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State to perform the analysis. Should such testing reveal the presence of DU contamination, the exposure device must be removed from use until an evaluation of the wear of the S-tube has been made. Should the evaluation reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while not in use and in storage. Before using or transferring such a device, however, the device must be tested for DU contamination, if the interval of storage exceeds 12 months. A record of the DU leak-test must be made in accordance with 333-105-0630.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0470

Quarterly Inventory

(1) Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation, and for devices containing depleted uranium received and possessed under the license.

(2) The licensee or registrant shall maintain records of the quarterly inventory in accordance with 333-105-0640.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0480

Inspection and Maintenance of Radiation Machines, Radiographic Exposure Devices, Transport and Storage Containers, Associated Equipment, Source Changers, and Survey Instruments

(1) The licensee or registrant shall perform visual and operability checks on survey meters, radiation machines, radiographic exposure devices, transport and storage containers, associated equipment and source changers before each day's use, or work shift, to ensure that:

- (a) The equipment is in good working condition;
- (b) The sources are adequately shielded; and
- (c) Required labeling is present.

(2) Survey instrument operability must be performed using check sources or other appropriate means.

(3) If equipment problems are found, the equipment must be removed from service until repaired.

(4) Each licensee or registrant shall have written procedures for and perform inspection and routine maintenance of radiation machines, radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment must be removed from service until repaired.

(5) The licensee's inspection and maintenance program must include procedures to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

(6) Records of equipment problems and of any maintenance performed under 333-105-0480 must be made in accordance with 333-105-0660.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0490

Permanent Radiographic Installations

(1) Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either:

(a) An entrance control of the type described in OAR 333-120-0220 that causes the radiation level upon entry into the area to be reduced; or

(b) Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed or the machine is energized. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2) The alarm system must be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test must include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry as designated in 333-105-0490(1)(a) must be tested monthly. If an entrance control device or an alarm is operating improperly, it must be immediately labeled as defective and repaired within 7 calendar days. The facility may continue to be used during this 7-day period, provided the licensee or reg-

istrant implements the continuous surveillance requirements of 333-105-0580 and uses an alarming rate-meter. Test records for entrance controls and audible and visual alarms must be maintained in accordance with 333-105-0670.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0500

Labeling, Storage, and Transportation

(1) The licensee may not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, i.e., magenta, purple or black on a yellow background, having a minimum diameter of 25 mm, and the wording:

CAUTION RADIOACTIVE MATERIAL
NOTIFY CIVIL AUTHORITIES
or "DANGER"

(2) The licensee may not transport radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with rules set out in division 118.

(3) Radiographic exposure devices, source changers, storage containers, and radiation machines, must be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner that will minimize danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

(5) The licensee's or registrant's name and city or town where the main business office is located shall be prominently displayed with a durable, clearly visible label(s) on both sides of all vehicles used to transport radioactive material or radiation machines for temporary job site use.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0510

Conducting Industrial Radiographic Operations

(1) Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of 333-105-0530(3). The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

(2) All radiographic operations must be conducted in a permanent radiographic installation unless otherwise specifically authorized by the Agency.

(3) Except when physically impossible, collimators shall be used in industrial radiographic operations that use radiographic exposure devices that allow the source to be moved out of the device.

(4) A licensee or registrant may conduct lay-barge, offshore platform, or underwater radiography only if procedures have been approved by the Agency, the Nuclear Regulatory Commission, or by another Agreement State.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0520

Radiation Safety Officer

The radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program.

(1) The minimum qualifications, training, and experience for radiation safety officers for industrial radiography are as follows:

(a) Completion of the training and testing requirements of 333-105-0530(1);

(b) 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

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(2) The Agency will consider alternatives when the radiation safety officer has appropriate training and experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

(3) The specific duties and authorities of the radiation safety officer include:

(a) Establishing and overseeing all operating, emergency, and ALARA procedures as required by Division 120 of these rules and reviewing them regularly to ensure that they conform to Agency rules and to the license or registration conditions;

(b) Overseeing and approving the training program for radiographic personnel to ensure that appropriate and effective radiation protection practices are taught;

(c) Ensuring that required radiation surveys and leak tests are performed and documented in accordance with the rules, including any corrective measures when levels of radiation exceed established limits;

(d) Ensuring that personnel monitoring devices are calibrated, if applicable, and used properly; that records are kept of the monitoring results; and that timely notifications are made as required by Division 120 of these rules; and

(e) Ensuring that operations are conducted safely and for implementing corrective actions including terminating operations.

(4) Licensees and registrants will have 2 years from the effective date of this rule to meet the requirements of 333-105-0520(1) and (2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0530

Training

(1) The licensee or registrant may not permit any individual to act as a radiographer until the individual:

(a) Has received at least 40 hours of training in the subjects outlined in 333-105-0530(7), in addition to on the job training consisting of hands-on experience under the supervision of a radiographer and is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of this Division. The on the job training shall include a minimum of 2 months (320 hours) of active participation in the performance of industrial radiography utilizing radioactive material and/or 1 month (160 hours) of active participation in the performance of industrial radiography utilizing radiation machines. Individuals performing industrial radiography utilizing radioactive materials and radiation machines must complete both segments of the on the job training (3 months or 480 hours); or

(b) The licensee or registrant may, until July 1, 2003, allow an individual who has not met the requirements of 333-105-0530(1)(a), to act as a radiographer after the individual has received at least 40 hours of training in the subjects outlined in 333-105-0530(7) and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the Agency, the Nuclear Regulatory Commission, or another Agreement State, in addition to on the job training consisting of hands-on experience under the supervision of a radiographer. The on the job training shall include a minimum of 2 months (320 hours) of active participation in the performance of industrial radiography utilizing radioactive material and/or 1 month (160 hours) of active participation in the performance of industrial radiography utilizing radiation machines. Individuals performing industrial radiography utilizing radioactive materials and radiation machines must complete both segments of the on the job training (3 months or 480 hours).

(2) In addition, the licensee or registrant may not permit any individual to act as a radiographer until the individual:

(a) Has received copies of and instruction in the requirements described in the rules contained in this division, and applicable sections of divisions 120, 111, and 118 of these rules, in the license or registration under which the radiographer will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures;

(b) Has demonstrated an understanding of items in 333-105-0530(2)(a) by successful completion of a written or oral examination;

(c) Has received training in the use of the registrant's radiation machines, or the licensee's radiographic exposure devices, sealed sources, in the daily inspection of devices and associated equipment, and in the use of radiation survey instruments; and

(d) Has demonstrated understanding of the use of the equipment described in 333-105-0530(2)(c) by successful completion of a practical examination.

(3) The licensee or registrant may not permit any individual to act as a radiographer's assistant until the individual:

(a) Has received copies of and instruction in the requirements described in the rules contained in this Division, and applicable sections of Divisions 120, 111, and 118 of these regulations, in the license or registration under which the radiographer's assistant will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures;

(b) Has demonstrated an understanding of items in 333-105-0530(3)(a) by successful completion of a written or oral examination;

(c) Under the personal supervision of a radiographer, has received training in the use of the registrant's radiation machines, or the licensee's radiographic exposure devices and sealed sources, in the daily inspection of devices and associated equipment, and in the use of radiation survey instruments; and

(d) Has demonstrated understanding of the use of the equipment described in 333-105-0530(3)(c) by successful completion of a practical examination.

(4) The licensee or registrant shall provide annual refresher safety training, as defined in 333-105-0005(1), for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

(5) Except as provided in 333-105-0530(5)(d), the radiation safety officer or designee shall conduct an inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the Agency's rules, license or registration requirements, and operating and emergency procedures are followed. The inspection program must:

(a) Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed 6 months; and

(b) Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of 333-105-0530(2)(c) and the radiographer's assistant must demonstrate knowledge of the training requirements of 333-105-0530(3)(c) by a practical examination before these individuals can next participate in a radiographic operation.

(c) The Agency may consider alternatives in those situations where the individual serves as both radiographer and radiation safety officer.

(d) In those operations where a single individual serves as both radiographer and radiation safety officer, and performs all radiography operations, an inspection program is not required.

(6) The licensee or registrant shall maintain records of the above training to include certification documents, written, oral and practical examinations, refresher safety training and inspections of job performance in accordance with 333-105-0680.

(7) The licensee or registrant shall include the following subjects required in 333-105-0530(1):

(a) Fundamentals of radiation safety including:

(A) Characteristics of gamma and x-radiation;

(B) Units of radiation dose and quantity of radioactivity;

(C) Hazards of exposure to radiation;

(D) Levels of radiation from sources of radiation; and

(E) Methods of controlling radiation dose (time, distance, and shielding);

(b) Radiation detection instruments including:

(A) Use, operation, calibration, and limitations of radiation survey instruments;

(B) Survey techniques; and

(C) Use of personnel monitoring equipment;

(c) Equipment to be used including:

(A) Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed);

(B) Operation and control of radiation machines;

(C) Storage, control, and disposal of sources of radiation; and

(D) Inspection and maintenance of equipment.

(d) The requirements of pertinent state and federal rules; and

(e) Case histories of accidents in radiography.

(8) Licensees and registrants will have one year from the effective date of this rule to comply with the additional training requirements specified in 333-105-0530(2)(a) and (3)(a).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

ADMINISTRATIVE RULES

333-105-0540

Operating and Emergency Procedures

(1) Operating and emergency procedures must include, as a minimum, instructions in the following:

(a) Appropriate handling and use of sources of radiation so that no person is likely to be exposed to radiation doses in excess of the limits established in Division 120 of these rules;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods for posting and controlling access to radiographic areas;

(d) Methods and occasions for locking and securing sources of radiation;

(e) Personnel monitoring and the use of personnel monitoring equipment;

(f) Transporting equipment to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles when required, and control of the equipment during transportation as described in Division 118 of these rules;

(g) The inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, survey instruments, alarming ratemeters, transport containers, and storage containers;

(h) Steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarming ratemeter alarms unexpectedly;

(i) The procedure(s) for identifying and reporting defects and non-compliance, as required by 333-105-0740;

(j) The procedure for notifying proper persons in the event of an accident or incident;

(k) Minimizing exposure of persons in the event of an accident or incident, including a source disconnect, a transport accident, or loss of a source of radiation;

(l) Source recovery procedure if licensee will perform source recoveries; and

(m) Maintenance of records.

(2) The licensee or registrant shall maintain copies of current operating and emergency procedures in accordance with 333-105-0690 and 333-105-0730.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0550

Supervision of Radiographer's Assistants

The radiographer's assistant shall be under the direct visual supervision of a radiographer when using radiographic exposure devices, associated equipment or sources of radiation, or when conducting radiation surveys required by 333-105-0570(2) to determine that the sealed source has returned to the shielded position or the radiation machine is off after an exposure. The personal supervision must include:

(1) The radiographer's physical presence at the site where the sources of radiation are being used;

(2) The availability of the radiographer to give immediate assistance if required; and

(3) The radiographer's direct observation of the assistant's performance of the operations referred to in this section.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0560

Personnel Monitoring

(1) The licensee or registrant may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a combination of direct reading dosimeter, an alarming ratemeter, and either a film badge or a TLD or other NAVLAP approved technologies. At permanent radiographic installations where other appropriate alarming or warning devices are in routine use, or during radiographic operations using radiation machines, the use of an alarming ratemeter is not required.

(a) Pocket dosimeters must have a range from zero to 2 millisieverts (200 mrem) and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(b) Each film badge and TLD must be assigned to and worn by only one individual.

(c) Film badges and TLD's must be exchanged at periods not to exceed one month.

(d) After replacement, each film badge or TLD must be returned to the supplier for processing within 14 calendar days of the end of the monitoring period, or as soon as practicable. In circumstances that make it impossible to return each film badge or TLD in 14 calendar days, such circumstances must be documented and available for review by the Agency.

(2) Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters, must be read and the exposures recorded at the beginning and end of each shift, and records must be maintained in accordance with 333-105-0700.

(3) Pocket dosimeters, or electronic personal dosimeters, must be checked at periods not to exceed 12 months for correct response to radiation, and records must be maintained in accordance with 333-105-0700(1). Acceptable dosimeters must read within plus or minus 20 percent of the true radiation exposure.

(4) If an individual's pocket dosimeter is found to be off-scale, or the electronic personal dosimeter reads greater than 2 millisieverts (200 mrem), the individual's film badge or TLD must be sent for processing within 24 hours. In addition, the individual may not resume work associated with the use of sources of radiation until a determination of the individual's radiation exposure has been made. This determination must be made by the radiation safety officer or the radiation safety officer's designee. The results of this determination must be included in the records maintained in accordance with 333-105-0700.

(5) If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged must be included in the records maintained in accordance with 333-105-0700.

(6) Reports received from the film badge or TLD processor must be retained in accordance with 333-105-0700.

(7) Each alarming ratemeter must:

(a) Be checked to ensure that the alarm functions properly before using at the start of each shift;

(b) Be set to give an alarm signal at a preset dose rate of 5 millisieverts (500 mrem per hour; with an accuracy of plus or minus 20 percent of the true radiation dose rate);

(c) Require special means to change the preset alarm function; and

(d) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee shall maintain records of alarming ratemeter calibrations in accordance with 333-105-0700(2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0570

Radiation Surveys

The licensee or registrant shall:

(1) Conduct all surveys with a calibrated and operable radiation survey instrument that meets the requirements of 333-105-0450;

(2) Conduct a survey of the radiographic exposure device and the guide tube after each exposure when approaching the device or the guide tube. The survey must determine that the sealed source has returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment. Radiation machines shall be surveyed after each exposure to determine that the machine is off;

(3) Conduct a survey of the radiographic exposure device whenever the source is exchanged and whenever a radiographic exposure device is placed in a storage area as defined in 333-105-0005, to ensure that the sealed source is in its shielded position; and

(4) Maintain records in accordance with 333-105-0710.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0580

Surveillance

During each radiographic operation, the radiographer shall ensure continuous direct visual surveillance of the operation to protect against unauthorized entry into a radiation area or a high radiation area, as defined in Division 100 of these rules, except at permanent radiographic installations where all entryways are locked and the requirements of 333-105-0490 are met.

Stat. Auth.: ORS 453.605 - 453.807

ADMINISTRATIVE RULES

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0590

Posting

All areas in which industrial radiography is being performed must be conspicuously posted as required by OAR 333-120-0410. The exceptions listed in 333-120-0420 do not apply to industrial radiographic operations.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0600

Records for Industrial Radiography

Each licensee or registrant shall maintain a copy of its license or registration, documents incorporated by reference, and amendments to each of these items until superseded by new documents approved by the Agency, or until the Agency terminates the license or registration.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0610

Records of Receipt and Transfer of Sources of Radiation

(1) Each licensee or registrant shall maintain records showing the receipts and transfers of sealed sources, devices using DU for shielding, and radiation machines, and retain each record for 3 years after it is made.

(2) These records must include the date, the name of the individual making the record, radionuclide, number of Becquerel (Curies) or mass (for DU), and manufacturer, model, and serial number of each source of radiation and/or device, as appropriate.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0620

Records of Radiation Survey Instruments

Each licensee or registrant shall maintain records of the calibrations of its radiation survey instruments that are required under 333-105-0450 and retain each record for 3 years after it is made.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0630

Records of Leak Testing of Sealed Sources and Devices Containing DU

Each licensee shall maintain records of leak test results for sealed sources and for devices containing DU. The results must be stated in units of Becquerel (microcuries). The licensee shall retain each record for 3 years after it is made or until the source in storage is removed.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0640

Records of Quarterly Inventory

(1) Each licensee or registrant shall maintain records of the quarterly inventory of sources of radiation, including devices containing depleted uranium as required by 333-105-0470, and retain each record for 3 years.

(2) The record must include the date of the inventory, name of the individual conducting the inventory, radionuclide, number of Becquerel (curies) or mass (for DU) in each device, location of sources of radiation and/or devices, and manufacturer, model, and serial number of each source of radiation and/or device, as appropriate.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0650

Utilization Logs

(1) Each licensee or registrant shall maintain utilization logs showing for each source of radiation the following information:

(a) A description, including the make, model, and serial number of the radiation machine or the radiographic exposure device, transport, or storage container in which the sealed source is located;

(b) The identity and signature of the radiographer to whom assigned;

(c) The location and dates of use, including the dates removed and returned to storage; and

(d) For permanent radiographic installations, the dates each radiation machine is energized.

(2) The licensee or registrant shall retain the logs required by 333-105-0650(1) for 3 years.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0660

Records of Inspection and Maintenance of Radiation Machines, Radiographic Exposure Devices, Transport and Storage Containers, Associated Equipment, Source Changers, and Survey Instruments

(1) Each licensee or registrant shall maintain records specified in 333-105-0480 of equipment problems found in daily checks and quarterly inspections of radiation machines, radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments; and retain each record for 3 years after it is made.

(2) The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair and/or maintenance, if any, was performed.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0670

Records of Alarm System and Entrance Control Checks at Permanent Radiographic Installations

Each licensee or registrant shall maintain records of alarm system and entrance control device tests required by 333-105-0490 and retain each record for 3 years after it is made.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0680

Records Of Training and Certification

Each licensee or registrant shall maintain the following records for 3 years after the individual terminates employment:

(1) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, the names of individuals conducting and receiving the oral and practical examinations, and a list of items tested and the results of the oral and practical examinations; and

(2) Records of annual refresher safety training and semi-annual inspections of job performance for each radiographer and each radiographer's assistant. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance, the records must also include a list showing the items checked and any non-compliance observed by the radiation safety officer or designee.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0690

Copies of Operating and Emergency Procedures

Each licensee or registrant shall maintain a copy of current operating and emergency procedures until the Agency terminates the license or registration. Superseded material must be retained for 3 years after the change is made.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

ADMINISTRATIVE RULES

333-105-0700

Records of Personnel Monitoring

Each licensee or registrant shall maintain the following exposure records specified in 333-105-0560:

- (1) Direct reading dosimeter readings and yearly operability checks required by 333-105-0560(2) and (3) for 3 years after the record is made;
- (2) Records of alarming ratemeter calibrations for 3 years after the record is made;
- (3) Reports received from the film badge or TLD processor until the Agency terminates the license or registration; and
- (4) Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged film badges or TLD's, until the Agency terminates the license or registration.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0710

Records of Radiation Surveys

Each licensee shall maintain a record of each exposure device survey conducted before the device is placed in storage as specified in 333-105-0570(3) Each record must be maintained for 3 years after it is made.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0720

Form of Records

Each record required by this Division must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0730

Location Of Documents and Records

(1) Each licensee or registrant shall maintain copies of records required by this Division and other applicable Divisions of these rules at the location specified in 333-105-0410(11).

(2) Each licensee or registrant shall also maintain current copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary job site:

- (a) The license or registration authorizing the use of sources of radiation;
- (b) A copy of divisions 100, 120, 105 & 111 of this chapter;
- (c) Utilization logs for each source of radiation dispatched from that location as required by 333-105-0650.
- (d) Records of equipment problems identified in daily checks of equipment as required by 333-105-0660(1);
- (e) Records of alarm system and entrance control checks required by 333-105-0670, if applicable;
- (f) Records of dosimeter readings as required by 333-105-0700;
- (g) Operating and emergency procedures as required by 333-105-0690;
- (h) Evidence of the latest calibration of the radiation survey instruments in use at the site, as required by 333-105-0620;
- (i) Evidence of the latest calibrations of alarming ratemeters and operability checks of dosimeters as required by 333-105-0700;
- (j) Survey records as required by 333-105-0710 and 333-120-0620 as applicable, for the period of operation at the site;
- (k) The shipping papers for the transportation of radioactive materials required by Division 118 of these rules; and
- (l) When operating under reciprocity pursuant to OAR 333-102-0340, a copy of the applicable State license or registration, or Nuclear Regulatory Commission license authorizing the use of sources of radiation.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0740

Notifications

(1) In addition to the reporting requirements specified in 10 CFR 30.50 and in division 120 of these rules, each licensee or registrant shall provide a written report to the Agency within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

- (a) Unintentional disconnection of the source assembly from the control cable;
- (b) Inability to retract the source assembly to its fully shielded position and secure it in this position;
- (c) Failure of any component, which is critical to safe operation of the device, to properly perform its intended function; or
- (d) An indicator on a radiation machine fails to show that radiation is being produced, an exposure switch fails to terminate production of radiation when turned to the off position, or a safety interlock fails to terminate x-ray production.

(2) The licensee or registrant shall include the following information in each report submitted under 333-105-0740(1), and in each report of over-exposure submitted under OAR 333-120-0720 which involves failure of safety components of radiography equipment:

- (a) Description of the equipment problem;
 - (b) Cause of each incident, if known;
 - (c) Name of the manufacturer and model number of equipment involved in the incident;
 - (d) Place, date, and time of the incident;
 - (e) Actions taken to establish normal operations;
 - (f) Corrective actions taken or planned to prevent recurrence; and
 - (g) Names and qualifications of personnel involved in the incident.
- (3) Any licensee or registrant conducting radiographic operations or storing sources of radiation at any location not listed on the license or registration for a period in excess of 180 days in a calendar year, shall notify the Agency prior to exceeding the 180 days.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0750

Reciprocity

(1) All reciprocal recognition of licenses and registrations by the Agency will be granted in accordance with OAR 333-102-0340.

(2) Reciprocal recognition by the Agency of an individual radiographer certification will be granted provided that:

- (a) The individual holds a valid certification in the appropriate category issued by a certifying entity, as defined in 333-105-0005;
- (b) The requirements and procedures of the certifying entity issuing the certification affords the same or comparable certification standards as those afforded by 333-105-0530(1);
- (c) The applicant presents the certification to the Agency prior to entry into the state; and
- (d) No escalated enforcement action is pending with the Nuclear Regulatory Commission or in any other state.

(3) Certified individuals who are granted reciprocity by the Agency shall maintain the certification upon which the reciprocal recognition was granted, or prior to the expiration of such certification, shall meet the requirements of 333-105-0530(1).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-105-0760

Specific Requirements for Radiographic Personnel Performing Industrial Radiography

(1) At a job site, the following shall be supplied by the licensee or registrant:

- (a) At least one operable, calibrated survey instrument for each exposure device or radiation machine in use;
- (b) A current whole body personnel monitor (TLD or film badge) for each person performing radiographic operations;
- (c) An operable, calibrated pocket dosimeter with a range of zero to 200 milliroentgens for each person performing radiographic operations ;
- (d) An operable, calibrated, alarming ratemeter for each person performing radiographic operations using a radiographic exposure device; and
- (e) The appropriate barrier ropes and signs.

ADMINISTRATIVE RULES

(2) Each radiographer at a job site shall have on their person a valid certification ID card issued by a certifying entity.

(3) Industrial radiographic operations shall not be performed if any of the items in 333-105-0760(1) and (2) are not available at the job site or are inoperable.

(4) During an inspection, the Agency may terminate an operation if any of the items in 333-105-0760(1) and (2) are not available or operable, or if the required number of radiographic personnel are not present. Operations shall not be resumed until all required conditions are met.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0005

Definitions

As used in this Division, the following definitions apply:

(1) "Accessible Surface" means the external surface of the enclosure or housing provided by the manufacturer;

(2) "Added Filtration" means any filtration which is in addition to the inherent filtration.

(3) "Aluminum Equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

NOTE: The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(4) "Agency approved Instructor" means an individual who has been evaluated and approved by the Agency to teach Radiation Safety.

(5) "Agency approved training course" means a course of training that has been evaluated and approved by the Agency.

(6) "A.R.R.T." means the American Registry of Radiologic Technologists.

(7) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

(8) "Attenuation Block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(9) "Automatic Exposure Control (AEC)" means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation. (See also "Photo timer".)

(10) "Barrier" (see "Protective Barrier").

(11) "Beam Axis" means a line from the source through the centers of the X-ray fields.

(12) "Beam-Limiting Device" means a device which provides a means to restrict the dimensions of the X-ray field.

(13) "Beam Monitoring System" means a system designed to detect and measure the radiation present in the useful beam.

(14) "C-arm x-ray system" means an x-ray system in which the image receptor and x-ray tube housing are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(15) "Cephalometric Device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(16) "Certified Components" means components of X-ray systems which are subject to the X-ray Equipment Performance Standard promulgated under Public Law 90-602, the Radiation Control Agency for Health and Safety Act of 1968.

(17) "Certified System" means any X-ray system which has one or more certified component(s).

(18) "Changeable Filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

(19) "Coefficient of Variation (C)" means the ratio of the standard deviation to the mean value of a set of observations. It is estimated using the following equation: [Equation not included. See ED. NOTE.]

(20) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(21) "Contact Therapy System" means an X-ray system used for therapy with the tube port placed in contact with or within five centimeters of the surface being treated.

(22) "Control Panel" means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.

(23) "Cooling Curve" means the graphical relationship between heat units stored and cooling time.

(24) "Dead-Man Switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(25) "Detector" (see "Radiation detector").

(26) "Diagnostic x-ray imaging system" means an assemblage of components for the generation, emission, and reception of x-rays and the transformation, storage, and visual display of the resultant x-ray image.

(27) "Diagnostic Source Assembly" means the tube housing assembly with a beam-limiting device attached.

(28) "Diagnostic-Type Protective Tube Housing" means a tube housing so constructed that the leakage radiation measured at a distance of one meter from the source does not exceed 100 milliroentgens in one hour when the tube is operated at its leakage technique factors.

(29) "Diagnostic X-Ray System" means an X-ray system designed for irradiation of any part of the human body or animal body for the purpose of diagnosis or visualization.

(30) "Direct Scattered Radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

(31) "Entrance Exposure Rate" means the exposure free in air per unit of time.

(32) "Field Emission Equipment" means equipment which uses a tube in which electron emission from the cathode is due solely to the action of an electric field.

(33) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(34) "Fluoroscopic Benchmark" means a standard based upon the average cumulative fluoroscopic on-time normally found to be used for a specific fluoroscopic procedure at the site.

(34) "Fluoroscopic Imaging Assembly" means a subsystem in which X-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(35) "Fluoroscopic x-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/or button of a fluoroscopic x-ray machine or physically positions patients or animals. Human holders, used solely for immobilization purposes (i.e. veterinarian human holders) are excluded from this rule.

(36) "Focal Spot" means the area projected on the anode of the tube by the electrons accelerated from the cathode and from which the useful beam originates.

(37) "General Purpose Radiographic X-Ray System" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(38) "Gonad Shield" means a protective barrier for the testes or ovaries.

(39) "Half-Value Layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(40) "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an Oregon licensed practitioner of the healing arts legally authorized to prescribe such x-ray tests for the purpose of diagnosis or treatment.

(41) "Heat Unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes and seconds, i.e., kVp x mA x second.

(42) "HVL" (see "Half-value layer").

(43) "Image Intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

(44) "Image Receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident photons either into a visible image or into another form which can be made into a visible image by further transformations.

(45) "Inherent Filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

ADMINISTRATIVE RULES

(46) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(47) "Irradiation" means the exposure of matter to ionizing radiation.

(48) "Kilovolt-Peak" (see "Peak tube potential").

(49) "kV" means kilovolts.

(50) "kVp" (see "Peak tube potential").

(51) "kWs" means kilowatt second. It is equivalent to 103 kV.mA.s, i.e., (A)kWs = (X)kV x (Y)mA x (Z)s x kWs = XYZ kWs 103kV x mA x 103

(52) "Lead Equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(53) "Leakage Radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

(a) The useful beam; and

(b) Radiation produced when the exposure switch or timer is not activated.

(54) "Leakage Technique Factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliampere seconds, or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(55) "Light Field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(56) "Line-Voltage Regulation" means the difference between the no-load and the load line potentials expressed as a percent of the load line potential. It is calculated using the following equation: [Equation not included. See ED. NOTE.]

(57) "mA" means milliamperes.

(58) "mAs" means milliamperes second.

(59) "Maximum Line Current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

(60) "Mobile Equipment" (see "Equipment").

(61) "Operator" means an individual who, under the supervision of a practitioner of the healing arts, uses ionizing radiation upon a human being for diagnostic or therapeutic purposes including the physical positioning of the patient, the determination of exposure parameters, and the handling of ionizing radiation equipment.

(62) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(63) "Peak Tube Potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

(64) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

(65) "Photo timer" means a method for controlling radiation exposures to image receptors by measuring the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is a part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

(66) "PID" (see "Position indicating device").

(67) "Portable Equipment" (see "X-Ray Equipment").

(68) "Position Indicating Device" means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(69) "Primary Dose Monitoring System" means a system which will monitor useful beam during irradiation and which will terminate irradiation when a preselected number of dose monitor units have been acquired.

(70) "Primary Protective Barrier" (see "Protective barrier").

(71) "Protective Apron" means an apron made of radiation absorbing materials used to reduce radiation exposure.

(72) "Protected Area" means an area shielded with primary or secondary protective barriers or an area removed from the radiation source such that the exposure rate within the area due to normal operating procedures and workload does not exceed any of the following limits:

(a) Two milliroentgens in any one hour; or

(b) One hundred milliroentgens in any one year.

(c) See OAR 333-120-0180 for additional information.

(73) "Protective Barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure;

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(74) "Protective Glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

(75) "Qualified Expert" means an individual who has demonstrated to the satisfaction of the Agency that such individual possesses the knowledge, training and experience to measure ionizing radiation, to evaluate safety techniques and to advise regarding radiation protection needs.

(76) "Quality Control Program" means a program directed at film processing and radiographic image quality whereby periodic monitoring of film processing is performed. Test films are compared against a control film, either visually or by use of a densitometer, to determine if density or contrast have changed. Steps can then be taken to investigate such change and correct the problem. The X-ray machine itself can also be involved in the quality control program, as can other components of the imaging chain.

(77) "Radiation Detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(78) "Radiation Therapy Simulation System" means a radiographic or fluoroscopic system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(79) "Radiograph" means an image receptor on which the image is created directly or indirectly by a pattern and results in a permanent record.

(80) "Radiographic Imaging System" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(81) "Radiological Physicist" means an individual who:

(a) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or

(b) Has a bachelor's degree in one of the physical sciences or engineering and three years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the calibration and spot checks of a medical accelerator or a sealed source teletherapy unit; or

(c) Has a Master's or a Doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one year's full-time training in therapeutic radiological physics; and has had one year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(82) "Rating" means the operating limits as specified by the component manufacturer.

(83) "Recording" means producing a permanent form of an image resulting from X-ray photons.

(84) "Registrant", as used in this Division, means any person who owns or possesses and administratively controls an X-ray system which is used to deliberately expose humans or animals to the useful beam of the system and is required by the provisions contained in Divisions 100 and 101 of this chapter to register with the Agency.

(85) "Response Time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero, sufficient to provide a steady state midscale reading.

(86) "Scattered Radiation" means radiation that, during passage through matter, has been deviated in direction (see "Direct Scattered Radiation").

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(87) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(88) "Secondary Dose Monitoring System" means a system which will terminate irradiation in the event of failure of the primary system.

(89) "Secondary Protective Barrier" (see "Protective barrier").

(90) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(91) "SID" (see "Source-image receptor distance").

(92) "Source" means the focal spot of the X-ray tube.

(93) "Source-Image Receptor Distance" means the distance from the source to the center of the input surface of the image receptor.

(94) "Spot Check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(95) "Spot Film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(96) "Spot-Film Device" means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(97) "SSD" means the distance between the source and the skin of the patient.

(98) "Stationary Equipment" (see "X-Ray Equipment").

(99) "Stray Radiation" means the sum of leakage and scattered radiation.

(100) "Technique Factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses;

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(101) "Termination of Irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(102) "Traceable to a National Standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(103) "Tube" means an X-ray tube, unless otherwise specified.

(104) "Tube Housing Assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(105) "Tube Rating Chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(106) "Unprotected Area" means any area in which the exposure rate, due to the use of the radiation machine under normal operating procedures and workload, exceeds any of the following limits:

(a) Two milliroentgens in any one hour; or

(b) One hundred milliroentgens in any seven consecutive days; or

(c) Five hundred milliroentgens in any one year.

(107) "Useful Beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(108) "Variable-Aperture Beam-Limiting Device" means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

(109) "Visible Area" means that portion of the input surface of the image receptor over which the incident X-ray photons are producing a visible image.

(110) "Wedge Filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

(111) "X-Ray Control" means a device which controls input power to the X-ray high-voltage generator and/or the X-ray tube. It includes equipment such as exposure switches (control), timers, photo timers, automatic brightness stabilizers and similar devices, which control the technique factors of an X-ray exposure.

(112) "X-Ray Equipment" means an X-ray system, subsystem, or component thereof. Types of equipment are as follows:

(a) "Mobile equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(b) "Portable equipment" means X-ray equipment designed to be hand-carried;

(c) "Stationary equipment" means X-ray equipment which is installed in a fixed location;

(d) "Transportable" means X-ray equipment installed in a vehicle or trailer.

(113) "X-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/ or button of an x-ray machine, or physically positions patients or animals for an x-ray.

(114) "X-Ray Field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(115) "X-Ray High-Voltage Generator" means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements.

(116) "X-Ray System" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(117) "X-Ray Subsystem" means any combination of two or more components of an X-ray system for which there are requirements specified in this Division.

(118) "X-Ray Tube" means any electron tube which is designed to be used primarily for the production of X-rays.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0035

Deliberate Exposures Restricted

Persons shall not be exposed to the useful beam except for healing art purposes until the patient has been evaluated, and a medical need for the x-ray/s is determined, and has been authorized by a physician licensed to practice the healing arts in Oregon. Any useful diagnostic information obtained from each exposure shall be reviewed by a practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes:

(1) Exposure of an individual for training, demonstration or other purposes unless there are also healing arts requirements and proper prescription has been provided.

(2) Exposure of an individual for the purpose of healing arts screening:

(a) Any person proposing to conduct a healing arts screening program shall not initiate such a program without prior approval of the Agency;

(b) When requesting such approval, that person shall submit the following information. If any information submitted to the Agency becomes invalid or outdated, the Agency shall be immediately notified:

(A) Name and address of the applicant and, where applicable, the names and addresses of agents within this state;

(B) Diseases or conditions for which the X-ray examinations are to be used in diagnoses;

(C) A detailed description of the X-ray examinations proposed in the screening program;

(D) Description of the population to be examined in the screening program, i.e., age, sex, physical conditions, and other appropriate information;

(E) An evaluation of any known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used instead of the X-ray examinations;

(F) An evaluation by a qualified expert of the X-ray system(s) to be used in the screening program. The evaluation by the qualified expert shall show that such system(s) do satisfy all requirements of these rules;

(G) A description of the diagnostic film quality control program;

(H) A copy of the technique chart for the X-ray examination procedures to be used;

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(I) The qualifications of each individual who will be operating the X-ray system(s);

(J) The qualifications of the individual who will be supervising the operators of the X-ray system(s). The extent of supervision and the method of work performance evaluation shall be specified;

(K) The name and address of the individual who will interpret the radiograph(s);

(L) A description of the procedures to be used in advising the individuals screened and their private practitioners of the healing arts of the results of the screening procedure and any further medical needs indicated;

(M) A description of the procedures for the retention or disposition of the radiographs and other records pertaining to the X-ray examinations.

(3) Mammography screening shall be exempt from the requirements of section (2) of this rule if the following conditions are met:

(a) The requirements set forth in OAR 333-106-0699 are satisfied.

(b) All other applicable rules are met.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0045

Use of Best Procedures and Equipment

Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. This is interpreted to include, but not limited to:

(1) The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations.

(2) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality, see Tables 1, 2 and 3. [Tables not included. See ED. NOTE.]

(3) Portable or mobile X-ray equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary X-ray installation.

(4) X-ray systems subject to OAR 333-106-0301(1) shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

(5) Cardboard cassettes without screens shall not be used (dental intraoral excluded).

(6) Fluoroscopy:

(a) Use shall be restricted to those properly trained, and deemed competent in the safe use of fluoroscopy by a hospital radiation safety committee, radiologist or roentgenologist:

(A) Physician here means a MD, DO, DC, DPM or DVM only;

(B) Technologist here means A.R.R.T. — Registered only;

(i) The use of fluoroscopy by technologists shall be performed under the direction of a radiologist or roentgenologist and is restricted to the healing arts exclusively for the purpose of localization and/or to assist physicians in obtaining images for diagnostic purposes;

(ii) Allowing technologists to assist in the use of fluoroscopy is not to be interpreted as giving the technologist the authority to do fluoroscopic studies on patients on their own accord.

(c) Proper training to meet the requirements of subsection (a) of this section shall include but not be limited to the following:

(i) Principles and operation of the fluoroscopic X-ray machine;

(ii) Biological effects of X-ray;

(iii) Radiation units;

(iv) Typical fluoroscopic outputs;

(v) High level control options;

(vi) Dose reduction techniques for fluoroscopy;

(vii) Protective devices;

(viii) Radiation monitoring;

(ix) Applicable radiation rules and regulations.

(D) Physicians or technologists using fluoroscopy prior to the effective date of these rules will be considered to have met the requirements of paragraph (6)(a)(C) of this rule if they have a written statement attesting that they have been evaluated and deemed competent in the safe use of fluoroscopy. Such evaluation and attestation must include the input of a radiologist or roentgenologist. In addition such attestation could be used as the basis of establishing proper training and competency in the safe use of fluoroscopy by other registrants that the individual may be associated with.

(b) All images formed by the use of stationary fluoroscopy shall be viewed, directly or indirectly, and interpreted by a radiologist, cardiologist or other qualified specialist;

(c) Mobile fluoroscopy shall meet the requirements of subsection (6)(a) and (b) of this rule;

(d) Written procedures for technologists performing fluoroscopy shall be available and include:

(A) A description of the examinations that the technologist is allowed to perform;

(B) A description of the qualifications to be met by a technologist who is performing fluoroscopy;

(C) A list of all technologists who are qualified and who are performing fluoroscopy.

(e) At no time will any student be allowed to perform fluoroscopy unless directly supervised by a radiologist or qualified technologist;

(f) Overhead fluoroscopy is not to be routinely used as a positioning tool for radiographic exams.

(7) Use of techniques designed to compensate for anatomical thickness variations after the primary beam has exited the patient is specifically prohibited. This includes "split screen" imaging techniques whereby multiple speed intensifying screens are placed in the same cassette, or any techniques which rely on attenuation of secondary (remnant) radiation for compensatory purposes. Lead lined grids, which are designed to reduce scattered radiation are excluded from this provision.

(8) Filter slot covers shall be provided when necessary.

(9) All patients' radiographs, or copies shall be made available for review by any practitioner of the healing arts upon request of the patient.

(10) Protective equipment including aprons, gloves and shields shall be checked annually for defects, such as holes, cracks and tears to assure reliability and integrity. A record of this test shall be made and maintained for inspection by the Agency. If such defect is found, equipment shall be replaced or removed from service until repaired. Fluoroscopy shall only be used for this purpose if a visual and manual check indicated a potential problem.

(11) Facilities shall determine or cause to be measured the typical patient exposure for their most common radiographic examinations. The exposures shall be recorded as milliroentgens measured in free air at the point of skin entrance for an average patient. These values must then be compared to existing guidelines, and if such values are significantly higher than such guidelines, action must be taken to reduce the values while at the same time maintaining or improving diagnostic image quality. In addition, typical patient exposure values shall be posted or made readily available to administrators, X-ray operators, patients and practitioners.

(12) Facilities that utilize fluoroscopy shall maintain a record of the cumulative fluoroscopic exposure time used for each examination. The record must indicate the patients name, the type of examination, the date of the examination, the fluoroscopists name, the fluoroscopic room in which the examination was done and the total cumulative fluoroscopic on time for each fluoroscopic examination and:

(a) DHS Response: Change wording of OAR 333-106-0045(12)(a) as follows: "Effective twelve (12) months after the effective date of this rule, establish cumulative fluoroscopic on-time benchmarks for each at least two (if applicable) of the most common types of fluoroscopic examinations performed at their site in the following categories:

(A) Routine procedures performed on adults;

(B) Routine procedures performed on children;

(C) Orthopedic procedures performed in surgery;

(D) Urologic procedures performed in surgery;

(E) Angiographic procedures performed;

(F) Interventional cardiac studies;

(b) Develop and perform periodic (not to exceed 12 month intervals) quality assurance studies to determine the status of each individual fluoroscopist's cumulative on-time in relation to the fluoroscopic on-time benchmarks established for individual fluoroscopic examinations;

(c) Take appropriate action, when the established benchmarks are consistently exceeded The Radiation Safety Committee (RSC) must review the results of the cumulative fluoroscopic on-time Quality Assurance Study and take corrective action regarding those individuals who have exceeded the benchmark/s established by the facility for a particular procedure on three or more occasions during the study period. Documentation of the RSC review, as well as any corrective action/s taken, must be available for Agency review. Corrective action should, at a minimum, include;

(A) Notification of the individual; and

(B) Recommendation that the individual undergo additional coaching, training, etc. in the safe use of fluoroscopic equipment in order to assist them in reducing their cumulative fluoroscopic on-times.

(13) Dental X-ray machines designed and manufactured to be used for dental purposes shall be restricted to dental use only.

(14) An X-ray quality control program shall be administered when appropriate.

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(15) The number of radiographs taken for any radiographic examination should be the minimum number needed to adequately diagnose the problem.

(16) All X-ray equipment must be capable of functioning at the manufacturer's intended specifications.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0055

X-ray Operator Training

(1) The registrant shall assure that individuals who will be operating the X-ray equipment shall have adequate training in radiation safety. Adequate training in radiation safety means a minimum of forty (40) hours of didactic instruction for medical X-ray equipment operators, thirty (30) hours for dental X-ray equipment operators, and twenty (20) hours for veterinary X-ray equipment operators from an Agency approved training course covering the following subjects:

- (a) Nature of X-rays;
 - (b) Interaction of X-rays with matter;
 - (c) Radiation units;
 - (d) Principles of the X-ray machine;
 - (e) Biological effects of X-ray;
 - (f) Principles of radiation protection;
 - (g) Low dose techniques;
 - (h) Applicable radiation regulations;
 - (i) Darkroom and film processing;
 - (j) Film critique.
- (2) In addition to the above;

(a) Medical X-ray equipment operators using diagnostic radiographic equipment on human patients, and who are not responsible to the Oregon Board of Radiologic Technology. Must have 100 hours or more of instruction in radiologic technology including but not limited to anatomy and physiology, patient positioning, exposure and technique all of which must be appropriate to the types of X-ray examination that the individual will be involved with; and

(b) Have 200 hours or more of X-ray laboratory instruction and practice in the actual use of an energized X-ray unit, setting techniques and practicing positioning of the appropriate diagnostic radiographic procedures that they intend to administer; and

(c) Must have completed the required radiation use and safety hours and a minimum of 50 hours in X-ray laboratory before X-raying a human patient; and

(d) The training required in OAR 333-106-0055(1) and (2) must be taught by an Agency approved Instructor. Approval will be based the following criteria;

(A) Medical:

(i) Currently licensed as a Radiologic Technologist and approved as an education provider by the Oregon Board of Radiologic Technology.

(B) Dental:

(i) Passed the Dental Assisting National Board (DANB) written radiation health and safety examination; And

(ii) Currently licensed, by the Oregon Board of Dentistry as a dentist; or

(iii) Dental hygienist; or

(iv) Is a dental assistant certified in Radiologic proficiency and has a minimum of two years of experience in taking dental radiographs.

(C) Veterinarian:

(i) Currently credentialed with the Oregon Veterinary Medical Examining Board; or

(ii) Currently licensed as a Radiologic Technologist by the Oregon Board of Radiologic Technology; and

(iii) Have training specific to veterinarian radiography; And

(iv) Have a minimum of two years of experience in taking veterinary radiographs.

(D) On a case by case basis, if an evaluation by the Agency reveals the individual has alternative qualifications that are substantially equivalent to the qualifications listed in sections (2)(d)(A)(B), or (C) of this rule Alternative Radiation Safety Instructor Qualifications-(D) "The radiation safety training specified in OAR 333-106-0055(1) could also be provided by a person qualified under Agency rules as a Hospital Radiology Inspector, Qualified expert; or

(E) On a case by case basis, by a person whose qualifications as an instructor in radiation safety, are deemed by the Agency to be substantially equivalent to those listed in sections (2)(d)(A), (B), or (C) of this rule, or

(3) In addition to the requirements in sections (1),(2)(d)(B) of this rule, dental X-ray equipment operators must also satisfy any requirements established by the Oregon Board of Dentistry;

(4) The operator shall be able to demonstrate competency in the safe use of the X-ray equipment and associated X-ray procedures.

(5) Any operator is deemed to have adequate training to meet the requirements of section (1) of this rule if they meet any of the following:

(a) Hold a current license from the Oregon Board of Radiologic Technology;

(b) Hold a current limited permit from the Oregon Board of Radiologic Technology;

(c) Are a student in a two-year approved school of Radiologic Technology as defined in ORS 688.405 while practicing Radiologic Technology under the supervision of a radiologist who is currently licensed with the Oregon Medical Examiners Board or a radiologic technologist who is currently registered with the American Registry of Radiologic Technologists and licensed with the Oregon Board of Radiologic Technology;

(d) Are a student in an Oregon Board of Radiologic Technology approved limited permit program under a Radiologic Technologist who is currently registered with the American Registry of Radiologic Technologists and licensed by the Oregon Board of Radiologic Technology; or

(e) Medical X-ray equipment operators not responsible to the Oregon Board of Radiologic Technology, who have met the training requirements listed in section (1) of this rule prior to September 1995, will be considered to have met the requirements of section (2) of these rules.

(f) Reciprocity. X-ray equipment operators who have received their radiation safety training outside of Oregon will be considered to have met the training requirements listed in section (1) or (2) as applicable of this rule, if the Agency's evaluation of their training or training and experience, reveals that they substantially meet the intent of section (1) or (2) of this rule.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0101

Diagnostic X-ray Systems

Additional Requirements. In addition to other requirements of this Division, all diagnostic X-ray systems shall meet the following requirements:

(1) Warning Label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed".

(2) The state will attach an identification number to each X-ray control panel:

(a) Identification numbers shall not be removed without written permission of the Agency;

(b) Identification numbers shall not be defaced.

(3) Mobile and portable X-ray systems shall meet the requirements of a stationary system when used for greater than seven consecutive days in the same location.

(4) Battery Charge Indicator. On battery-powered X-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(5) Leakage Radiation from the Diagnostic Source Assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 100 milliroentgens (25.8 C/kg) in one hour when the X-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(6) Radiation from Components Other Than the Diagnostic Source Assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed two milliroentgens (0.516 C/kg) in one hour at five centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

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(7) Beam Quality:

(a) Half-Value Layer:

(A) The half-value layer of the useful beam for a given X-ray tube potential shall not be less than the values shown in Table 4. If it is necessary to determine such half-value layer at an X-ray tube potential which is not listed in Table 4, linear interpolation or extrapolation may be made; [Tables not included. See ED. NOTE.]

(B) In addition to the requirements of section (5) of this rule, all intra-oral dental radiographic systems manufactured on and after December 1, 1980, shall have a minimum half-value layer not less than 1.5 millimeters aluminum equivalent filtration permanently installed in the useful beam;

(C) Beryllium window tubes shall have a minimum of 0.5 millimeter aluminum equivalent filtration permanently installed in the useful beam;

(D) For capacitor energy storage equipment, compliance with the requirements of section (5) of this rule shall be determined with the maximum quantity of charge per exposure;

(E) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials which are always present between the source and the patient.

(b) Filtration Controls. For X-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) and shall prevent an exposure unless the minimum amount of filtration required by subsection (5)(a) of this rule is in the useful beam for the given kVp which has been selected.

(8) Multiple Tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the X-ray control panel and at or near the tube housing assembly which has been selected.

(9) Mechanical Support of Tube Head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the X-ray system.

(10) Technique Indicators:

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated;

(b) The requirement of subsection (10)(a) of this rule may be met by permanent marking on equipment having fixed technique factors.

(11) There shall be provided for each X-ray machine a means for determining the proper S.I.D.

(12) X-ray film developing requirements. Compliance with this section is required of all healing arts registrants and is designed to ensure that patient and operator exposure is minimized and to produce optimum image quality and diagnostic information:

(a) Manual processing of films:

(A) The following relationship between temperature of the development and development time must be used (standard chemistry only) or manufacturer's recommendations: [Tables not included. See ED. NOTE.]

(B) Processing of film. All films shall be processed in such a fashion as to achieve adequate sensitometric performance. This criterion shall be adjudged to have been met if:

(i) Film manufacturer's published recommendations for time and temperature are followed; or

(ii) Each film is developed in accordance with the time-temperature chart (see subsection (a) of this section).

(C) Chemical-film processing control:

(i) Chemicals shall be mixed in accordance with the chemical manufacturer's recommendations;

(ii) Developer replenisher shall be periodically added to the developer tank based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(D) All processing chemicals shall be completely replaced at least every two months or as indicated by the manufacturer;

(E) Devices shall be available which will:

(i) Give the actual temperature of the developer; and

(ii) Give an audible or visible signal indicating the termination of a preset development time (in minutes or seconds).

(b) Automatic film processing. Films shall be processed in such a manner that the degree of film development is the same as would be achieved by proper adherence to subsection (a) of this section (manual processing);

(c) Darkrooms. Darkrooms shall be constructed so that film being processed, handled, or stored will be exposed only to light which has passed through an appropriate safelight filter;

(d) Safelights shall be properly mounted to eliminate film fogging;

(e) Safelights shall be properly matched to the type of film being used;

(f) Rapid film processing. Special chemicals have been designed for use in Endodontics. These chemicals have special development requirements and do not permit as large of a margin of error in darkroom technique as do standard developing chemicals. Failure to precisely follow manufacturer's recommendations can easily lead to overexposure and underdevelopment. Darkroom procedures shall include:

(A) The manufacturer's time temperature development is crucial and shall be followed exactly;

(B) Caution: A timer capable of accurately measuring the short development times required shall be used;

(C) If rapid chemical processing is used for general radiography all applicable requirements of section (12) of this rule shall be followed.

(g) The department shall make such tests as may be necessary to determine compliance with this section.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0105

Information and Maintenance Record and Associated Information

(1) The registrant shall maintain the following information for each x-ray and automatic film processing system for inspection by the Agency:

(a) Model, serial numbers and manufacturer's user manuals for all x-ray systems and automatic film processors;

(b) Tube rating charts and cooling curves;

(c) Records of surveys, calibrations maintenance, and modification performed on the x-ray system(s) with names of persons who perform such services;

(d) A scale drawing of the room in which a stationary x-ray system is located with such drawing indicating the current use of areas adjacent to the room and an estimate of the extent of occupancy by individuals in such areas. In addition, the drawing shall include:

(A) The result of a survey for radiation levels present at the operator's position and at pertinent points outside the room at specified test conditions; or

(B) The type and thickness of materials, or lead equivalency, of each protective barrier.

(e) A copy of all correspondence with this Agency regarding that x-ray system;

(f) Provisions in section (1) of this rule shall pertain to X-ray systems placed in service after the effective date of these rules.

(2) X-ray Log. Each facility shall maintain an x-ray log containing the patient's name, the type of examinations, and the dates the examinations were performed and the name of the x-ray operator. The following facilities are exempt from this requirements:

(a) Dental facilities that maintain patient records showing the type and date of the examination and the operator's name;

(b) Industrial facilities doing industrial X-ray only;

(c) Veterinary facilities;

(d) Hospitals or clinics who employ only fully licensed X-ray operators;

(e) Doctors' offices or clinics with only one X-ray operator, or one X-ray exam;

(f) Academic, when not X-raying humans.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0210

Entrance Exposure Rates

(1) Fluoroscopic equipment manufactured before May 19, 1995 that is provided with Automatic Exposure Rate Control (AERC) shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of ten (10) roentgens (2.58 mC/kg) per minute, at a point where the center of the useful beam enters the patient, except;

(a) During the recording of fluoroscopic images; or;

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(b) When optional high-level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of five (5) roentgens (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(2) Fluoroscopic equipment that is not provided with AERC shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of five (5) roentgens (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, except;

(a) During the recording of fluoroscopic images; or

(A) When optional high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(3) Equipment with both an AERC mode and a manual mode. Fluoroscopic equipment that is provided with both an AERC and a manual mode shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of ten (10) roentgens (2.58 mC/kg) per minute in either mode at a point where the center of the useful beam enters the patient, except;

(a) During the recording of fluoroscopic images; or

(A) When the mode or modes have an optional high-level control, in which case that mode or modes shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of five (5) roentgens (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient, unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(4) Exemptions. Fluoroscopic radiation therapy simulation systems are exempt from the requirements set forth in sections 1, 2, and 3 of this rule.

(5) For fluoroscopic equipment manufactured on and after May 19, 1995, the following requirements will apply:

(a) Fluoroscopic equipment operable at any combination of tube potential and current that will result in an exposure rate in excess of five (5) roentgens (1.29 mC/kg) per minute at a point where the center of the useful beam enters the patient shall be equipped with AERC. Provision for manual selection of the technique factors may be provided.

(b) Fluoroscopic equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of ten (10) roentgens (2.58 mC/kg) per minute at a point where the center of the useful beam enters the patient except;

(A) During the recording of fluoroscopic images from an x-ray image-intensifier tube using photographic film or a video camera when the x-ray source is operated in a pulsed mode.

(B) When an optional high-level control is activated, the equipment shall not be operable at any combination of tube potential and current that will result in an exposure rate in excess of twenty (20) roentgens per minute at a point where the center of the useful beam enters the patient. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(4) Measuring compliance. Compliance with the requirements of this rule shall be determined as follows:

(a) If the source is below the table, exposure rate shall be measured one (1) centimeter above the tabletop or cradle;

(b) If the source is above the table, the exposure rate shall be measured at thirty (30) centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(c) For a C-arm type of fluoroscope, the exposure rate shall be measured thirty (30) centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than thirty (30) centimeters from the input surface of the fluoroscopic imaging assembly;

(d) For a lateral type fluoroscope, the exposure rate shall be measured at a point fifteen (15) centimeters from the centerline of the X-ray table and in the direction of the X-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is moveable, it shall be positioned as closely as possible to the lateral X-ray source, with the end of the beam-limiting device or spacer no closer than fifteen (15) centimeters to the centerline of the X-ray table.

(5) Exemptions. Fluoroscopic radiation therapy simulation systems are exempt from the requirement set forth in section 5 of this rule.

(6) Periodic measurement of entrance exposure rate shall be performed as follows:

(a) Such measurement shall be made annually or after any maintenance of the system which might affect the exposure rate;

(b) Results of these measurements shall be posted where any fluoroscopist may have ready access to such results while using the fluoroscope and in the record required in OAR 333-106-0105(1)(c). The measurement results shall be stated in roentgens per minute and include the technique factors used in determining such results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results;

(c) Personnel monitoring devices may be used to perform the measurements required by subsection (5)(a) of this rule, provided the measurements are made as described in subsection (5)(d) of this rule;

(d) Conditions of periodic measurement of entrance exposure rate are as follows:

(A) The measurement shall be made under the conditions that satisfy the requirements of section (4) of this rule;

(B) The kVp shall be the kVp typical of clinical use of the X-ray system;

(C) The X-ray system(s) that incorporates automatic exposure control shall have sufficient material placed in the useful beam to produce a milliamperage typical of the use of the X-ray system or the worst case; and

(D) X-ray system(s) that do not incorporate an automatic exposure control shall utilize a milliamperage typical of the clinical use of the X-ray system.

NOTE: Materials should be placed in the useful beam when conducting these periodic measurements to protect the imaging system.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0220

Indication of Potential and Current

During fluoroscopy and cinefluorography x-ray tube potential and current shall be continuously indicated. Deviation of x-ray tube potential and current from the indicated values shall not exceed the maximum deviation stated by the manufacturer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0325

Intraoral Dental Radiographic Systems

In addition to the provisions of OAR 333-106-0010 through 333-106-0101, the requirements of this rule apply to X-ray equipment and associated facilities used for intraoral dental radiography. Requirements for extraoral dental radiographic systems are covered in OAR 333-106-0301 through 333-106-0320. Only systems meeting the requirements of OAR 333-106-0325 shall be used.

(1) Source-to-Skin Distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance, to not less than:

(a) 18 centimeters if operable above 50 kVp; or

(b) 10 centimeters if operable at 50 kVp only.

(2) Beam Limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the X-ray beam such that the beam at the minimum SSD shall be containable in a circle having a diameter of no more than seven (7) centimeters:

(3) Radiation Exposure Control (Timers). Means shall be provided to control the radiation exposure by through the adjustment of exposure time, number of pulses, and/or current/milliamps (mA), or the product of current and exposure time (mAs). In addition:

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(a) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, such as the depression of a switch. Radiation exposure shall not be initiated without such an action; and

(b) It shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided;

(c) Exposure Indication. Means shall be provided for visual indication, observable at or from the operator's protected position, whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(d) Exposure termination.

(A) Means shall be provided to terminate the exposure at a preset, time interval, mAs, number of pulses, or radiation to the image receptor.

(B) An x-ray exposure control shall be incorporated into each system such that an exposure can be terminated by the operator at any time, except for exposures of 1/2 second or less.

(C) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero".

(4) Radiation Exposure Control Location and Operator Protection. Each X-ray control shall be located in such a way as to meet the following requirements:

(a) The exposure switch shall be able to be operated in a protected area which shall be located behind a secondary protective barrier as defined in OAR 333-106-0005(66)(b) and the operator shall remain in that protected area during the entire exposure; and

(b) The operator's protected area shall provide visual indication of the patient during the X-ray procedure.

(c) Mobile and portable X-ray systems which are:

(A) Used for greater than one week in the same location, i.e., a room or suite, shall meet the requirements of paragraph (4)(b)(A) of this rule;

(B) Used for less than one week at the same location, i.e., a room or suite, shall be provided with either a protective barrier of at least six and one half (6.5) feet (2 meters) high for operator protection, or a means to allow the operator to be at least nine (9) feet (2.7 meters) from the tube housing assembly while making exposures.

(5) Exposure Reproducibility. When the equipment is operated on an adequate power supply as specified by the manufacturer, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05 for any specific combination of technique factors. This requirement shall be deemed to have been met if, when four exposures are made at identical technique factors, the value of the average exposure (E) is greater than or equal to five times the maximum exposure (Emax) minus the minimum exposure (Emin): $E > 5 (Emax - Emin)$

(6) Accuracy. (a) Deviation of technique factors from the indicated values for kVp and exposure time (if time is independently selectable) shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications the deviation shall not exceed ten (10) percent of the indicated value for kVp and twenty (20) percent for exposure time.

(b) kVp Limitations. Dental x-ray machines with a nominal fixed kVp of less than 50 kVp shall not be used to make diagnostic dental radiographs on humans.

(7) Administrative Controls:

(a) Patient and film holding devices shall be used when the techniques permit;

(b) The tube housing and the PID shall not be hand-held during an exposure;

(c) The X-ray system shall be operated in such a manner that the useful beam at the patient's skin does not exceed the requirements of subsections (2)(a) of this rule or its updated version;

(d) All patients shall be provided with a leaded lap apron during any X-ray exposure;

(e) Dental fluoroscopy without image intensification shall not be used;

(f) Pointed cones shall not be utilized unless specific authorization has been granted by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0575

Spot Checks

Spot checks shall be performed on systems subject to OAR 333-106-0480 during calibrations and thereafter at intervals not to exceed one month. Such spot checks shall meet the following requirements:

(1) The spot-check procedures shall be in writing and shall have been developed by a radiological physicist. A copy of the procedure shall be submitted to the Agency prior to its implementation.

(2) If a radiological physicist does not perform the spot-check measurements, the results of the spot-check measurements shall be reviewed by a radiological physicist within 15 days.

(3) The spot-check procedures shall specify the frequency at which tests or measurements are to be performed and the acceptable tolerance for each parameter measured in the spot check when compared to the value for that parameter determined in the calibration.

(4) At intervals not to exceed one week, spot checks shall be made to ensure that the energy remains within ± 3 percent.

(5) Where a system has built-in devices which provide a measurement of any parameter during irradiation, such measurement shall not be utilized as a spot-check measurement.

(6) The cause for a parameter exceeding a tolerance set by the radiological physicist shall be investigated and corrected before the system is used for patient irradiation.

(7) Whenever a spot check indicates a significant change in the operating characteristics of a system, as specified in the radiological physicist's spot-check procedures, the system shall be recalibrated as required in OAR 333-106-0570(1).

(8) Records of spot-check measurements shall be maintained by the registrant for a period of 2 years after completion of the spot-check measurements and any necessary corrective actions.

(9) Where a spot check involves a radiation measurement, such measurements shall be obtained using a system satisfying the requirements of OAR 333-106-0570(3) or which has been intercompared with a system meeting those requirements within the previous year.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0700

Definitions

In addition to the definitions provided in Division 100 and 106 of these rules, the following definitions shall be applicable to the rules in this section.

(1) Air Kerma means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a given mass of air. The unit used to measure the quantity of kerma is the Gray (Gy). For x-rays with energies below 300 kiloelectronvolts (keV), 1Gy=100 rad and is equivalent to 114 Roentgens (R) of exposure.

(2) FDA means the Food and Drug Administration.

(3) An Image receptor support surface means that portion of the image receptor support which is the x-ray input surface and is used to support the patient's breast during mammography.

(4) Interpreting physician means a licensed physician who interprets mammographic images and meets the qualifications of OAR 333-106-0750(2).

(5) Lead Interpreting Physician means a physician who interprets mammographic images, meets the qualifications of OAR 333-106-0750(2), and who has the general responsibility for ensuring that the registrant's quality assurance program meets all applicable rules and regulations.

(6) Mammography screening means the use of radiation to test women for the detection of diseases of the breast when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such tests for the purposes of diagnosis. Screening is considered as self-referral by asymptomatic women without physician orders (see OAR 333-100-0020(5)(6) and 333-106-0035(3)).

(7) Mammography means radiography of the breast.

(8) Mammography equipment evaluation means an onsite assessment of a mammography unit/s or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable state and federal standards.

(9) Mammography unit/s means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum; An X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

(10) Medical Physicist means a person trained in evaluating the performance of mammography equipment and quality assurance programs and meets the qualifications of OAR 333-106-0750(3).

(11) MQSA means the Mammography Quality Standards Act of 1992.

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(12) Phantom means a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer. (The "FDA accepted phantom" meets this requirement.)

(13) Quality Assurance is a comprehensive concept that comprises all of the management practices instituted by the registrant or the registrant's representative/s to ensure that:

(a) Every imaging procedure is necessary and appropriate to the clinical problem at hand;

(b) The images generated contain information critical to the solution of that problem;

(c) The recorded information is correctly interpreted and made available in a timely fashion to the patient's physician;

(d) The examination results in the lowest possible radiation exposure, cost, and inconvenience to the patient, consistent with objective (b) noted above.

(14) Quality Assurance Program includes such facets as efficacy studies, continuing education, quality control, preventive maintenance, and calibration of equipment.

(15) Quality Control means a series of distinct technical procedures that ensure the production of a satisfactory product, e.g., a high quality screening or diagnostic image.

(16) Quality Control Technologist means an individual who is qualified under MQSA, and who is responsible for those quality assurance responsibilities not assigned to the Lead Interpreting Physician or to the Medical Physicist.

(17) Resting period means the period of time necessary to bleed out air that has been trapped between the radiographic film and intensifying screen during the loading process in the darkroom. This period of time is usually measured in minutes and determined by the individual manufacturer of the intensifying screen/mammography cassette combination.

(18) Standard Breast means a 4.2 centimeter(cm) thick compressed breast, consisting of 50 percent adipose, and 50 percent glandular tissue.

(19) Survey means an onsite physics consultation and evaluation of a registrant's mammography equipment, and quality assurance program performed by a medical physicist.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0710

Equipment Standards

Only x-ray systems meeting the design and performance standards required under MQSA shall be used, unless otherwise specified in the following rules.

(1) System design. The x-ray system shall be specifically designed for mammography.

(2) Image receptor.

(a) Image receptor systems shall be specifically designed, or appropriate for mammography.

(b) Systems using screen-film image receptors shall provide, at a minimum, image receptor sizes of 18X24, and 24X30 centimeters (cm).

(c) An adequate number of image receptors shall be provided to accommodate the resting period recommended by the manufacturer.

(3) Target/filter. The x-ray system shall have the capability of providing kVp/target/filter combinations compatible with image receptor systems meeting the following requirements:

(a) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(b) When more than one target is provided, the system shall indicate, prior to exposure, the preselected target material.

(c) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after exposure, the target material and/or focal spot actually used during the exposure.

(4) Beam quality: When used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the useful beam shall have a minimum half-value layer (HVL). The minimum HVL, for mammography equipment designed to operate below 50 kVp, is determined by dividing the actual kVp by 100, and is expressed in millimeters (mm) of aluminum equivalent.

(5) Resolution. Until October 28, 2002, focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. After October 28, 2002, facilities shall evaluate focal spot condition only by determining system resolution.

(a) Each X-ray system used for mammography, in combination with the mammography screen-film combination used, shall provide a minimum resolution of 11 Cycles/millimeters (mm)(line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(b) The bar pattern shall be placed 4.5 centimeters (cm) above the image receptor support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 centimeter (cm) of the chest wall edge of the image receptor.

(6) Compression.

(a) All mammography systems shall incorporate a compression device capable of compressing the breast with a force of at least 25 pounds.

(b) Effective October 28, 2002, the maximum compression force for the initial power drive shall be between 25 pounds and 45 pounds.

(c) All mammography systems shall be equipped with different sized compression paddles that match the sizes of all full field image receptors provided for the system. The compression paddle shall:

(A) Be flat and parallel to the image receptor support and shall not deflect from parallel by more than 1.0 centimeter (cm) at any point on the surface of the compression paddle when compression is applied. If the compression paddle is not designed to be flat and parallel to the image receptor support during compression, it shall meet the manufacturer's design specifications and maintenance requirements;

(B) Have a chest wall edge that is straight and parallel to the edge of the image receptor support;

(C) Clearly indicate the size and available positions of the detector at the x-ray input surface of the compression paddle;

(D) Not extend beyond the chest wall edge of the image receptor support by more than one (1) percent of the SID when tested with the compression paddle placed above the support surface at a distance equivalent to a standard breast thickness;

(E) Shall not be visible, at its vertical edge, on the image.

(c) When equipped with a compression paddle height digital display, the display shall accurately represent the actual height of the compression paddle to within + or - 0.5 centimeter (cm). Testing shall be performed according to manufacturer's specifications.

(7) System capabilities. A mammographic x-ray system utilizing screen-film image receptors shall:

(a) Be equipped with moving grids matched to all image receptor sizes provided.

(b) Provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, non-grid, magnification; and various target-filter combinations.

(A) The automatic exposure control shall be capable of maintaining film optical density(OD) within + or - 0.30 of the mean optical density when thicknesses of a homogeneous material are varied over a range of 2 to 6 centimeters (cm) and the kVp is varied appropriately for such thicknesses over the kVp range used clinically. If this requirement can not be met, a technique chart shall be developed showing appropriate techniques (kVp and density control settings) for different thicknesses and compositions that must be used so that optical densities within + or - 0.30 of the average under photo-timed conditions can be produced;

(B) After October 28, 2002, the AEC shall be capable of maintaining film optical density (OD) to within + or - 0.15 of the mean optical density when thicknesses of a homogeneous material are varied over a range of 2 to 6 centimeters (cm) and the kVp is varied appropriately for such thicknesses over the kVp range used clinically.

(8) Breast entrance kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

(9) Collimation.

(a) All mammography systems shall have beam limiting devices that allow the entire chest wall edge of the X-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the X-ray field does not extend beyond any edge of the image receptor by more than two (2) percent of the SID. Under no circumstances, shall the X-ray field extend beyond the non-chest wall edges of the image receptor support.

(b) The total misalignment of the edges of the visually defined light field with the respective edges of the X-ray field either along the length or width of the visually defined field shall not exceed two (2) percent of the SID.

(10) Kilovoltage peak (kVp) accuracy and reproducibility;

(a) The kVp, shall be accurate within + or - five (5) percent of the indicated or selected kVp at the lowest clinical kVp that can be measured

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by a kVp test device, and the most commonly used, and highest available clinical kVp; and

(b) At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.

(11) Dose. The average glandular dose delivered during a single cranio-caudal view of an FDA accepted phantom simulating a standard breast, shall not exceed 200 millirad (2.0 mGy). The dose shall be determined with technique factors and conditions used, by the registrant, clinically for a standard breast. The testing protocol used shall be the same as used by MQSA.

(a) If the average glandular dose exceeds 200 millirad (2.0 mGy) but is no greater than 250 millirad (2.5 mGy), patient mammography may be continued until the cause of the problem is determined and corrected. Correction must be completed within thirty (30) working days of when the registrant became aware of the problem. If correction has not been completed within thirty (30) working days, and the registrant has not requested an extension in writing from the agency, patient mammography must cease until correction of the dose problem has occurred.

(b) If the average glandular dose exceeds 250 millirad (2.5 mGy), patient mammography must cease until the cause of the dose problem is determined and corrected.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0720

Quality Assurance Program

(1) The registrant shall have a written, on-going equipment quality assurance program specific to mammographic imaging, covering all components of the diagnostic x-ray imaging system. The quality assurance program shall include the testing required in section (5) of this rule, as well as the evaluation of the test results and corrective actions necessary to ensure consistently high-quality images with minimum patient exposure. Responsibilities under this requirement are as follows:

(a) The registrant shall identify in policy/procedure, by name, a Lead Interpreting Physician meeting the requirements of OAR 333-106-0750(2), whose responsibilities at a minimum must include:

(A) Ensuring that the registrant's quality assurance program meets all associated rules and regulations;

(B) Ensuring that an effective quality assurance program exists;

(C) Providing frequent feedback to mammography technologists regarding film quality and quality control procedures;

(D) Reviewing the Quality Control Technologist's test data at least every three months, or more if consistency has not been shown or problems are evident;

(E) Reviewing the Medical Physicist's annual survey report/ or equipment evaluation results.

(b) The registrant shall identify in policy/procedure, by name, and have the services of, a Medical Physicist who meets the requirements of OAR 333-106-0750(3). The Medical Physicist shall assist in overseeing the equipment quality assurance practices of the registrant. At a minimum, the Medical Physicist shall be responsible for the annual surveys, mammography equipment evaluations, and associated reports meeting all the requirements of MQSA.

(c) The registrant shall identify in policy/procedure, by name, a single qualified Quality Control Technologist meeting the requirements of OAR 333-106-0750(1), who shall be responsible for:

(A) Equipment performance monitoring functions;

(B) Analyzing the monitoring results to determine if there are problems requiring correction;

(C) Carrying out or arranging for the necessary corrective actions when results of quality control tests including those specified in section (5) of this rule, indicate the need; and

(D) The Quality Control Technologist may be assigned other tasks associated with the quality assurance program that are not assigned to the Lead Interpreting Physician or Medical Physicist. These additional tasks must be documented in written policy/procedure.

(2) Annual Survey. At intervals not to exceed 12-14 months, the registrant shall have a Medical Physicist meeting the requirements of OAR 333-106-0750(3) conduct a survey to evaluate the mammography equipment, and the effectiveness of the quality assurance program required in section (1) of this rule. Records of annual surveys shall be maintained for a minimum of two years, and shall be available on-site for agency review.

(3) Annual survey/ or equipment evaluation corrective actions. Corrective action shall be completed within thirty (30) working days of when the registrant received written or verbal notice of recommendations or failures on their annual survey /or equipment evaluation report, unless otherwise noted in these rules or a written request for extension has been submitted to and approved by the Agency;

(a) Correction of equipment related failures or recommendations shall be demonstrated by a repeat test using the same test methodology and documentation, or a test accepted as the equivalent by the Agency, that was used to initially identify the problem.

(b) When the results of a quality control test/s fail to meet applicable action limits defined in these rules, the appropriate action regarding the suspension or continuation of mammography as defined in these rules or in MQSA, shall be taken.

(4) Quality assurance records. The registrant shall ensure that:

(a) Records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, policies, previous inspection findings, and radiation protection are maintained until inspected by the agency.

(b) Quality control monitoring data and records, problems detected by the analysis of that data, corrective actions, and records of the Lead Interpreting Physician's periodic reviews of the Quality Control Technologist's monitoring data taken must be maintained for a minimum of two years.

(5) Equipment quality control tests frequency. The registrant shall ensure that the following quality control tests are performed when applicable equipment or components are initially installed or replaced and performed thereafter at least as often as the frequency specified as follows; [Table not included. See ED. NOTE.]

(6) Testing methods and action limits for quality control tests shall meet the most current requirements of MQSA, in addition to the following;

(7) Screen/film contact. Screen film contact tests shall be performed on all screens used clinically, using a 40 mesh test tool and 4 cm thick sheet of acrylic. Screens demonstrating one or more areas of poor contact that are greater than 1 cm in diameter, that are not eliminated by screen cleaning, and remain in the same location during subsequent tests, shall not be used for mammography. Screen/film contact shall be such that any areas of poor contact, regardless of size, shall not detract from image quality.

(8) Processor performance. A processor performance test shall be performed by sensitometric means and evaluated daily, after the solution temperature in the processor has reached proper temperature, and just prior to processing any clinical mammograms. The test shall be an assessment of the base plus fog, mid-density, density difference, and developer temperature.

(a) Sensitometers and densitometer used to evaluate processor performance shall be calibrated every twelve (12) months and a record of the calibration shall be maintained until inspected by the Agency.

(b) The mid-density and density difference action limits must be within + or - 0.15 of the control operating level.

(c) The base plus fog (B+F) action limit must be within + or - 0.03 of the control operating level.

(d) If the mid-density and/or the density difference fall outside of the + or - 0.10 control limit but within the + or - 0.15 control limit for a period of three (3) days (a trend), steps must be taken to determine the cause and correct the problem;

(e) If the mid-density and/or the density difference falls outside of the + or - 0.15 control limit, mammograms must not be processed through the processor until the cause of the problem is determined, corrected, and a repeat test is done demonstrating that the mid-density and/or density difference are within the + or - 0.15 control limit;

(f) Processor quality control graphs must be in the format of the registrant's accrediting body or equivalent, and indicate test date/s, mid-density and density difference action limits, base plus fog action limit, film brand, type and emulsion number in use, as well as high-lighting the date column when chemistry changes occurred, and noting corrective action taken when limits are exceeded;

(g) Cross over records and calculations must be maintained for agency review. New mid-density and/or density difference operating levels must be charted on a new graph page.

(h) Re-establishment of operating levels must be done in accordance with the accrediting body's protocol regarding the appropriateness of this procedure or at the specific direction of the facility's medical physicist.

(i) While re-establishing operating levels (five day average), the facility must chart each day's results against its old operating control levels. At the end of the of the five days, a new chart must be established, indicating

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the new calculated operating limits. During the five day average, the facility will not be cited for having exceeded the old processor operating levels, and must also do a phantom image test each day. Should the phantom image test exceed either the ± 0.20 background optical density limit or the ± 0.05 density difference limit, mammography must be suspended until the cause of the problem is identified and corrected, and a repeat phantom image test is shown to be within limits.

(9) Primary/secondary barrier transmission - upon initial x-ray system installation and significant modification of the system or the facility.

(10) Image quality. The mammography system must be capable of producing an image of the phantom demonstrating the following:

(a) A minimum score of four (4.0) fibers, three (3.0) speck groups, and three (3.0) masses (or the most current minimum score established by the accrediting body and accepted by the FDA).

(b) Background density action limits within ± 0.20 of the control level;

(c) Density difference action limits within ± 0.05 of the control level;

(d) Milliampere seconds (mAs) within $\pm 15\%$ of the control level;

(e) Demonstrating a level of contrast sufficient enough to clearly help define fibril, speck, and mass edges.

(f) Without objectionable levels of image noise or quantum mottle that obscure the visualization of fibrils, specks, or masses.

(g) Demonstrating reasonably sharp fibril, and mass margins.

(h) With a minimum optical density (measured at the center of the phantom) of 1.20.

(i) Phantom image test records must be in the most current format of the registrant's accrediting body or the equivalent, and indicate the exposure mode, kVp, and photo-cell used for the test as well as remarks indicating the corrective action that was taken when limits were exceeded.

(j) When phantom image results do not meet the requirements defined in sections (a),(b),(c), (d),(e), (f),(g),or (h) of this rule, corrective action must occur, and a repeat phantom image test must be performed demonstrating compliance, before further mammography examinations are performed using the x-ray machine.

(11) Darkroom fog. Darkroom fog levels shall not exceed 0.05 in optical density when sensitized film is exposed to darkroom conditions with safelight on for two (2) minutes. Film shall be sensitized by exposing it to sufficient light from an appropriate intensifying screen so that after processing, an optical density of at least 1.20 is achieved.

(a) If the darkroom fog level exceeds 0.05 in optical density but is less than 0.10, mammography may be continued until the problem is corrected.

(b) If the darkroom fog level exceeds 0.10 in optical density, mammography must be curtailed until the problem is corrected and the fog level no longer exceeds 0.05 in optical density.

(12) Repeat rate. Corrective actions shall be recorded and the results of these corrective actions shall be assessed if the reject rate exceeds five (5) percent or changes by $\pm 2\%$ from the previously measured rate. The reject rate shall be based on repeated clinical images.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0730

Additional Requirements

(1) Masks. Masks shall be provided on the view boxes to block extraneous light from the viewer's eye when the illuminated surface of the view box is larger than the area of clinical interest.

(2) Film processing. Film processors utilized for mammography shall be:

(a) Used with x-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(b) Use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(c) Be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent.

(3) Instruments and devices. The following instruments and devices shall be available and properly maintained;

(a) FDA accepted image quality phantom;

(b) 21 step sensitometer that is calibrated every 12 months;

(c) Densitometer that is calibrated every 12 months and checked against the instrument control strip at least monthly.

(4) Image retention. Clinical images shall be retained for a minimum of five (5) years or not less than ten (10) years if no additional mammograms of the patient are performed.

(5) Mobile Mammography. In addition to meeting the requirements of this section as well as OAR 333-106-0699, 333-106-0710, 333-106-0720, 333-106-0730, and 333-106-0750, registrants shall ensure that for a mammography system that is used at more than one location:

(a) The film processor is operated in accordance with the requirements of OAR 333-106-0740(2)(a)(b)(c)(d), and is located where the mammography examinations are performed (batch processing is prohibited).

(b) The following tests are conducted, evaluated and documented after every move and before any mammography examinations are conducted, in order to verify that the unit's performance continues to meet quality requirements:

(A) Phantom image;

(B) The measured radiation output or the data from the post exposure mAs display does not deviate by more than $\pm 10\%$ of the established operating level.

(6) Technique charts. Mammography technique charts shall posted in the vicinity of the mammography system's X-ray control. The technique chart shall indicate;

(a) Technique factors for 3, 3-5, 5-7, and > 7 centimeter compressed breast thicknesses for fatty, 50 percent fatty-50 percent dense, and dense breast tissue;

(b) The target/ filter combination to be used;

(c) The kVp to be selected for the patient sizes and breast tissue compositions indicated in section (a) of this rule, or if an auto-kVp mode is used, indicate the post kVp that is selected;

(d) The exposure mode to be used (i.e. auto-kVp, manual, etc.);

(e) The manual technique factors to be used for small, medium, and large sized breast tissue specimens, and Implanted breasts;

(f) The film/screen combination to be used;

(g) The date that the technique chart was last reviewed for accuracy and the name of the reviewer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-106-0750

Personnel Qualifications

(1) Operator qualifications. In order to use any mammography X-ray machine the operator of the mammography X-ray unit must have the following qualifications:

(a) Have a current license issued by the Oregon Board of Radiologic Technology; and

(b) Have prior to the effective date of these rules qualified as a radiologic technologist under the MQSA interim rules or completed forty (40) contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not be limited to;

(A) Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, imaging patients with breast implants;

(B) The performance of 25 examinations under the direct supervision of an individual qualified under this section; and

(C) At least 8 hours of training in each mammography modality to be used by the technologist in performing mammography exams; and

(D) Be currently registered and in good standing with the American Registry of Radiologic Technologist (ARRT); and

(E) Be certified in mammography by the ARRT or the equivalent; or
(F) Provide documented evidence that an ARRT mammography certification test is scheduled. Technologists meeting the requirements of sections (1)(a)(b)(A)(B)(C)(D) of this rule may work under the supervision (supervision means that a fully qualified technologist is on-site and readily available to answer questions or assist) of a technologist, meeting all of the requirements of this rule, for up to one year while waiting to take the certification test.

(2) Interpreting Physician qualifications. All physicians interpreting mammograms shall meet MQSA qualifications; and

(a) Hold a current license to practice medicine in the State of Oregon;

(3) Medical Physicist qualifications. All Medical Physicists conducting surveys and equipment evaluations of mammography facilities and providing oversight of their quality assurance programs shall;

(a) Meet MQSA requirements; and

(b) Be currently licensed as a vendor by the agency.

Stat. Auth.: ORS 453.605 - 453.807

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Stats. Implemented: ORS 453.625, 453.635 & 453.695
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-111-0010

Instructions to Workers

All individuals working in or frequenting any portion of a restricted area:

(1) Shall be kept informed of the storage, transfer or use of sources of radiation in such portions of the restricted area;

(2) Shall be instructed in the health protection problems associated with exposure to radiation or radioactive material, in precautions or procedures to minimize exposure and in the purposes and functions of protective devices employed;

(3) Shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposures to radiation or radioactive material occurring in such areas;

(4) Shall be instructed of their responsibility to report promptly to the licensee or registrant any condition which may constitute, lead to or cause a violation of Agency rules and licenses or unnecessary exposure to radiation or radioactive material;

(5) Shall be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(6) Shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to OAR 333-111-0015.

(7) Refresher training shall be provided at intervals not to exceed three (3) years covering the topics identified in 333-111-0010.

NOTE: The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.745

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0010

Purpose and Scope

This Division establishes requirements and provisions to regulate the production, preparation, compounding and use of radionuclides in the healing arts and for issuance of licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this Division are in addition to, and not in substitution for, others in these Rules. The requirements and provisions of these Rules apply to applicants and licensees subject to this Division unless specifically exempted.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0020

Definitions

As used in this Division, the following definitions apply:

(1) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used, or stored.

(2) "Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using or storing radioactive material;

(3) "Authorized nuclear pharmacist" means a pharmacist who:

(a) Meets the requirements in OAR 333-116-0910 and 333-116-0915;

or

(b) Is identified as an authorized nuclear pharmacist on an Agency, Agreement State, or U.S. Nuclear Regulatory Commission license that authorizes the use of byproduct material in the practice of nuclear pharmacy; or

(c) Is identified as an authorized nuclear pharmacist on a permit issued by an Agency, Agreement State, or U.S. Nuclear Regulatory Commission specific licensee of broad scope that is authorized to permit the use of radioactive material in the practice of nuclear pharmacy; or

(d) Is approved as an authorized nuclear pharmacist by a nuclear pharmacy licensed (authorized) by the Agency, the U.S. Nuclear Regulatory Commission, or an Agreement State to approve authorized nuclear pharmacists.

(4) "Authorized user" means a practitioner of the healing arts who:

(a) Meets the requirements listed in OAR 333-116-0660, 333-116-0670, 333-116-0680, 333-116-0690, 333-116-0700, 333-116-0710, 333-116-0720, and 333-116-0740 or

(b) is identified as an authorized user on an Agency, Agreement State, Licensing State or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or

(c) Is identified as an authorized user on a permit issued by an Agency, Agreement State, or U.S. Nuclear Regulatory Commission licensee of broad scope that is authorized to permit the medical use of radioactive material.

(5) "Black Box" means the radiopharmaceutical production purification system used in a PET facility.

(6) "Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose of radiation within a few centimeters, by surface, intracavitary, or interstitial application that is not designed to be disassembled by the user.

(7) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. This source may also be used for other purposes.

(8) "Dental use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of dentistry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(9) "Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

(10) "Diagnostic clinical procedures manual" means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(11) "High dose-rate remote afterloader" means a device that remotely delivers a brachytherapy source, with a dose rate in excess of 2 gray (200 rads) per hour, to the point or surface where the dose is prescribed.

(12) "Low dose-rate remote afterloader" means a device that remotely delivers a brachytherapy source, with a dose rate of less than 2 gray (200 rads) per hour, to the point or surface where the dose is prescribed.

(13) "Management" means the chief executive officer or that individual's designee;

(14) "Medical institution" means an organization in which several medical disciplines are practiced;

(15) "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

(16) "Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements should apply in the case at hand.

(17) "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than 1.11 megabecquerels (30 μ Ci) of either sodium iodide I-125 or I-131:

(A) Involving the wrong individual or wrong radiopharmaceutical, or

(B) When both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceed 1.11 megabecquerels (30 μ Ci).

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131;

(A) Involving the wrong individual, wrong radiopharmaceutical, or wrong route of administration; or

(B) When the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

(A) Involving the wrong individual or wrong treatment site; or

(B) When the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

(d) A teletherapy radiation dose:

(A) Involving the wrong individual, wrong mode of treatment, or wrong treatment site;

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(B) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

(C) When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

(D) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

(A) Involving the wrong individual, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(B) Involving a sealed source that is leaking;

(C) When, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(D) When the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than 1.11 megabecquerels (30 μ Ci) of either sodium iodide I-125 or I-131:

(A) Involving the wrong individual, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; or

(B) When the dose to the individual exceeds 50 millisieverts (5 rem) effective dose equivalent or 500 millisieverts (50 rem) dose equivalent to any individual organ.

(18) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(19) "Nuclear Pharmacist" means an authorized nuclear pharmacist, as defined in OAR 333-116-0020(3), who has received additional training, pursuant to 333-116-0910 and 333-116-0915 in the management and handling of radioactive drugs and is authorized by license to receive, use, transfer, and dispose of such radioactive drugs.

(20) "Output" means the exposure rate, dose rate or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(21) "PET" means Positron Emission Tomography

(22) "PET Isotope Nuclear Pharmacy" means a licensed facility that compounds radiopharmaceuticals using positron emitting isotopes for use at licensed medical facilities.

(23) "PET cyclotron facility" means a facility that manufacturers short-lived radioisotopes for use in compounding radiopharmaceuticals at a PET Isotope Nuclear Pharmacy.

(24) "PET Medical Facility" means a clinical nuclear medicine facility that utilizes positron-emitting isotopes for diagnostic imaging.

(25) "Pharmacist" means an individual licensed by a State or Territory of the United States, The District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

(26) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

(27) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive; or

(b) Either in the diagnostic clinical procedures manual or in any appropriate record, in accordance with the directions of the authorized user for diagnostic procedures.

(28) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction, as documented in the written directive;

(c) For brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote afterloaders, the total dose as documented in the written directive.

(29) "Podiatric use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of podiatry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(30) "Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

(31) "Positron Emission Tomography (PET) facility" means a facility comprised of an accelerator that produces positron-emitting isotopes, a radiopharmacy that specializes in preparation of PET radiopharmaceuticals, and/or a clinic that uses PET isotopes for medical diagnostic purposes.

(32) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive; or

(b) Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(33) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive;

(c) For brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote afterloaders, the total dose as documented in the written directive.

(34) "Pulsed dose-rate remote afterloader" means a special type of remote afterloading device that uses a single source capable of delivering dose rates in the "high dose rate" range, but is used to simulate the radiobiology of a low dose rate treatment by inserting the source for a given fraction of each hour.

(35) "Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a Agency, Agreement State, or U.S. Nuclear Regulatory Commission license.

(36) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive where a written directive is required;

(b) A radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than 1.11 megabecquerels (30 μ Ci) of either sodium iodide I-125 or I-131 when both:

(A) The administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage, and

(B) The difference between the administered dosage and prescribed dosage exceed 15 micro-curies;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;

(e) A teletherapy radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.

(37) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(38) "Stereotactic radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a dose to a tissue volume.

(39) "Structured educational program" means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

(40) "Teletherapy physicist" means the individual identified as the qualified teletherapy physicist on a Agency license.

(41) "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(42) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(43) "Unit dosage" means a dosage intended for medical use in a single patient or human research subject that has been obtained from a manufacturer or preparer licensed by the Agency as a nuclear pharmacy.

(44) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(45) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in OAR 333-116-0125(1)(e), containing the following information:

(a) For any administration of quantities greater than 1.11 megabecquerels (30 μ Ci) of either sodium iodide I-125 or I-131: the dosage;

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(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

(A) Prior to implantation: the radioisotope, number of sources, and source strengths; and

(B) After implantation but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0025

FDA, Other Federal, and State Requirements

Nothing in this part relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0035

Application for License, Amendment, or Renewal

(1) An application must be signed by the management of the facility.

(2) An application for a license for medical use of radioactive material as described in OAR 333-116-0200, 333-116-0300, 333-116-0320, 333-116-0360, 333-116-0400, and 333-116-0420 and for medical use of remote afterloaders in 333-116-0480, must be made by filing a "Radioactive Materials License Application — Medical". A request for a license amendment or renewal may be submitted in letter format.

(3) Except for medical use of remote afterloaders, a separate license application must be filed for each medical use of radioactive material as described in 333-116-0480 by filing a "Radioactive Materials License Application — Medical." A request for a license amendment or renewal may be submitted in letter format.

(4) An application for a license for medical use of radioactive material as described in 333-116-0800 must be made by filing a "Radioactive Materials License Application — Medical."

(a) In addition to the information required in the "Radioactive Materials License Application — Medical," the application must also include information regarding any radiation safety aspects of the medical use of the radioactive material that is not addressed in this division, as well as any specific information necessary for:

(A) Radiation safety precautions and instructions;

(B) Training and experience of proposed users;

(C) Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

(D) Calibration, maintenance, and repair of equipment necessary for radiation safety.

(b) The applicant of licensee shall also provide any other information requested by the Agency in its review of the application.

(5) An applicant that satisfies the requirements specified in OAR 333-102-0900 may apply for a Broad Scope A specific license.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0040

License Amendments

A licensee shall apply for and shall receive a license amendment:

(1) Before using radioactive material for a method or type of medical use not permitted by the license issued under this Division;

(2) Before permitting anyone, except a visiting authorized user described in OAR 333-116-0110, to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license except an individual who is:

(a) An authorized user who meets the requirements of 333-116-0660, 333-116-0670, 333-116-0680, 333-116-0690, 333-116-0700, 333-116-0710 or 333-116-0720 of these rules;

(b) An authorized nuclear pharmacist who meets the requirements in OAR 333-116-0910;

(c) Identified as an authorized user, or an authorized nuclear pharmacist on a Nuclear Regulatory Commission or Agreement State license that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively, or

(3) Before changing the Radiation Safety Officer or Teletherapy Physicist;

(4) Before receiving radioactive material in excess of the amount authorized on the license;

(5) Before adding to or changing the area of use or mailing address identified on the license; and

(6) Before changing statements, representations and procedures which are incorporated into the license.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0050

Notifications

(1) A licensee shall provide to the Agency a copy of the board certification, the Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of Broad Scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, pursuant to OAR 333-116-0040(2)(a) through (c)

(2) A licensee shall notify the Agency by letter no later than 30 days after:

(a) An authorized user, an authorized nuclear pharmacist, a Radiation Safety Officer or an authorized medical Physicist permanently discontinues performance of duties under the license or has a name change.

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name does not constitute a transfer of control of the license as described in OAR 333-102-0305 of these rules; or

(d) The licensee has added to or changed the areas where radioactive material is used in accordance with 333-116-0200 and 333-116-0300.

(3) The licensee shall mail the documents required in this Division to the Agency for review.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0055

Exemptions Regarding Type a Specific Licenses of Broad Scope

A licensee possessing a Type A specific license of broad scope for medical use is exempt from:

(1) The provisions of OAR 333-116-0040(2);

(2) The provisions of 333-116-0040(5) regarding additions to or changes in areas of use only at the addresses specified in the license;

(3) The provisions of 333-116-0050(1);

(4) The provisions of 333-116-0050(2)(a) for an authorized user, or authorized nuclear pharmacist, and

(5) The provisions of 333-116-0140(1).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0057

License Issuance

(1) The Agency shall issue a license for the medical use of radioactive material if:

(a) The applicant has filed a "Radioactive Materials License Application — Medical" in accordance with the instructions in OAR 333-116-0035;

(b) The applicant has paid any applicable fee as provided in Division 103 of these rules;

(c) The Agency finds the applicant equipped and committed to observe the safety standards established by the Agency in these rules for the protection of the public health and safety; and

(d) The applicant meets the requirements of Division 102 of these rules.

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(2) The Agency shall issue a license for mobile services if the applicant:

- (a) Meets the requirements in paragraph (1) above; and
- (b) Assures that individuals or human research subjects to whom radiopharmaceuticals or radiation from implants will be administered may be released following treatment in accordance with 333-116-0460.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0059

Specific Exemptions

The Agency may, upon application of any interested person or upon its own initiative, grant such exemptions from the regulations in this division as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0070

Radiation Safety Officer

(1) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The Radiation Safety Officer shall:

(a) Investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(b) Establish and implement written policy and procedures for:

- (A) Authorizing the purchase of radioactive material;
- (B) Receiving and opening packages of radioactive material;
- (C) Storing radioactive material;
- (D) Keeping an inventory record of radioactive material;
- (E) Using radioactive material safely;
- (F) Taking emergency action if control of radioactive material is lost;
- (G) Performing periodic radiation surveys;
- (H) Performing checks and calibrations of survey instruments and other safety equipment;

(I) Disposing of radioactive material;

(J) Training personnel who work in or frequent areas where radioactive material is used or stored; and

(K) Keeping a copy of all records and reports required by the Agency Rules, a copy of these Rules, a copy of each licensing request and license and amendments and the written policy and procedures required by the Rules.

(c) Brief management once each year on the byproduct material program;

(d) Establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(e) Establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(f) For medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submission to the Agency for licensing action;

(g) For medical use sited at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0080

Radiation Safety Committee

(1) Each medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material which shall meet the following administrative requirements:

(a) Membership must consist of at least three individuals and shall include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate;

(b) The Committee shall meet at least once each calendar quarter;

(c) To establish a quorum and to conduct business, one-half of the Committee's membership shall be present, including the Radiation Safety Officer and the management's representative;

(d) The minutes of each Radiation Safety Committee meeting shall include:

- (A) The date of the meeting;
- (B) Members present;
- (C) Members absent;
- (D) Summary of deliberations and discussions;
- (E) Recommended actions and the numerical results of all ballots; and
- (F) Document any reviews required in OAR 333-116-0060(2) and 333-116-0080(2).

(e) The Committee shall provide each member with a copy of the meeting minutes and retain one copy until the Agency authorizes its disposition.

(2) To oversee the use of licensed material, the Committee shall:

(a) Be responsible for monitoring the institutional program to maintain individual and collective doses as low as reasonably achievable;

(b) Review, on the basis of safety and with regard to the training and experience standards of this division, and approve or disapprove any individual who is to be listed as an authorized user, the Radiation Safety Officer or Teletherapy Physicist before submitting a license application or request for amendment or renewal;

(c) Review on the basis of safety and approve or disapprove each proposed method of use of radioactive material;

(d) Review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove procedures and radiation safety program changes prior to submission to the Agency for licensing action;

(e) Review quarterly, with the assistance of the Radiation Safety Officer, occupational radiation exposure records of all personnel working with radioactive material;

(f) Review quarterly, with the assistance of the Radiation Safety Officer, all incidents involving radioactive material with respect to cause and subsequent actions taken;

(g) Review annually, with the assistance of the Radiation Safety Officer, the radioactive material program; and

(h) Establish a table of investigational levels for occupational dose that, when exceeded, will initiate investigations and considerations of action by the Radiation Safety Officer.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0090

Statement of Authorities and Responsibilities

(1) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority and organizational freedom to:

- (a) Identify radiation safety problems;
- (b) Initiate, recommend or provide solutions; and
- (c) Verify implementation of corrective actions.

(2) A licensee shall establish in writing the authorities, duties, responsibilities and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee.

(3) In addition to the radiation protection program requirements of OAR 333-120-0020, a licensee's management shall approve in writing:

(a) Requests for license application, renewal, or amendments before submission to the Agency;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted under 333-116-0040 and 333-116-0500;

(4) A license with multiple modalities or multiple users shall also develop, implement, and maintain written administrative procedures for interdepartmental/interdisciplinary coordination of the licensee's radiation protection program.

Stat. Auth.: ORS 453.605 - 453.807

ADMINISTRATIVE RULES

Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0100

Supervision

(1) A licensee who permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by OAR 333-116-0030 shall:

(a) Instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, the licensee's written quality management program, the Oregon Rules for the Control of Radiation and the institutions radioactive materials license conditions appropriate to that individual's use of radioactive material; and

(b) Review the supervised individual's use of radioactive material, provide reinstruction as needed and review records kept to reflect this use;

(c) Require the authorized user to be immediately available to communicate with the supervised individual;

(d) Require the authorized user to be able to be physically present and available to the supervised individual (on one hour notice); and

(e) Require that only those individuals specifically trained and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by OAR 333-116-0030(3); shall

(a) Instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's use of radioactive material, and

(b) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, the written radiation protection procedures established by the licensee and this Division, and license conditions.

(3) A licensee shall establish, implement and maintain a policy for all supervised individuals to request clarification, as needed, from:

(a) The authorized user, before initiating or continuing any procedure that requires a written directive, if the supervised individual has any question about what should be done or how it should be done; and

(b) The authorized user or authorized nuclear pharmacist about the instructions and requirements provided to the supervised individual in accordance with paragraphs (1) and (2).

(4) A licensee that permits supervised activities under paragraph (1) and (2) is responsible for the acts and omissions of the supervised individual.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0105

Written Directives

(1) A written directive must be prepared, dated and signed by an authorized user prior to administration of I-131 sodium iodide greater than 1.11 Megabecquerels (MBq) (30 microcuries (μ Ci)), any therapeutic dosage of a radiopharmaceutical, or any therapeutic dose of radiation from radioactive material.

NOTE 1: If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in writing in the patient's record. (i.e. written directive is prepared within 48 hours of the oral directive)

NOTE 2: If, because of a patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize a patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision. Also, a written revision to an existing written directive may be made by any diagnostic or therapeutic procedure provided that the revision is dated and signed by the authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic dose, the teletherapy dose, or the next teletherapy fractional dose.

(2) The written directive must contain the patient or human research subject's name and the following:

(a) For any administration of quantities greater than 1.11 MBq (30 μ Ci) of sodium iodide I-131; the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-131: the radiopharmaceutical dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates (including gamma angle), collimator size, plug pattern, total dose for the treatment, and the total treatment volume;

(d) For teletherapy: the total dose, dose per fraction, number of fractions, treatment site, and overall treatment period;

(e) For remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or

(f) For all other brachytherapy:

(A) Prior to implantation: treatment site, the radionuclide, number of sources and source strengths or dose; and

(B) After implantation but prior to completion of the procedure: the radionuclide, treatment site, and total source strength and exposure time (or equivalently, the total dose).

(3) The licensee shall retain the written directive until records are reviewed by Agency inspectors.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0107

Procedures for Administrations Requiring a Written Directive

(1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) The procedures required by paragraph (1) of this section shall, at a minimum, address:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the specific details of the administration are in accordance with the written directive and treatment plan;

(c) Checking both manual and computer-generated dose calculations; and

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical devices.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0120

Mobile Nuclear Medicine Service Administrative Requirements

(1) The Agency will only license mobile nuclear medicine services in accordance with OAR 333-116-0300, 333-116-0320, and 333-116-0400 of this Division and OAR 333-102-0130.

(2) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of licensed radioactive material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for three years after the last provision of service.

(3) If a mobile nuclear medicine service provides services that the client also is authorized to provide, the client is responsible for assuring that services are conducted in accordance with the rules in this Division while the mobile nuclear medicine service is under the client's direction.

(4) A mobile nuclear medicine service may not order radioactive material to be delivered directly from the manufacturer or the distributor to the client's address of use unless the client has a radioactive materials license. Radioactive material delivered to the client's address of use shall be received and handled in conformance with the client's license.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0125

Quality Management Program

(1) Each applicant or licensee under this division, as applicable, shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the following specific objectives:

(a) That, prior to administration, a written directive (see NOTE below) is prepared for:

(A) Any teletherapy radiation dose;

(B) Any gamma stereotactic radiosurgery radiation dose;

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(C) Any brachytherapy radiation dose;

(D) Any administration of quantities greater than 1.11 megabecquerels (30 μ Ci) of either sodium iodide I-125 or I-131; or

(E) Any therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) That, prior to each administration, the patient's identity is verified by more than one method as the individual named in the written directive;

(c) That final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(d) That each administration is in accordance with the written directive; and

(e) That any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

NOTE: If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision. Also, a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose. If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive.

(2) The licensee shall:

(a) Develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(A) A representative sample of patient administrations,

(B) All recordable events, and

(C) All misadministrations to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(b) Evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of paragraph (a) of this section; and

(c) Retain records of each review, including the evaluations and findings of the review, in an auditable form for three years.

(3) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(a) Assembling the relevant facts including the cause;

(b) Identifying what, if any, corrective action is required to prevent recurrence; and

(c) Retaining a record, in an auditable form, for five years or until inspected by the agency, of the relevant facts and what corrective action, if any, was taken.

(4) The licensee shall retain:

(a) Each written directive; and

(b) A record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in OAR 333-116-0125(1)(a), in an auditable form, for five years, or until inspected by the agency, after the date of administration.

(5) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the Agency Office within 30 days after the modification has been made.

(6) Each applicant for a new license, as applicable, shall submit to the Agency Office in accordance with OAR 333-102-0295 a quality management program as part of the application for a license and implement the program upon issuance of the license by the agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, ORS 453.635 & 453.665

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0140

Suppliers

A licensee may use for medical use only:

(1) Radioactive material manufactured, produced, labeled, prepared, compounded, packaged and distributed in accordance with a license issued pursuant to these Rules or the equivalent Rules of another Agreement State, a Licensing State or the U.S. Nuclear Regulatory Commission; and

(2) Reagent kits, radiopharmaceuticals, and/or radiobiologics that have been manufactured, labeled, packaged and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration.

(3) Radiopharmaceuticals compounded from a prescription in accordance with the regulations of the state Board of Pharmacy.

(4) Teletherapy and brachytherapy sources manufactured and distributed in accordance with a license issued pursuant to these regulations, or the equivalent regulations of another Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0150

Quality Control of Imaging Equipment

Each licensee shall establish written quality control procedures for all diagnostic equipment used to obtain images from radionuclide studies. As a minimum the quality control procedures and frequencies shall include quality control procedures recommended by equipment manufacturers or procedures which have been approved by the Agency. The licensee shall conduct quality control procedures in accordance with written procedures.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0160

Possession, Use, Calibration and Check of Dose Calibrators

(1) A medical use licensee authorized to administer radiopharmaceuticals shall possess a dose calibrator and use it to measure the amount of activity of radionuclides prior to administration to each patient or human research subject. The licensee shall also develop, implement and maintain written procedures for proper calibration and operation of the dose calibrator.

(2) At a minimum, a licensee shall:

(a) Check each dose calibrator for constancy and proper operation with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this section, the check must be done on a frequently used setting with a sealed source of not less than 1.85 megabecquerels (50 μ Ci) of any photon-emitting radionuclide with a half-life greater than 90 days. The results of this test must be within +10 percent of the sources stated activity. Sources used for the daily constancy test shall be determined by the manufacturer to be within +5 percent of the stated activity and traceable to the National Institute of Standards and Technology or other standards recognized as being equivalent by the National Institute of Standards and Technology.

(b) Test each dose calibrator for accuracy upon installation and at intervals not to exceed 12 months thereafter by assaying at least two sealed sources containing different photon-emitting radionuclides 1.85 megabecquerels (50 μ Ci) each, at least one of which has a principal photon energy between 100 keV and 500 keV. All sources used to satisfy the accuracy test shall be determined by the manufacturer to be within +5 percent of the stated activity and traceable to the National Institute of Standards and Technology or other standards recognized as being equivalent by the National Institute of Standards and Technology;

(c) Test each dose calibrator for linearity upon installation and at intervals not to exceed three months thereafter over the range of use between 1.1 megabecquerels (30 microcuries) and the highest dosage that will be administered; and

(d) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 1.1 megabecquerels (30 microcuries) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.

(4) A licensee shall also perform checks and tests required by 333-116-0160(2) following adjustment or repair of the dose calibrator and prior to use.

(5) A licensee shall retain a record of each check and test required by 333-116-0160(2) until inspection by the Agency. The records required by 333-116-0160(2) shall include:

(a) For constancy, the model and serial number of the dose calibrator, the identity and calibrated activity of the radionuclide contained in the check source, the date of the check, the activity measured, the instrument settings and the initials of the individual who performed the check;

(b) For accuracy, the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the

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radionuclide contained in the source and its activity, the date of the test, the results of the test, the instrument settings and the signature of the Radiation Safety Officer;

(c) For linearity, the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test and the signature of the Radiation Safety Officer; and

(d) For geometry dependence, the model and serial number of the dose calibrator, the configuration and calibrated activity of the source measured, the activity of the source, the activity measured and the instrument setting for each volume measured, the date of the test and the signature of the Radiation Safety Officer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0165

Possession, Use Calibration, and Check of Instruments to Measure Dosages of Alpha- or Beta-emitting Radionuclides

(1) For other than unit dosages, a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. A licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject.

(2) A licensee shall develop, implement, and maintain written procedures for use of the instrumentation. At a minimum, a licensee shall:

(a) Perform tests before initial use, and following repair, on each instrument for accuracy, linearity, and geometry dependence, unless it is not appropriate for the use of the instrument; and make adjustments when necessary;

(b) Perform accuracy annually;

(c) Perform linearity tests annually over the range of medical use; and

(d) Check each instrument for constancy and proper operation at the beginning of each day of use.

(3) Accuracy tests shall be performed with source(s) that are traceable to National Institute of Standards and Technology (NIST) or by a supplier who has compared the source to a source that was calibrated by NIST.

(4) A licensee shall retain a record of each check and test required by this section until inspection by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0170

Calibration and Check of Survey Instrument

(1) A licensee shall ensure that the survey instruments used to show compliance with this Division have been calibrated before first use, annually and following repair.

(2) To satisfy the requirements of section (1) of this rule the licensee shall:

(a) Calibrate all required scale readings up to 10 millisieverts (1000 mrem) per hour with a radiation source;

(b) For each scale that shall be calibrated, calibrate two readings separated by at least 50 percent of scale reading; and

(c) Conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(3) To satisfy the requirements of section (2) of this rule, the licensee shall:

(a) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 10 percent; and

(b) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent if a correction chart or graph is conspicuously attached to the instrument.

(4) A licensee shall check each survey instrument for proper operation with the dedicated check source before each use. The licensee is not required to keep records of these checks.

(5) The licensee shall retain a record of each calibration required in section (1) of this rule until inspection by the Agency. The record shall include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified exposure rates from the source and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration and the date of calibration.

(6) To meet the requirements of sections (1), (2) and (3) of this rule, the licensee may obtain the services of individuals licensed by the Agency, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to perform calibrations of survey instruments. Records of calibrations which contain information required by section (5) of this rule, shall be maintained by the licensee.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0180

Assay of Radiopharmaceutical Doses

A licensee shall:

(1) Assay, within 30 minutes before medical use, the activity of each radiopharmaceutical dosage that contains more than 370 kilobecquerels (10 μ Ci) of an alpha-, beta-, or photon-emitting radionuclide;

(2) Assay, before medical use, the activity of each radiopharmaceutical dosage emitting alpha and/or beta radiation as the radiation of principal interest, unless such radiopharmaceutical has been obtained:

(a) In unit dose form, calibrated by the supplier for individual patients; and

(b) From a supplier which participates in a measurement quality assurance program with the National Institute of Standards and Technology, and which is designed to ensure that unit doses have a calibration traceable to a national standard;

(3) For a dosage of an alpha- or beta-emitting radionuclide prepared by the licensee, this determination shall be made by direct measurement or by a combination of measurements and calculations.

(4) A licensee shall not use a dosage if the dosage differs from the prescribed dosage by more than 20 percent, unless authorized in writing by an authorized user.

(5) Retain a record of the assays required by this section until inspection by the Agency. To satisfy this requirement, the record shall contain the:

(a) Generic name, trade name or abbreviation of the radiopharmaceutical, its lot number and expiration dates and the radionuclide;

(b) Patient's name and identification number if one has been assigned;

(c) Prescribed dosage and activity of the dosage at the time of assay or a notation that the total activity is less than 370 kilobecquerels (10 μ Ci);

(d) Date and time of the assay; and

(e) Date and time of administration; and

(f) Initials of the individual who performed the assay.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0190

Authorization for Calibration and Reference Source

Any person authorized by OAR 333-116-0030 for medical use of radioactive material may receive, possess and use the following radioactive material for check, calibration and reference use:

(1) Sealed sources manufactured and distributed by persons specifically licensed pursuant to OAR 333-102-0290 or equivalent provisions of the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State and that do not exceed 555 MBq (15 mCi) each;

(2) Any radioactive material listed in OAR 333-116-0300, 333-116-0320 or 333-116-0360 with a half-life of 100 days or less in individual amounts not to exceed 555 MBq (15 mCi), except Y-90 sources not to exceed 2.8 GBq (75 mCi);

(3) Any radioactive material listed in 33-116-0300, 333-116-0320 or 333-116-0360 with a half life greater than 100 days in individual amounts not to exceed 7.4 MBq (200 mCi) each; and

(4) Technetium-99m in individual amounts to exceed 1.85 GBq (50 mCi).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0200

Requirements for Possession of Sealed Sources and Brachytherapy Sources

(1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer or equivalent instructions approved by the Agency, and

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shall maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall assure that:

(a) The source is tested for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) The source is tested for leakage at intervals not to exceed six months or at intervals approved by the Agency, another Agreement State, a Licensing State or the U.S. Nuclear Regulatory Commission in the Sealed Source and Device Registry (SS&D).

(3) To satisfy the leak test requirements of this Division, the licensee shall assure that:

(a) Leak tests are capable of detecting the presence of 185 Bq (0.005 μ Ci) of radioactive material on the test sample, or in the case of radium, the escape of radon at the rate of 37 Bq (0.001 μ Ci) per 24 hours;

(b) Test samples are taken from the source or from the surfaces of the device in which the source is mounted or stored on which radioactive contamination might be expected to accumulate; and

(c) For teletherapy units, test samples are taken when the source is in the "off" position.

(4) A licensee shall retain leak test records until inspected by the Agency. The records shall contain the model number and serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries (Bq), a description of the method used to measure each test sample, the date of the test and the signature of the Radiation Safety Officer.

(5) If the leak test reveals the presence of 185 Bq (0.005 μ Ci) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store it in accordance with the requirements of these Rules; and

(b) File a report within five days of receiving the leakage test results with the Agency describing the equipment involved, the test results and the action taken.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than 30 days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 MBq (100 μ Ci) or less of beta or photon-emitting material or 370 kBq (10 μ Ci) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. The licensee shall, however, test each such source for leakage before any use or transfer unless it has been tested for leakage within six months before the date of use or transfer.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a physical inventory of all such sources at intervals not to exceed three months. The licensee shall retain each inventory record until inspected by the Agency. The inventory records must contain the model number of each source and serial number if one has been assigned, the identity of each source radionuclide and its estimated activity, the location of each source, date of the inventory and the signature of the Radiation Safety Officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall survey with a radiation survey instrument at intervals not to exceed three months all areas where such sources are stored. This does not apply to teletherapy sources in teletherapy units, gamma stereotactic radio-surgery sources, or sealed sources in diagnostic devices.

(9) A licensee shall retain a record of each survey required in section (8) of this rule until inspection by the Agency. The record must include the date of the survey, a sketch of each area that was surveyed, the measured dose rate at several points in each area expressed in μ Sv (mrem) per hour, the model number and serial number of the survey instrument used to make the survey and the signature of the Radiation Safety Officer.

Stat. Auth.: ORS 453.605 - ORS 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0250

Surveys for Contamination and Ambient Radiation Dose Rate

(1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radioactive wastes are stored.

(3) A licensee shall conduct the surveys required by section (1) and (2) of this rule so as to be able to measure dose rates as low as 1 μ Sv (0.1 mrem) per hour.

(4) A licensee shall establish dose rate action levels for the surveys required by section (1) and (2) of this rule and shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds an action level.

(5) A licensee shall survey for removable contamination each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered and each week where radioactive materials are stored.

(6) A licensee shall conduct the surveys required by section (5) of this rule so as to be able to detect contamination on each wipe sample of 33.3 Bq (2000 dpm).

(7) A licensee shall establish removable contamination action levels for the surveys required by section (5) of this rule and shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds action levels.

(8) A licensee shall retain a record of each survey required by this rule until inspection by the Agency. The record must include the date of the survey, a sketch of each area surveyed, action levels established for each area, the measured dose rate at several points in each area expressed in μ Sv mrem per hour or the removable contamination in each area expressed in Bq (dpm) per 100 square centimeters, the serial number and the model number of the instrument used to make the survey or analyze the samples and the initials of the individual who performed the survey.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0260

Release of Patients Containing Therapeutic Quantities of Radiopharmaceuticals or Permanent Implants

(1) The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 millisieverts (0.5 rem).

(2) The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 millisievert (0.1 rem). If the dose to a breast-feeding infant or child could exceed 1 millisievert (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) Guidance on the interruption or discontinuation of breast-feeding; and

(b) Information on the consequences of failure to follow the guidance.

(3) The licensee shall maintain a record of the basis for authorizing the release of an individual, for 3 years after the date of release, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered,

(b) Using an occupancy factor less than 0.25 at 1 meter,

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(4) The licensee shall maintain a record, for 3 years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 millisieverts (0.5 rem).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0265

Release of Individuals Containing Radiopharmaceuticals or Implants

(1) A licensee may authorize the release from its control any individual who has been administered radiopharmaceuticals or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not calculated to exceed 5 mSv (0.5 rem) Note: U. S. Nuclear Regulatory Commission Regulatory Guide 8.39, "Release of Patients Administered Radioactive Materials", describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 millisieverts (0.5 rem).

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(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 mSv (0.1 rem). If the total effective dose equivalent to a breast-feeding infant or child could exceed 1 mSv (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

- (a) Guidance on the interruption or discontinuation of breast-feeding; and
- (b) Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall maintain a record of the basis for authorizing the release of an individual, until inspected by the Agency, if the total effective dose equivalent is calculated by:

- (a) Using the retained activity rather than the activity administered,
- (b) Using an occupancy factor less than 0.25 at 1 meter,
- (c) Using the biological or effective half-life, or
- (d) Considering the shielding by tissue.

(4) The licensee shall maintain a record, for 3 years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 millisieverts (0.5 rem).

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0290

Decay-In-Storage

(1) A licensee shall hold radioactive material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of OAR 333-120-0500 of these Rules if the licensee:

- (a) Holds radioactive material for decay a minimum of 10 half-lives;
- (b) Monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;
- (c) Removes or obliterates all radiation labels; and
- (d) Separates and monitors each generator column individually with all radiation shielding removed to ensure that its contents have decayed to background radiation level before disposal.

(2) For radioactive material disposed in accordance with the licensee shall retain a record of section (1) of this rule each disposal until inspection by the Agency. The record must include the date of the disposal, the date on which the radioactive material was placed in storage, the model and serial number of the survey instrument used, the background dose rate, the radiation dose rate measured at the surface of each waste container and the name of the individual who performed the disposal.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0300

Use of Radiopharmaceuticals for Uptake, Dilution or Excretion Studies

(1) A licensee may use any radioactive material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution or excretion:

- (a) Which the Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA); or
- (b) Which is prepared and compounded by an authorized nuclear pharmacist, a physician who is an authorized user, or an individual under the supervision of either as specified in OAR 333-116-0100.

(2) A licensee using a radiopharmaceutical specified in section (1) of this rule for a clinical procedure other than one specified in the product label or package insert instructions for use shall comply with the product label or package insert instructions regarding physical form, route of administration and dosage range.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0310

Possession of Survey Instrument

A licensee authorized to use radioactive material for uptake, dilution and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 1 Sv (0.1 mrem) per hour to 1 mSv (100 mrem) per hour. The instrument shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0320

Use of Radiopharmaceuticals, Generators and Reagents Kits for Imaging and Localization Studies

(1) A licensee may use any radioactive material in a diagnostic radiopharmaceutical, except aerosol or gaseous form, or any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for:

- (a) Which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA); or
- (b) Which is prepared and compounded by an authorized nuclear pharmacist, a physician who is an authorized user, or an individual under the supervision of either as specified in OAR 333-116-0100.

(2) A licensee using radiopharmaceuticals specified in section (1) of this rule for clinical procedures other than one specified in the product label or package insert instructions shall comply with the product label or package insert regarding physical form and dosage range.

(3) A licensee shall elute generators in compliance with OAR 333-116-0330 and prepare radiopharmaceuticals from kits in accordance with the manufacturer's instructions.

(4) Technetium-99m pentatate as an aerosol for lung function studies is not subject to the restrictions in section (1) of this rule. Provided the conditions of OAR 333-116-0340 are met, a licensee shall use radioactive aerosols or gases only if specific application is made to and approved by the Agency.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0330

Permissible Molybdenum-99 Concentration

(1) A licensee shall not administer to humans a radiopharmaceutical containing more than 0.15 kBq (0.15 μ Ci) of molybdenum-99 per MBq (mCi) of technetium-99m.

(2) A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract.

(3) A licensee who must measure molybdenum concentration shall retain a record of each measurement until inspection by the Agency. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in MBq (mCi), the measured activity of the molybdenum expressed in kBq (μ Ci), the ratio of the measures expressed as kBq (μ Ci) of molybdenum per MBq (mCi) of technetium, the date of the test and the initials of the individual who performed the test.

(4) A licensee shall report immediately to the Agency each occurrence of molybdenum-99 concentration exceeding the limits specified in section (1) of this rule.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0340

Control of Aerosols and Gases

(1) A licensee who administers radioactive aerosols or gases shall do so with a system that will keep airborne concentrations within the limits prescribed by OAR 333-120-0130 and 333-120-0180.

(2) The system shall either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(3) A licensee shall only administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.

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(4) Before receiving, using or storing a radioactive gas, the licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the occupational limit listed in 10 CFR Part 20 Appendix B to 20.1001 to 20.2401. The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(5) A licensee shall post the time calculated in accordance with 333-116-0340(4) of this rule at the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed.

(6) A licensee shall check the operation of collection systems before each use and measure the ventilation rates in areas of use at intervals not to exceed six months. Records of these checks and measurements shall be maintained for 5 years or until inspected by the Agency.

(7) A copy of the calculations required in 333-116-0340(4) of this rule shall be recorded and retained for the duration of the license.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0350

Possession of Survey Instruments

A licensee authorized to use radioactive material for imaging and localization studies shall have in its possession a portable, radiation detection survey instrument capable of detecting dose rates over the range of 1 μ Sv (0.1 mrem) per hour to 1 mSv (100 mrem) per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 μ Sv (1 mrem) per hour to 10 millisieverts (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0360

Use of Radiopharmaceuticals for Therapy

(1) A licensee may use for therapeutic administration any unsealed byproduct material prepared for medical use that:

(a) Has been granted acceptance or approval by the Food and Drug Administration; and

(b) Has been prepared by an authorized nuclear pharmacist, a physician who is an authorized user on a license from the Agency, other Agreement State, or the U.S. Nuclear Regulatory Commission.

(2) The licensee shall comply with the package insert instructions regarding indications and method of administration.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0370

Safety Instruction

(1) A licensee shall provide oral and written radiation safety instruction for all personnel caring for patients undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed one year.

(2) To satisfy 333-116-0370(1) of this rule, the instruction shall describe the licensee's procedures for:

(a) Patient control;

(b) Visitor control;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the Radiation Safety Officer or authorized user in case of the patient's death or medical emergency.

(3) A licensee shall keep until inspection by the Agency a list of individuals receiving instruction required by 333-116-0370(1) of this rule, a description of the instruction, the date of instruction and the name of the individual who gave the instruction.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0380

Safety Precautions

(1) For each patient receiving radiopharmaceutical therapy and hospitalized for compliance with OAR 333-116-0260 or 333-116-0265, a licensee shall:

(a) Provide a private room with a private sanitary facility;

(b) Post the patient's door with a "Caution: Radioactive Material" sign and note on the door or on the patient's chart where and how long visitors may stay in the patient's room;

(c) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of OAR 333-120-0180 of these Rules and retain until inspection by the Agency a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in mrem per hour, the instrument used to make the survey and the initials of the individual who made the survey;

(e) Either monitor material and items removed from the patient's room to determine that any contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle materials and items as radioactive waste;

(f) Instruct the patient and, where appropriate, the patient's family, orally and in writing concerning radiation safety precautions that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient;

(g) Survey the patient's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 3.33 Bq (200 dpm) per 100 square centimeters; and

(h) Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage and retain for the period required by OAR 333-120-0620 of these Rules a record of each thyroid burden measurement, date of measurement, the name of the individual whose thyroid burden was measured and the initials of the individual who made the measurements. Other procedures acceptable to the Agency may be used for individuals who only prepare, but do not administer, doses of stabilized I-131.

(2) A licensee shall notify the Radiation Safety Officer or the nuclear physician immediately if the patient dies or has a medical emergency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0390

Possession of Survey Instruments

A licensee authorized to use radioactive material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 1 μ Sv (0.1 mrem) per hour to 100 mrem (one mSv) per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 μ Sv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0410

Availability of Survey Instrument

A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range 1 μ Sv (0.1 mrem) per hour to 100 mrem (one mSv) per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 μ Sv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instrument shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

ADMINISTRATIVE RULES

333-116-0420

Use of Sources for Brachytherapy

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

- (1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial and intracavitary treatment of cancer;
 - (2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial and intracavitary treatment of cancer;
 - (3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;
 - (4) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer;
 - (5) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;
 - (6) Radium-226 as a sealed source in needles or applicator cells for topical, interstitial and intracavitary treatment of cancer;
 - (7) Radon-222 as seeds for interstitial, treatment of cancer;
 - (8) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions; and
 - (9) Palladium-103 as a sealed source in seeds for the interstitial treatment of cancer.
- (10) Any medical device or material approved for human use by the US FDA and approved for licensing purposes by the US NRC or an Agreement State.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0430

Safety Instructions

(1) The licensee shall provide oral and written radiation safety instruction to all personnel caring for a patient receiving implant therapy. Refresher training shall be provided at intervals not to exceed one year.

(2) To satisfy section (1) of this rule, the instruction shall describe:

- (a) Size and appearance of the brachytherapy sources;
- (b) Safe handling and shielding instructions in case of a dislodged source;
- (c) Procedures for patient control;
- (d) Procedures for visitor control; and
- (e) Procedures for notification of the Radiation Safety Officer or authorized user if the patient dies or has a medical emergency.

(3) A licensee shall retain until inspection by the Agency a record of individuals receiving instruction required by 333-116-0430(1) of this rule, a description of the instruction, the date of instruction and the name of the individual who gave the instruction.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0440

Safety Precaution

(1) A licensee shall, for each patient receiving implant therapy:

(a) Not place the patient in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirement of OAR 333-120-0180 of these rules at a distance of one meter from the implant;

(b) Post the patient's door with a "Caution: Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(c) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) Promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with OAR 333-120-0180 of these Rules, and retain until inspection by the Agency, a record of each survey that includes the time and date of the survey, a sketch of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts (mrem) per hour, the instrument used to make the survey and the initials of the individual who made the survey; and

(e) Instruct the patient and, where appropriate, the patient's family, orally and in writing concerning radiation safety precautions that will help to keep the radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

(2) A licensee shall notify the Radiation Safety Officer or authorized user immediately if the patient dies or has a medical emergency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0450

Brachytherapy Sources Inventory

(1) Each time brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count the number returned to ensure that all sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source use which includes:

(a) The names of the individuals permitted to handle the sources;

(b) The number and activity of sources removed from storage, the room number of use and patient's name, the time and date they were removed from storage, the number and activity of the sources in storage after the removal and the initials of the individual who removed the sources from storage; and

(c) The number and activity of sources returned to storage, the room number of use and patient's name, the time and date they were returned to storage, the number and activity of sources in storage after the return and the initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient and immediately after removal of sources from a patient the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall retain the records required in 333-116-0450(2) and 333-116-0450(3) of this rule until inspection by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0460

Release of Patients Treated with Temporary Implant

(1) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient treated by temporary implant until all sources have been removed.

(2) A licensee shall retain a record of patient surveys which demonstrate compliance with OAR 333-116-0450(1) until inspection by the Agency. Each record must include the date of the survey, the name of the patient, the dose rate from the patient expressed as μSv (mrem) per hour and measured within one meter from the patient and the initials of the individual who made the survey.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0470

Possession of Survey Instruments

A licensee authorized to use radioactive material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 1 μSv (0.1 mrem) per hour to 100 mrem (one mSv) per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 μSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0480

Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit

Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit. A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

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(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of § 35.49(a) are met.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0490

Installation, Maintenance, Adjustment, and Repair

(1) Only a person specifically licensed by the Commission or an Agreement State shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s), or compromise the radiation safety of the unit or the source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the Commission or an Agreement State shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the Commission or an Agreement State or an authorized medical physicist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with § 35.2605.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0495

Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

(1) A licensee shall:

(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(b) Permit only individuals approved by the authorized user, Radiation Safety Officer, or authorized medical physicist to be present in the treatment room during treatment with the source(s);

(c) Prevent dual operation of more than one radiation producing device in a treatment room if applicable; and

(d) Develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the source(s) in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures must include:

(A) Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(B) The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(C) The names and telephone numbers of the authorized users, the authorized medical physicist, and the Radiation Safety Officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by 333-116-0495(1)(d) of this section must be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by 333-116-0495(1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the Radiation Safety Officer to be contacted if the unit or console operates abnormally.

(4) A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties in:

(a) The procedures identified in paragraph (a)(4) of this section; and

(b) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instruction required by paragraph (d) of this section, in accordance with § 35.2310.

(7) A licensee shall retain a copy of the procedures required by §§ 35.610(a)(4) and (d)(2) in accordance with § 35.2610.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0515

Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit

A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses:

(1) As approved in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0525

Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

(1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:

(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) Cause the source(s) to be shielded when an entrance door is opened; and

(c) Prevent the source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source(s) on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in paragraphs (a) through (e) of this section, a licensee shall:

(a) For medium dose-rate and pulsed dose-rate remote afterloader units, require:

(A) An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

(B) An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator(s) in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For high dose-rate remote afterloader units, require:

(A) An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

(B) An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the Radiation Safety Officer, or his/her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

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- (a) Remaining in the unshielded position; or
 - (b) Lodged within the patient following completion of the treatment.
- Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0530

Possession of Survey Instrument

A licensee authorized to use radioactive material in a teletherapy therapy unit shall have in its possession either both a portable radiation detection survey instrument capable of detecting dose rates over the range 1 μ Sv (0.1 mrem) per hour to 100 mrem (one mSv) per hour and a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 μ Sv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The instruments shall be operable and calibrated in accordance with OAR 333-116-0170.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0540

Radiation Monitoring Device

(1) A licensee shall have in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(2) Each radiation monitor shall be capable of providing visible evidence of a teletherapy unit malfunction that results in an exposed or partially exposed source. The visible indicator of high radiation levels must be observable by an individual prior to entering the teletherapy room.

(3) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system or other type of uninterruptible power supply (UPS).

(4) Each radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

(5) A licensee shall maintain a record of the check required by 333-116-0540(4) until inspection by the Agency. The record shall include the date of the check, notation that the monitor indicates when the source is exposed and the initials of the individual who performed the check.

(6) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in 333-116-0540(4).

(7) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in 333-116-0540(5).

(8) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0560

Dosimetry Equipment

(1) Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met.

(a) The system shall have been calibrated using a system or source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration; or

(b) The system shall have been calibrated within the previous four years; 18 to 30 months after that calibration, the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past 24 months by the National Institute

of Standards and Technology or by a calibration laboratory accredited by the AAPM. The intercomparison meeting shall be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting must show that the calibration factor of the licensee's system had not changed by more than two percent. The licensee shall not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have available for use a dosimetry system for spot-check output measurements, if applicable. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with 333-116-0560(1) of this rule. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in section 333-116-0560(1) of this rule.

(3) The licensee shall retain a record of each calibration, intercomparison and comparison for the duration of the license. For each calibration, intercomparison or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared or compared as required by 333-116-0560(1) and 333-116-0560(2), the correction factors that were deduced, the names and credentials of the individuals who performed the calibration, intercomparison or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.625, 453.635 & 453.665
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0570

Full Calibration Measurement

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

- (a) Before the first medical use of the unit; and
- (b) Before medical use under the following conditions:

(A) Whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(B) Following replacement of the radioactive source or following reinstallation of the teletherapy unit in a new location;

(C) Following any repair of the teletherapy unit that includes removal of the radioactive source or major repair of the components associated with the source exposure assembly; and

- (c) At intervals not exceeding one year.

(2) To satisfy the requirement of 333-116-0570(1), full calibration measurements shall include determination of:

(a) The output within ± 3 percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

- (d) Timer accuracy, constancy, and linearity;

- (e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in OAR 333-116-0560(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in 333-116-0570(2)(a) may then be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by 333-116-0570(1) in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall correct mathematically the outputs determined in 333-116-0570(2)(a) for physical decay for intervals not exceeding one month for cobalt-60 and intervals not exceeding six months for cesium-137, or at intervals consistent with 1 percent decay for all other nuclides.

(6) Full calibration measurements required by 333-116-0570(1) and physical decay corrections required by 333-116-0570(5) shall be performed by a teletherapy or medical physicist certified to perform such measurements and named on the licensee's license or authorized by a license issued

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by the Nuclear Regulatory Commission or an Agreement State to perform such services.

(7) A licensee shall retain a record of each calibration for the duration of the license. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device and the signature of the teletherapy physicist.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0573

Full Calibration Measurements on Remote Afterloader Units

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
- (b) Before medical use under the following conditions:

(A) Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and

(B) Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding 1 quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds 75 days; and

(d) At intervals not exceeding 1 year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include, as applicable, determination of:

- (a) The output within +/- 5 percent;
- (b) Source positioning accuracy to within +/- 1 millimeter;
- (c) Source retraction with backup battery upon power failure;
- (d) Length of the source transfer tubes;
- (e) Timer accuracy and linearity over the typical range of use;
- (f) Length of the applicators; and
- (g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in § 35.630(a) to measure the output.

(4) A licensee shall make full calibration measurements required by paragraph (a) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in paragraph (b) of this section, a licensee shall perform an autoradiograph of the source(s) to verify inventory and source(s) arrangement at intervals not exceeding 1 quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with paragraphs (a) through (e) of this section.

(7) A licensee shall mathematically correct the outputs determined in paragraph (b)(1) of this section for physical decay at intervals consistent with 1 percent physical decay.

(8) Full calibration measurements required by paragraph (a) of this section and physical decay corrections required by paragraph (g) of this section must be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0577

Full Calibration Measurements on Gamma Stereotactic Radiosurgery Units

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

- (a) Before the first medical use of the unit;
- (b) Before medical use under the following conditions:

(A) Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(B) Following replacement of the sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(C) Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

(c) At intervals not exceeding 1 year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

- (a) The output within +/-3 percent;
- (b) Relative helmet factors;
- (c) Isocenter coincidence;
- (d) Timer accuracy and linearity over the range of use;
- (e) On-off error;
- (f) Trunnion centricity;
- (g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
- (h) Helmet microswitches;
- (i) Emergency timing circuits; and
- (j) Stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in § 35.630(a) to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (b)(1) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by paragraph (a) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in paragraph (b)(1) of this section at intervals not exceeding 1 month for cobalt-60 and at intervals consistent with 1 percent physical decay for all other radionuclides.

(6) Full calibration measurements required by paragraph (a) of this section and physical decay corrections required by paragraph (e) of this section must be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0580

Periodic Spot-Checks

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit at intervals not to exceed one month.

(2) To satisfy the requirement of 333-116-0580(1), measurements shall include determination of:

- (a) Timer constancy, accuracy, and linearity over the range of use;
- (b) On-off error;
- (c) The coincidence of the radiation field and the field indicated by the light beam localizing device;
- (d) The accuracy of all distance measuring and localization devices used for medical use;
- (e) The output for one typical set of operating conditions measured with the dosimetry system described in 333-116-0560; and
- (f) The difference between the measurement made in 333-116-0580(2)(e) and the anticipated output, expressed as a percentage of the anticipated value obtained at last full calibration corrected mathematically for physical decay.

(3) A licensee shall use the dosimetry system described in OAR 333-116-0560 to make the measurement required in 333-116-0580(2)(e).

(4) A licensee shall perform measurements required by 333-116-0580(1) in accordance with procedures established by the teletherapy or medical physicist. That individual is not required to actually perform the output spot-check measurements.

(5) A licensee shall have the teletherapy or medical physicist review the results of each output spot-check within 15 days of each measurement. The teletherapy or medical physicist shall promptly notify the licensee in writing of the results of each output spot-check. The licensee shall keep a copy of each written notification until inspection by the Agency.

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(6) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility at intervals not to exceed one month;

(7) To satisfy the requirement of 333-116-0580(5), checks shall assure proper operation of:

(a) Electrical interlocks at each teletherapy room entrance;

(b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism;

(c) Beam condition indicator lights on the teletherapy unit, on the control console and in the facility;

(d) Viewing systems;

(e) Treatment room doors from inside and outside the treatment room; and

(f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned "off".

(8) A licensee shall lock the control console in the "off" position if any door interlock malfunctions. No licensee shall use the unit until the interlock system is repaired unless specifically authorized by the Agency.

(9) A licensee shall promptly repair any system identified in 333-116-0580(7) that is not operating properly.

(10) A licensee shall retain a record of each spot-check required by 333-116-0580(1) and 333-116-0580(6) until inspection by the Agency. The record shall include, the date of the spot-check, the manufacturer's name, model number and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, the measured timer accuracy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the measured timer accuracy for a typical treatment time, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors and the signature of the individual who performed the periodic spot-check.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0583

Periodic Spot-checks for Remote Afterloader Units

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;

(b) Before each patient treatment with a low dose-rate remote afterloader unit; and

(c) After each source installation.

(2) A licensee shall perform the measurements required by paragraph (a) of this section in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of paragraph (a) of this section, spot-checks must, at a minimum, assure proper operation of:

(a) Electrical interlocks at each remote afterloader unit room entrance;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(d) Emergency response equipment;

(e) Radiation monitors used to indicate the source position;

(f) Timer accuracy;

(g) Clock (date and time) in the unit's computer; and

(h) Decayed source(s) activity in the unit's computer.

(5) If the results of the checks required in paragraph (d) of this section indicate the malfunction of any system, a licensee shall lock the con-

trol console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each check required by paragraph (d) and a copy of the procedures required by paragraph (b) of this section.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0585

Additional Technical Requirements for Mobile Remote Afterloader Units

(1) A licensee providing mobile remote afterloader service shall:

(a) Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(b) Account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by § 35.643, a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks must be made to verify the operation of (a) Electrical interlocks on treatment area access points;

(b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Applicators, source transfer tubes, and transfer tube-applicator interfaces;

(e) Radiation monitors used to indicate room exposures;

(f) Source positioning (accuracy); and

(g) Radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in paragraph (b), a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in paragraph (b) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) A licensee shall retain a record of each check required by paragraph (b) of this section in accordance with 333-116-0620.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0587

Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) Monthly;

(b) Before the first use of the unit on a given day; and

(c) After each source installation.

(2) A licensee shall:

(a) Perform the measurements required by 333-116-0587(1) in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of 333-116-0587(1)(a), spot-checks must, at a minimum:

(a) Assure proper operation of:

(A) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

(B) Helmet microswitches;

(C) Emergency timing circuits; and

(D) Stereotactic frames and localizing devices (trunnions).

(b) Determine:

(A) The output for one typical set of operating conditions measured with the dosimetry system described in 333-116-0560;

(B) The difference between the measurement made in 333-116-0587(3)(b)(A) and the anticipated output, expressed as a percentage of the

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anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

- (C) Source output against computer calculation;
- (D) Timer accuracy and linearity over the range of use;
- (E) On-off error; and
- (F) Trunnion centricity.

(4) To satisfy the requirements of 333-116-0587(1)(b) and 333-116-0587(1)(c), spot-checks must assure proper operation of:

- (a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;
- (b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;
- (c) Viewing and intercom systems;
- (d) Timer termination;
- (e) Radiation monitors used to indicate room exposures; and
- (f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in 333-116-0587(3) that is not operating properly as soon as possible.

(6) If the results of the checks required in 333-116-0587(4) indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each check required by 333-116-0587(3) and (4) and a copy of the procedures required by 333-116-0587(2) of this section.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0590

Radiation Surveys for Teletherapy Facilities

(1) Before medical use, after each installation of a teletherapy source and after making any change for which an amendment is required by OAR 333-116-0500, the licensee shall perform radiation surveys with an operable radiation measurement survey instrument calibrated in accordance with OAR 333-116-0170 to verify that:

(a) The maximum and average radiation levels at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 100 μ Sv (10 mrem) per hour and 20 μ Sv (2 mrem) per hour, respectively; and

(b) With the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

(A) Radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in OAR 333-120-0100 of these rules; and

(B) Radiation levels in unrestricted areas do not exceed the limits specified in OAR 333-120-0180 of these rules.

(2) If the results of the surveys required in section (1) of this rule indicate any radiation levels in excess of the respective limit specified in that paragraph, the licensee shall lock the control in the off position and not use the unit:

(a) Except as may be necessary to repair, replace or test the teletherapy unit, the teletherapy unit shielding or the treatment room shielding; or

(b) Until the licensee has received a specific exemption from the Agency.

(3) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in mrem (μ Sv) per hour, the calculated maximum level of radiation over a period of one week for each restricted and unrestricted area and the signature of the Radiation Safety Officer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0600

Safety Checks and Five-year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units

(1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed 5 years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the Nuclear Regulatory Commission or an Agreement State.

(3) If the results of the checks required in section (1) of this rule indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

(4) A licensee shall retain until inspection by the Agency a record of the facility checks following installation of a source. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors and the signature of the Radiation Safety Officer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0605

Therapy-Related Computer Systems

The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

(1) The source-specific input parameters required by the dose calculation algorithm;

(2) The accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) The accuracy of isodose plots and graphic displays;

(4) The accuracy of the software used to determine sealed source positions from radiographic images; and

(5) The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0610

Modification of Teletherapy Unit or Room Before Beginning a Treatment Program

(1) If the survey required by 333-116-0590 indicates that any individual member of the public is likely to receive a dose in excess of the limits specified in 333-120-0180, before beginning the treatment program the licensee shall:

(a) Either equip the unit with stops or add additional radiation shielding to ensure compliance with 333-120-0180.

(b) Perform the survey required by 333-116-0590 again; and

(c) Include in the report required by 333-116-0620 the results of the initial survey, a description of the modification made to comply with 333-116-0610(1)(a), and the results of the second survey.

(2) As an alternative to the requirements set out in 333-116-0610(a), a licensee may request a license amendment under 333-120-0180(3) that authorizes radiation levels in unrestricted areas greater than those permitted by 333-120-0180(1) of this chapter. A licensee may not begin the treatment program until the license amendment has been issued.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0640

Radiation Safety Officer

Except as provided in OAR 333-116-0650, an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in this rule shall:

(1) Be certified by:

(a) American Board of Health Physics in Comprehensive Health Physics; or

(b) American Board of Radiology; or

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- (c) American Board of Nuclear Medicine; or
- (d) American Board of Science in Nuclear Medicine; or
- (e) Board of Pharmaceutical Specialties in Nuclear Pharmacy or Science; or
- (f) American Board of Medical Physics in radiation oncology physics; or

(g) Royal College of Physicians and Surgeons of Canada in nuclear medicine; or

- (h) American Osteopathic Board of Radiology; or
- (i) American Osteopathic Board of Nuclear Medicine; or
- (2) Has completed 200 hours of classroom and laboratory training as follows:

- (a) Radiation physics and instrumentation;
- (b) Radiation protection;
- (c) Mathematics pertaining to the use and measurement of radioactivity;

- (d) Radiation biology;
- (e) Radiopharmaceutical chemistry; and
- (f) One year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on an Agency, Agreement State, Licensing State or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or

(3) Be an authorized user for those radioactive material uses that come within the Radiation Safety Officer's responsibilities.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0660

Training for Uptake, Dilution or Excretion Studies

Except as provided in OAR 333-116-0740 and 333-116-0750, the licensee shall require the authorized user of a radiopharmaceutical listed in OAR 333-116-0300 to be a physician who:

- (1) Is certified in:
 - (a) Nuclear medicine by the American Board of Nuclear Medicine; or
 - (b) Diagnostic radiology by the American Board of Radiology; or
 - (c) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or
 - (d) Nuclear Medicine by the American Osteopathic Board of Nuclear Medicine; or

(e) Nuclear Medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed 40 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals and 20 hours of supervised clinical experience:

- (a) To satisfy the basic instruction requirement, 40 hours of classroom and laboratory instruction shall include:
 - (A) Radiation physics and instrumentation;
 - (B) Radiation protection;
 - (C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiation biology; and

(E) Radiopharmaceutical chemistry.

(b) To satisfy the requirement for 20 hours of supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and shall include:

(A) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations or contraindications;

(B) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(C) Administering dosages to patients and using syringe radiation shields;

(D) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(E) Patient followup; or

(3) Has successfully completed a six month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in OAR 333-116-0660(2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0670

Training for Imaging and Localization Studies

Except as provided in OAR 333-116-0740 or 333-116-0750, the licensee shall require the authorized user of a radiopharmaceutical, generator or reagent kit specified in OAR 333-116-0320 to be a physician who:

(1) Is certified in:

(a) Nuclear medicine by the American Board of Nuclear Medicine; or

(b) Diagnostic radiology by the American Board of Radiology; or

(c) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

(d) Nuclear Medicine by the American Osteopathic Board of Nuclear Medicine; or

(e) Nuclear Medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed 200 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators and reagent kits, 500 hours of supervised work experience and 500 hours of supervised clinical experience:

(a) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiopharmaceutical chemistry; and

(E) Radiation biology.

(b) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(A) Ordering, receiving and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(C) Calculating and safely preparing patient dosages;

(D) Using administrative controls to prevent the misadministration of radioactive material;

(E) Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(F) Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(c) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(A) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations or contraindications;

(B) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(C) Administering dosages to patients and using syringe radiation shields;

(D) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(E) Patient followup; or

(3) Has successfully completed a six month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in OAR 333-116-0670(2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0680

Training for Therapeutic Use of Radiopharmaceuticals

Except as provided in OAR 333-116-0740, the licensee shall require the authorized user of a radiopharmaceutical listed in OAR 333-116-0360 for therapy to be a physician who:

(1) Is certified by:

(a) The American Board of Nuclear Medicine; or

(b) The American Board of Radiology in radiology or therapeutic radiology, or radiation oncology; or

(c) The American Osteopathic Board of Radiology after 1984; or

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(d) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed 80 hours of instruction in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals and has had supervised clinical experience:

(a) To satisfy the requirement for instruction, 80 hours of classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology;

(b) To satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(A) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals;

(B) Use of soluble phosphorus-32 for the treatment of ascites polycythemia vera, leukemia or bone metastases in three individuals;

(C) Use of iodine-131 for treatment of thyroid carcinoma in three individuals; and

(D) Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three individuals.

(E) Use of phosphorus-32, strontium-89, or samarium-153 for treatment of pain associated with bone metastases in three individuals.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0720

Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

Except as provided in OAR 333-116-0740, the licensee shall require the authorized user of a sealed source specified in OAR 333-116-0480 in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit to be a physician who:

(1) Is certified in:

(a) Radiology, radiation oncology or therapeutic radiology by the American Board of Radiology; or

(b) Radiation oncology by the American Osteopathic Board of Radiology; or

(c) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) Is in the active practice of therapeutic radiology and has completed 200 hours of instruction in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, 500 hours of supervised work experience and a minimum of three years of supervised clinical experience:

(a) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology.

(b) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution and shall include:

(A) Review of the full calibration measurements and periodic spot checks;

(B) Preparing treatment plans and calculating treatment times;

(C) Using administrative controls to prevent misadministrations;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(E) Checking and using survey meters.

(c) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under

the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

(A) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment and any limitations or contraindications;

(B) Selecting the proper dose and how it is to be administered;

(C) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(D) Post-administration followup and review of case histories.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0730

Training for Teletherapy or Brachytherapy Physicist

The licensee shall require the teletherapy physicist to:

(1) Be certified by the American Board of Radiology in:

(a) Therapeutic radiological physics; or

(b) Roentgen ray and gamma ray physics; or

(c) X-ray and radium physics; or

(d) Radiological physics; or

(2) Be certified by the American Board of Medical Physics in radiation oncology physics; or

(3) Hold a master's or doctor's degree in physics, biophysics, radiological physics or health physics and have completed one year of full time training in therapeutic radiological physics and also one year of full time work experience under the supervision of a teletherapy or brachytherapy physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in OAR 333-116-0200, 333-116-0570, 333-116-0580 and 333-116-0590 under the supervision of a teletherapy or brachytherapy physicist during the year of work experience.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0830

Accelerator Facility Requirements

(1) Accelerators shall meet all requirements of Division 109 of this Chapter. Shielded-room accelerators shall be equipped with interlocks and personnel control; self-shielded accelerators shall be shielded such that personnel access is prevented during operation.

(2) Non-ionizing radiation shall meet requirements of Division 112 of these rules.

(3) Target maintenance and repair, contamination control, and emergency actions shall be conducted pursuant to Division 120 of these rules.

(4) There shall be an Understanding of Transfer (UOT) when isotopes are transferred from one licensee or entity to another for processing, specifying at what point control is transferred to personnel handling radiochemical production or radiopharmacy operation.

(5) Radiation surveys shall be made prior to any accelerator operation or isotope production with a radiation survey instrument calibrated in accordance with requirements in OAR 333-116-0390. Periodic surveys shall be done throughout times of operation to ensure that radiation levels meet all applicable requirements in Division 120 (Radiation Protection Standards).

(6) Ventilation controls shall be implemented to ensure compliance with all applicable local, state, and federal requirements. Controls shall include monitoring of stacks and computer modeling of air emissions to confirm compliance with standards.

(7) Real-time (integrating) monitors shall be used to confirm requirements in OAR 333-120-0100, 333-120-0160, 333-120-0170, and 333-120-0180.

(8) Contamination wipes for radioactive material shall be made pursuant to requirements in OAR 333-116-0250;

(9) Dosimetry must address both gamma and beta doses in all areas of the facility. Licensees and registrants must monitor extremities to ensure compliance with OAR 333-120-0100. Bioassays, as defined in OAR 333-100-0005(16), are not required, but there must be evaluation of internal exposures, pursuant to OAR 333-120-0130, based on calculated releases and monitoring.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.665

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-116-0905

Training for Authorized Medical Physicist

The licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a speciality board whose certification process includes all of the training and experience requirements in paragraph (2) of this section and whose certification has been approved by the U.S. Nuclear Regulatory Commission; or

(2)(a) Holds a master's or doctor's degree in physics, biophysics, radiological physics, medical physics, or health physics, or an equivalent training program approved by the U.S. Nuclear Regulatory Commission, and has completed one year of full-time training in therapeutic radiological physics and an additional year of full-time practical experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in OAR 333-116-0200, and 333-116-0480 through 333-116-0630 as applicable; and

(b) Has obtained a written certification, signed by a preceptor authorized medical physicist, that the requirements in paragraph (2)(a) in this section have been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently function as an authorized medical physicist; and,

(c) Following completion of the requirements in paragraph(2)(a) of this section, has demonstrated sufficient knowledge in radiation safety commensurate with the use requested by passing an examination given by an organization or entity approved by the U.S. Nuclear Regulatory Commission in accordance with appendix A of this Division.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0910

Training for an Authorized Nuclear Pharmacist

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified as a nuclear pharmacist by a speciality board whose certification process includes all of the requirements in paragraph (2) of this section and whose certification has been approved by the U.S. Nuclear Regulatory Commission; or

(2)(a) Has completed 700 hours in a structured educational program consisting of both:

(A) Didactic training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(B) Supervised practical experience in a nuclear pharmacy involving:

(i) Shipping, receiving, and performing related radiation surveys;

(ii) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) Using administrative controls to avoid misadministration s in the administration of radioactive material; and

(v) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the requirements of paragraph (2)(a) have been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-116-0915

Training for Experienced Nuclear Pharmacists

A licensee may apply for and shall receive a license amendment identifying an experienced nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in OAR 333-116-0910(2)(a) before December 2, 1994, and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor

statement in 333-116-0910(2)(b) and recency of training in 333-116-0760 to qualify as an authorized nuclear pharmacist.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0020

Definitions

As used in this Division, the following definitions apply:

(1) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(2) "Closed transport vehicle" means a transport vehicle equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the radioactive material. The enclosure may be either temporary or permanent but shall limit access from top, sides, and ends. In the case of packaged materials, it may be of the "see-through" type.

(3) "Exclusive use" means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

NOTE: The term "exclusive use" is used interchangeably with the terms "sole use" or "full load" in other regulations, such as Title 49 of the Code of Federal Regulations.

(4) "Fissile material" means any special nuclear material consisting of or containing one or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only, are not included in this definition. Neither natural nor depleted uranium is fissile material.

NOTE: Agency jurisdiction is limited to special nuclear material in quantities not sufficient to form a critical mass as defined in Division 100 of these rules.

(5) "Fissile material package" means a fissile material packaging together with its fissile material contents.

(6) "Low specific activity (LSA) material" means radioactive materials that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(a) LSA-I.

(A) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(B) Solid unirradiated natural uranium, depleted uranium, natural thorium, or their solid or liquid compounds or mixtures; or

(C) Radioactive material, other than fissile material, for which the A2 value is unlimited; or

(D) Mill tailings, contaminated earth, concrete, rubble, other bulk debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10-6 A2/g.

(b) LSA-II.

(A) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(B) Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed 10-4 A2/g for solids and gases, and 10-5 A2/g for liquids.

(c) LSA-III. Solids (e.g., consolidated wastes, activated materials) in which:

(A) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(B) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days, would not exceed 1E-1 A2; and

(C) The average specific activity of the solid does not exceed 2E-3 A2 per gram.

(7) "Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thori-

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um-228 or thorium-230 when contained in ores or physical or chemical concentrates; or alpha emitters with a half-life of less than 10 days.

(8) "Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as special form radioactive material.

(9) "Nuclear waste" means a quantity of source, byproduct or special nuclear material required to be in U.S. Nuclear Regulatory Commission approved specification packaging while transported to, through or across a state boundary to a disposal site, or to a collection point for transport to a disposal site.

NOTE: The definition of nuclear waste in this Part is used in the same way as in 49 CFR 173.403.

(10) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 49 CFR Part 173 Subpart I. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(11) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189 and Parts 390-397.

(12) "Regulations of the U.S. Nuclear Regulatory Commission" means the regulations in 10 CFR 71.

(13) "Special form radioactive material" means radioactive material that satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch.); and

(c) It satisfies the test requirements specified by the Nuclear Regulatory Commission. A special form encapsulation designed in accordance with the Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the Nuclear Regulatory Commission requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet requirements of this definition applicable at the time of its design or construction.

(14) "Specific activity" of a radionuclide means the radioactivity of a radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(15) "Surface contaminated object" (SCO) means a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(a) SCO-I: a solid object on which:

(A) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4 Bq/cm² (10⁻⁴ microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 0.4 Bq/cm² (10⁻⁵ microcurie/cm²) for all other alpha emitters;

(B) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4x10⁴ Bq/cm² (1.0 microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 4x10³ Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters; and

(C) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4x10⁴ Bq/cm² (1 microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 4x10³ Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters.

(b) SCO-II: a solid object on which the limits for SCO-I are exceeded and on which:

(A) The non-fixed contamination on the accessible surface averaged over 300 square centimeters (or the area of the surface if less than 300 square centimeters) does not exceed 400 bequerel per square centimeter (Bq/cm²) (1E-2 microcurie per square centimeter) for beta, gamma and low toxicity alpha emitters or 40 bequerel per square centimeter (Bq/cm²) (1E-3 microcurie per square centimeter) for all other alpha emitters;

(B) The fixed contamination on the accessible surface averaged over 300 square centimeters (or the area of the surface if less than 300 square centimeters) does not exceed 8E5 bequerel per square centimeter (Bq/cm²) (20 microcuries square centimeter) for beta, gamma and low toxicity alpha emitters, or 8E4 bequerel per square centimeter (Bq/cm²) (2 microcuries per square centimeter) for all other alpha emitters; and

(C) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 square centimeters (or the area of the surface if less than 300 square centimeters) does not exceed 8E5 bequerel per square centimeter (Bq/cm²) (20 microcuries per square centimeter) for beta, gamma and low toxicity alpha emitters, or 8x10⁴ Bq/cm² (2 microcuries/cm²) for all other alpha emitters.

(16) "Transport index" means the dimensionless number, rounded up to the first decimal place, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one meter from the external surface of the package in millisievert (mSv) per hour multiplied by 100 (equivalent to the maximum radiation level in millirem per hour at 1 meter).

(17) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A1 for special form radioactive material or A2 for normal form radioactive material, where A1 and A2 are given in 10 CFR Part 71 Appendix A or may be determined by procedures described in 10 CFR Part 71 Appendix A.

(18) "Type A package" means a packaging that, together with its radioactive contents limited to A1 or A2 as appropriate, meets the requirements of 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests set forth in 173.465 or 173.466, as appropriate.

(19) "Type B package" means a Type B packaging together with its radioactive contents.

NOTE: A type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in OAR 333-118-0035.

(20) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(21) "Type B quantity" means a quantity of radioactive material greater than Type A quantity.

NOTE: 10 CFR Part 71 Appendix A referred to or incorporated by reference in this rule is attached to this Division or available from the Health Division.

(22) "Uranium — natural, depleted, enriched"

(a) "Natural uranium" means uranium isotopes with the naturally occurring distribution of uranium, isotopes (which is approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(b) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(c) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

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

Stat. Auth.: ORS 453.605 - ORS 453.755

Stats. Implemented:

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0040

Exemptions

(1) Common and contract carriers, freight forwarders, and warehouse workers that are subject to the requirements of the U.S. Department of Transportation in 49 CFR 170 through 189 or the U.S. Postal Service in the U.S. Postal Service Manual Domestic Mail Manual, (DMM), section C-023.9.0 are exempt from the rules in Divisions 102, 105, 113, 115, 116, 117, and 121 of this Chapter and the requirements for a license to the extent that they transport or store radioactive material in the regular course of their carriage for others or storage incident thereto. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to OAR 333-118-0030 and other applicable requirements of these rules.

(2) Any licensee is exempt from the requirements of this Division to the extent that the licensee delivers to a carrier for transport a package containing radioactive material having a specific activity not greater than (0.002 microcurie per gram 70 Becquerels per gram (Bq/g).

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-118-0050

Transportation of Licensed Material

(1) Each licensee who transports licensed material outside the site of usage, as specified in the Agency license, or where transport is on public highways, or who delivers licensed material to a carrier for transport shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 CFR 170-189, particularly the regulations of U.S. Department of transportation in the following areas:

(A) Packaging — 49 CFR Part 173: Subparts A and B and I.

(B) Marking and labeling — 49 CFR Part 172: Subpart D, §§ 172.400 through 172.407, §§ 172.436 through 172.440, and Subpart E.

(C) Placarding — 49 CFR Part 172: Subpart F, especially §§ 172.500 through 172.519, 172.556, and Appendices B and C.

(D) Accident reporting — 49 CFR Part 171: §§ 171.15 and 171.16.

(E) Shipping papers and emergency information — 49 CFR Part 172: Subparts C and G.

(F) Hazardous material employee training — 49 CFR Part 172: Subpart H.

(H) Hazardous material shipper/carrier registration — 49 CFR Part 107: Subpart G.

(b) The licensee also shall comply with applicable U.S. Department of Transportation regulations pertaining to the following modes of transportation:

(A) Rail — 49 CFR Part 174: Subparts A through D and K.

(B) Air — 49 CFR Part 175.

(C) Vessel — 49 CFR Part 176: Subparts A through F and M.

(D) Public highway — 49 CFR Part 177 and Parts 390 through 397.

(c) Assure that any special instructions needed to safely open the package are sent to or have been made available to the consignee.

(2) If, for any reason, the regulations of the U.S. Department of Transportation are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of 49 CFR Parts 170 through 189 appropriate to the mode of transport and to the same extent as if the shipment were subject to the regulations.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0060

General Licenses for Carriers

(1) A general license is hereby issued to any common or contract carrier not exempt under OAR 333-118-0040 to receive, possess, transport, and store radioactive material in the regular course of their carriage for others or storage incident thereto, provided the transportation and storage is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation, insofar as such requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

NOTE: Notification of an incident shall be filed with, or made to, the Department as prescribed in 49 CFR, regardless of and in addition to the notification made to the U.S. Department of Transportation or other agencies.

(2) A general license is hereby issued to any private carrier to transport radioactive material, provided the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the U.S. Department of Transportation, insofar as such requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting.

(3) Persons who transport radioactive material pursuant to the general licenses in 333-118-0060(1) or (2) are exempt from the requirements of divisions 111 and 120 of these rules to the extent that they transport radioactive material.

Stat. Auth.: ORS 453.605 - ORS 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0070

General License: Nuclear Regulatory Commission-Approved Packages

(1) A general license is hereby issued to any licensee of the Agency to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the U.S. Nuclear Regulatory Commission.

(2) This general license applies only to a licensee who:

(a) Has a copy of the specific license, certificate of compliance, or other approval by the Nuclear Regulatory Commission of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(b) Complies with the terms and conditions of the license, certificate, or other approval by the Nuclear Regulatory Commission, as applicable, and the applicable requirements of Division 118;

(c) Prior to the licensee's first use of the package, has registered with the U.S. Nuclear Regulatory Commission; and

(d) Has a quality assurance program required by OAR 333-118-0200 and approved by the Agency.

(3) The general license in OAR 333-118-0070(1) applies only when the package approval authorizes use of the package under this general license.

(4) For previously approved Type B packages which are not designated as either B(U) or B(M) in the Certificate of Compliance, this general license is subject to additional restrictions in OAR 333-118-0080. For a Type B or fissile material package, the design of which was approved by Nuclear Regulatory Commission before April 1, 1996, the general license is subject to additional restrictions of OAR 333-118-0080.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0080

General License: Previously Approved Packages

(1) A Type B package previously approved by the U.S. Nuclear Regulatory Commission, but not designated as B(U) or B(M) in the Certificate of Compliance, may be used under the general license of OAR 333-118-0070 with the following additional limitations:

(a) Fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with U.S. Nuclear Regulatory Commission regulations at 10 CFR 71.85(c); and

(b) The package may not be used for a shipment to a location outside the United States except when approved under special arrangement in accordance with 49 CFR 173.471. A package used for a shipment to a location outside the United States is subject to multilateral approval, as defined in U.S. Department of Transportation regulations at 49 CFR 173.403; and

(c) A serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

(2) A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the Nuclear Regulatory Commission but without the designation "-85" in the identification number of the Nuclear Regulatory Commission certificate of compliance, may be used under the general license of 333-118-0070 with the following additional conditions:

(a) Fabrication of the package is satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with Nuclear Regulatory Commission regulations at 10 CFR 71.85(c);

(b) A package used for a shipment to a location outside the United States is subject to multilateral approval except approved under special arrangement in accordance with U.S. Department of Transportation regulations at 49 CFR 173.403; and

(c) A serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0090

General License: U.S. Department of Transportation Specification Container

(1) A general license is issued to any licensee of the Agency to transport, or to deliver to a carrier for transport, licensed material in a specification container containing a fissile material or a Type B quantity of radioactive material as specified in 49 CFR Parts 173 and 178.

(2) This general license applies only to a licensee who has a quality assurance program required by OAR 333-118-0200 and approved by the Agency.

(a) Has a copy of the specification;

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(b) Complies with the terms and conditions of the specification and the applicable requirements of Division 118; and

(c) Has a quality assurance program required by OAR 333-118-0200.

(3) The general license in OAR 333-118-0090 is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States except by multilateral approval as defined in 49 CFR 173.403

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0100

General License: Use of Foreign Approved Package

(1) A general license is issued to any licensee of the Agency to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by the U.S. Department of Transportation as meeting the applicable requirements of 49 CFR 171.12.

(2) This general license applies only to international shipments.

(3) This general license applies only to a licensee who:

(a) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(b) Complies with the terms and conditions of the certificate and revalidation and with the applicable requirements of this Division.

(c) Has a quality assurance program approved by the Nuclear Regulatory Commission.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0110

General License: Fissile Material, Limited Quantity per Package

(1) A general license is hereby issued to any licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped as a Fissile Class II package in accordance with division 333-0118.

(2) This general license applies only when a package contains no more than a Type A quantity of radioactive material, including only one of the following:

(a) Up to 40 grams of uranium-235; or

(b) Up to 30 grams of uranium-233; or

(c) Up to 25 grams of the fissile radionuclides of plutonium, except that for encapsulated plutonium-beryllium neutron sources in special form, an A1 quantity of plutonium may be present; or

(d) A combination of fissile radionuclides in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in 333-118-0110(2)(a), (2)(b), and (2)(c) does not exceed unity.

(3) Except as specified in 333-118-0110(3)(b), this general license applies only when all of the following requirements are met:

(a) A package containing fissile radionuclides is labeled with a transport index not less than the number given by the following equation:

$$\text{Minimum Transport Index} = (0.25x + 0.33y + 0.4z)$$

where the package contains x grams of uranium-235, y grams of uranium-233, and z grams of the fissile radionuclides of plutonium;

(b) For a package in which the only fissile material is encapsulated plutonium-beryllium neutron sources in special form, the transport index based on criticality considerations may be taken as 0.025 times the number of grams of the fissile radionuclides of plutonium.

(c) In all cases, the transport index must be rounded up to one decimal place and shall not exceed 10.0.

(d) Except for the beryllium contained within the special form plutonium-beryllium sources authorized in 333-118-0110(2), beryllium, graphite, or hydrogenous material enriched in deuterium is not present in quantities exceeding 0.1% of the fissile material mass.

(e) The licensee has a quality assurance program approved by the nuclear regulatory commission.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0120

General License: Fissile Material, Limited Moderator per Package

(1) A general license is hereby issued to any licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped as a Fissile Class II package in accordance with Division 333-118.

(2) This general license applies only when all of the following requirements are met.

(a) The package contains no more than a Type A quantity of radioactive material.

(b) Neither beryllium nor hydrogenous material enriched in deuterium is present.

(c) The total mass of graphite present does not exceed 7.7 times the total mass of uranium-235 plus plutonium.

(d) Substances having higher hydrogen density than water, for example certain hydrocarbon oils, are not present, except that polyethylene may be used for packing or wrapping.

(e) Uranium-233 is not present, and the amount of plutonium does not exceed one percent of the amount of uranium-235.

(f) The amount of uranium-235 is limited as follows:

(A) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per package may not exceed the value given in the following Table 1.

(B) If the fissile radionuclides are distributed uniformly, for example, they cannot form a lattice arrangement within the packaging, and the maximum amount of uranium-235 per package may not exceed the value given in Table 2.

(g) The transport index of each package based on criticality considerations is taken as 10 times the number of grams of uranium-235 in the package divided by the maximum allowable number of grams per package in accordance with Table 1 or 2 of this section as applicable. [Tables not included. See ED. NOTE.]

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

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0130

Fissile Material: Assumptions as to Unknown Properties of Fissile Material

When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties had credible values that would cause the maximum neutron multiplication.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0140

Preliminary Determinations

Prior to the first use of any packaging for the shipment of radioactive material:

(1) The licensee shall show that there are no defects that could significantly reduce the effectiveness of the packaging;

(2) Where the maximum normal operating pressure will exceed 35 kilopascals (five pounds per square inch (psi) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure to show that the system will maintain its structural integrity at that pressure;

(3) The licensee shall determine that the packaging has been fabricated in accordance with the design approved by the U.S. Nuclear Regulatory Commission; and

(4) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number as assigned by the U.S. Nuclear Regulatory Commission.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0150

Routine Determinations

Prior to each shipment of licensed material, the licensee shall determine that:

(1) The package is proper for the contents to be shipped;

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(2) The package is in unimpaired physical condition except superficial defects such as marks or dents;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) Any pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) Any structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified in 10 CFR 71.45;

(8) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable.

(a) The level of non-fixed (removable) radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in OAR 333-118-0150(8)(b), the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in Table 3 below at any time during transport. Other methods of assessment of equal or greater efficiency may be used. When other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed 10 times the limits listed in Table 3.

(b) In the case of packages transported as exclusive use shipments by rail or highway only, the non-fixed (removable) radioactive contamination at any time during transport must not exceed 10 times the levels prescribed in OAR 333-118-0150(8)(a). The levels at the beginning of transport must not exceed the levels in OAR 333-118-0150(8)(a);

(9) External radiation levels around the package and around the vehicle, if applicable, will not exceed 2 mSv/hr (200 millirem per hour) at any point on the external surface of the package at any time during the transportation. The transport index shall not exceed 10; [Table not included. See ED. NOTE.]

(10) For a package transported in exclusive use by rail, highway, or water, radiation levels external to the package may exceed the limits specified in OAR 333-118-0150(10) but shall not exceed any of the following:

(a) 2 milliSieverts per hour (mSv/h) (200 millirem per hour) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 10 milliSieverts per hour (mSv/h) (1000 millirem per hour);

(A) The shipment is made in a closed transport vehicle,

(B) Provisions are made to secure the package so that its position within the vehicle remains fixed during transportation, and

(C) There are no loading or unloading operations between the beginning and end of the transportation.

(b) 2 milliSieverts per hour (mSv/h) (200 millirem per hour) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier*, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle;

*NOTE: A flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 2 milliSieverts per hour (mSv/h) (200 millirem per hour) at the surface.

(c) 0.1 milliSieverts per hour (mSv/h) (10 millirems per hour) at any point two (2) meters from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point two (2) meters from the vertical planes projected from the outer edges of the vehicle; and

(d) 0.02 milliSieverts per hour (mSv/h) (2 millirem per hour) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with OAR 333-111-0005; and

(11) A package must be prepared for transport so that in still air at 100 degrees Fahrenheit (38 degrees Celsius) and in the shade, no accessible surface of a package would have a temperature exceeding 122 degrees Fahrenheit (50 degrees Celsius) in a nonexclusive use shipment or 185

degrees Fahrenheit (85 degrees Celsius) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation.

(12) A package may not incorporate a feature intended to allow continuous venting during transport.

(13) Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee.

NOTE: A flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier is in place, the package cannot exceed 2 mSv/h (200 millirems per hour) at any accessible surface.

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

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0160

Air Transport of Plutonium

Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this Division or included indirectly by citation of the U.S. Department of Transportation regulations, as may be applicable, the licensee shall assure that plutonium in any form is not transported by air, or delivered to a carrier for air transport, unless:

(1) The plutonium is contained in a medical device designed for individual human application; or

(2) The plutonium is contained in a material in which the specific activity is not greater than 70 Bq/g (0.002 microcuries per gram) of material and in which the radioactivity is essentially uniformly distributed; or

(3) The plutonium is shipped in a single package containing no more than an A2 quantity of plutonium in any isotope or form and is shipped in accordance with OAR 333-118-0050; or

(4) The plutonium is shipped in a package specifically authorized (in the certificate of compliance issued by the Nuclear Regulatory Commission for that package) for the shipment of plutonium by air, and the licensee requires, through special arrangement with the carrier, compliance with 49 CFR 175.704, the U.S. Department of Transportation regulations applicable to the air transport of plutonium.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0170

Shipment Records

Each licensee shall maintain for a period of 3 years after shipment, or until inspected by the Agency, a record of each shipment of licensed material not exempt under OAR 333-118-0040, showing, where applicable:

(1) Identification of the packaging by model and serial number;

(2) Verification that the packaging, as shipped, had no significant defects;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) Date of the shipment;

(6) Name and address of the transferee;

(7) Address to which the shipment was made; and

(8) Results of the determinations required by OAR 333-118-0150.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0180

Reports

The licensee shall report to the Agency within 30 days:

(1) Any instance in which there is significant reduction in the effectiveness of any approved Type B or fissile packaging during use; and

(2) Details of any defects with safety significance in the Type B or fissile packaging after first use, with the means employed to repair the defects and prevent their recurrence or

(3) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-118-0190

Advance Notification of Transport of Nuclear Waste

(1) Prior to the transport of any nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall provide advance notification of such transport to the governor, or governor's designee, of each state within or through which the waste will be transported.

NOTE: A list of the mailing addresses of the governors and governors' designees is available upon request from the Director, Office of State, Local, and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Advance notification is required only when:

(a) The nuclear waste is required to be in Type B packaging for transportation;

(b) The nuclear waste is being transported into, within, or through, a state en route to a disposal facility or to a collection point for transport to a disposal facility; and

(c) The quantity of licensed material in a single package exceeds any one of the following:

(A) 3000 times the A_1 value of the radionuclides as specified in Appendix A, Table A-1 for special form radioactive material;

(B) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A-1 for normal form radioactive material;

(C) 1000 TBq (27,000 Ci)

(3) Each advance notification required by 333-118-0190(1) shall contain the following information:

(a) The name, address, and telephone number of the shipper, carrier and receiver of the shipment;

(b) A description of the nuclear waste contained in the shipment as required by 49 CFR 172.202 and 172.203(d);

(c) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(d) The 7-day period during which arrival of the shipment at state boundaries is estimated to occur;

(e) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact with a telephone number for current shipment information.

(4) The notification required by 333-118-0190(1) shall be made in writing to the office of each appropriate governor, or governor's designee, and to the Agency. A notification delivered by mail must be postmarked at least seven days before the beginning of the 7-day period during which departure of the shipment is estimated to occur. A notification delivered by the messenger must reach the office of the governor, or governor's designee, at least four (4) days before the beginning of the 7-day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for 3 years or until inspected by the agency.

(5) The licensee shall notify each appropriate governor, or governor's designee, and the Agency of any changes to schedule information provided pursuant to 333-118-0190(1). Such notification shall be by telephone to a responsible individual in the office of the governor, or governor's designee, of the appropriate state or states. The licensee shall maintain for 3 years a record of the name of the individual contacted.

(6) Each licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice to the governor, or governor's designee, of each appropriate state and to the Agency. A copy of the notice shall be retained by the licensee for 3 years.

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

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0200

Quality Assurance Requirements

(1) Unless otherwise authorized by the agency, each licensee shall establish, maintain, and execute a quality assurance program to verify by procedures such as checking, auditing, and inspection, that deficiencies, deviations, and defective material and equipment relating to the shipment of packages containing radioactive material are promptly identified and corrected.

(2) The licensee shall identify the material and components to be covered by the quality assurance program.

(3) Each licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accor-

dance with those procedures throughout the period during which packaging is used.

(4) Prior to the use of any package for the shipment of radioactive material, each licensee shall obtain approval by the Agency of its quality assurance program.

(5) The licensee shall maintain sufficient written records to demonstrate compliance with the quality assurance program. Records of quality assurance pertaining to the use of a package for shipment of radioactive material shall be maintained for a period of 3 years after shipment or until inspected by the Agency.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-118-0800

Referenced Materials

(1) This Division of Chapter 333 of the Oregon Administrative Rules incorporates by reference material originally published elsewhere. Certified copies of the complete text of incorporated materials referenced are available for public inspection during regular business hours at the Radiation Protection Services Office. Copies of referenced material will be provided at cost upon request. Information regarding how the incorporated material may be obtained or examined is available from Radioactive Materials Program, Radiation Protection Services, 800 NE Oregon Street Suite 260, Portland, Oregon 97232.

(2) Material referenced in this Division does not include amendments to or revised editions of the material published later than the effective date of the relevant section.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0030

Administrative Responsibilities

(1) The registrant shall be responsible for directing the operation of the tanning facility which has been registered with the Agency. That individual, or individual's agent shall assure that the provisions of these rules are met in the operation of tanning devices.

(2) A tanning device which does not meet the provisions of these rules shall not be operated and may be tagged "Out of Service for Non-compliance with OAR 333-119 Requirements" by Agency inspectors. Devices tagged as non-compliant shall not be operated until written authorization is received by the registrant from the Agency.

(3) The registrant shall assure that the tanning facility will comply with all applicable federal laws and regulations.

(4) In addition to the requirements of this Division, all registrants are subject to the applicable requirements of Divisions 100, 103 and 111 of these rules.

(5) The Agency Inspection Findings report and facility response letter(s) shall be conspicuously posted in public view until all items of non-compliance have been corrected and a written Agency release from this requirement is received by the registrant.

(6) The registrant shall post in a conspicuous place the Agency "Notice To The Public".

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930 & 431.935

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0040

Construction and Operation of Tanning Facilities

Unless otherwise ordered or approved by the Agency, each tanning facility shall be constructed, operated and maintained to meet the following minimum requirements:

(1) Physical facilities:

(a) All tanning facilities shall be equipped with convenient toilet facilities and dressing rooms. Such toilet facilities shall include a water closet and handwashing sinks. Such toilet and dressing rooms shall be properly maintained, as well as meet all state and local codes.

(b) All areas of the tanning facility shall be ventilated with at least six air changes per hour or as required by local code.

(c) Tanning booth temperature shall be maintained below 100 degrees Fahrenheit (38 degrees Centigrade) during booth operation.

(d) The tanning device shall meet the National Fire Protection Association's National Electrical Code, or be approved by the Underwriter Laboratories (UL) or Electrical Testing Laboratories (ETL).

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(e) Except as otherwise noted by the Agency, each tanning facility shall be constructed, operated and maintained in accordance with applicable city, county and state codes.

(2) Cleaning and maintenance:

(a) All areas of the tanning facility, including tanning devices, equipment and apparatus, shall be maintained in a clean and sanitary manner by the facility operator and in accordance with manufacturer's instructions.

(b) The tanning device(s) and protective eyewear shall be cleaned with an approved sanitizer after each use by the facility operator. A listing of approved sanitizers is maintained by the Agency and is available upon request of registrants. This listing may change at any time due to updating of state or federal sanitation guidelines. The operator shall use a sanitizer that sanitizes to a safe level of microorganisms as required by these rules. A clean paper or cloth towel shall be used each time the tanning device is cleaned and sanitized. The sanitizer, as described in these rules, is one specifically manufactured for sanitizing ultravioletlightemitting equipment and protective eyewear, and that does not damage the acrylic lamp covers of the device. The Ultraviolet Light produced by the tanning device itself is not considered an adequate sanitizing agent.

(c) Protective eyewear and tanning devices shall be sanitized after each use with a sanitizing agent which is registered by EPA and approved by the Agency using the following procedures:

(A) Immerse protective eyewear for at least one minute in a clean solution (or spray tanning device acrylic surfaces and allow at least one to two minutes of surface contact time with a solution) containing at least 400 ppm (parts per million) of available quaternary ammonium compound at a temperature of at least 75 degrees Fahrenheit; or

(B) Immerse protective eyewear for at least one minute in a clean solution (or spray tanning device acrylic surfaces and allow at least one to two minutes of surface contact time with the solution) containing at least 100 ppm (parts per million) of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit; or

(C) Immerse protective eyewear for at least one minute in a clean solution (or spray tanning device acrylic surfaces and allow at least one to two minutes of surface contact time with the solution) containing at least 25 ppm (parts per million) of available iodine and at a pH of which the efficacy has been demonstrated to be effective by the manufacturer and at temperature of at least 75 degrees Fahrenheit; or

(D) Immerse protective eyewear for at least one minute in a clean solution (or spray tanning device acrylic surfaces and allow at least one to two minutes of surface contact time with the solution) containing any other chemical sanitizing agent registered with the EPA or FDA, and specifically manufactured for use with protective eyewear and/or tanning devices that will provide the equivalent bactericidal effect of a solution containing at least 100 ppm (parts per million) of available chlorine as a hypochlorite at temperature of at least 75 degrees Fahrenheit.

(d) A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million (ppm) shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and at least weekly thereafter to ensure sufficient strength of the sanitizing solution. If a suitable test kit is not available for an approved sanitizer, the laboratory analysis data shall be provided by the product manufacturer, and a copy be on file with the Agency. Written procedures at the facility using sanitizer shall include proper mixing and handling instructions to assure proper concentration of the sanitizer.

(e) Clean sanitary towels shall be provided to all patrons using tanning facilities.

(f) A hamper or receptacle must be provided for all soiled towels and linen.

(g) No pets or animals are permitted in tanning facilities other than seeing eye dogs or hearing assistance dogs.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0080

Training of Personnel

(1) The registrant shall certify that all tanning device operators are adequately trained in the following:

(a) The requirements of this Division; and

(b) Procedures for correct operation of the tanning facility and tanning devices; and

(c) Recognition of injury or overexposure to Ultraviolet radiation; and

(d) The tanning device manufacturer's procedures for operation and maintenance of the tanning devices; and

(e) The determination of skin type of customers and appropriate determination of duration of exposure to registered tanning devices; and

(f) Emergency procedures to be followed in case of injury; and

(g) Potential photosensitizing foods, cosmetics, and medications.

(2) The registrant shall ensure that tanning devices are operated only while an adequately trained operator is present at the tanning facility.

(3) All currently registered tanning facilities in the State of Oregon must have completed the following staff training requirements within one (1) year of registering with the agency:

(a) At least one owner, manager or operator from each tanning facility with four or less tanning devices, shall successfully complete one of the vendor-provided formal training courses authorized by the Agency.

(b) At least two operators from each tanning facility with five or more tanning devices shall successfully complete one of the vendor provided formal training courses authorized by the Agency.

(c) Training of other full or part-time operators shall be by means of an Agency-authorized and vendor-provided training course, or by materials received by an owner or primary operator from an Agency-authorized and vendor-provided training course, or by an Agency-authorized correspondence course.

(4) Staff training shall be documented by the facility owner or operator and include date and time with subjects covered in the training session for all operators.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0090

Protection of Consumers

The registrant shall establish and use a procedure manual that will aid in the protection of the consumer to excessive or unnecessary exposure to Ultraviolet Light. This manual shall include, but not be limited to, the following instructions:

(1) Only one consumer per tanning room at a time, or

(a) When two or more tanning devices are used in the same room, only those consumers using tanning devices should be present in the room, and

(b) In the case of a consumer using a tanning device who may need the aid or assistance from another person, that individual must also be provided with and wear protective eyewear.

(2) No consumer under the age of 18, without written parental consent, shall be allowed to use a tanning device. Written consent must be provided on the premises in the presence of an owner/operator, with the parent's understanding of the potential risks involved in overexposure.

(3) A sign shall be posted in conspicuous view at or near the reception area with the following text: "PERSONS UNDER AGE 18 ARE REQUIRED TO HAVE PARENT OR LEGAL GUARDIAN SIGN AUTHORIZATION TO TAN, IN THE PRESENCE OF A TANNING FACILITY OPERATOR. OAR 333-119-0090(2)."

(4) Each person using a tanning device shall be instructed by the operator on the maximum exposure time and proper exposure distance, as recommended by the manufacturer of the device. The operator shall also instruct the consumer as to the location and proper operation of the tanning device's emergency shut off switch.

(5) Infants and minors are not permitted to be in the tanning device room during exposure by parents or guardians.

(6) Tanning operators shall limit exposure time to the exposure time recommendation provided by the device manufacturer on the tanning device or in the device operating manual. The maximum exposure time recommended by the manufacturer of the device shall not be exceeded in any 24-hour period.

(7) Tanning operators shall keep a list of emergency contact numbers in view at each tanning facility. This list shall include the emergency contact numbers appropriate for the community where the facility is located. Example of emergency contacts:

(a) Nearest hospital;

(b) Nearest fire department;

(c) Emergency medical services or emergency 911 service, if available;

(d) Oregon Radiation Protection Services at (503) 731-4014.

(8) Tanning operators shall maintain a list of the common photosensitizing agents as provided by the Oregon Health Division, FDA, or other appropriate authorities, available for review by consumers.

ADMINISTRATIVE RULES

(9) Tanning facilities are prohibited from controlling the use of tanning devices solely with token timer systems.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0100

Equipment

(1) The registrant shall use only tanning devices manufactured in accordance with the specifications set forth in 21 CFR Part 1040, Section 1040.20, "Sunlamp Products and Ultraviolet Lamps Intended for Use in Sunlamp Products."

(2) Each sunlamp product or Ultraviolet Lamp used in these facilities shall not emit measurable Ultraviolet C radiation.

(3) Each Ultraviolet Lamp contained within the sunlamp product shall be shielded so as to not come into contact with the consumer. A transparent acrylic cover shall be used for this purpose.

(4) Tanning booths in which the consumer is in a standing position shall be provided with a handrail for the consumer to hold onto during operation of the booth.

(a) The construction of the booth shall be such that it will have the strength to withstand the stress of use and the impact of a falling person.

(b) Entry to stand-up booths shall be of rigid construction with doors which are non-latching and open outwardly.

(5) Each tanning device shall have, clearly marked, the appropriate position the consumer is to assume prior to operation.

(6) Each tanning device shall prominently display the following label or equivalent warning/information label:

DANGER - ULTRAVIOLET RADIATION.

FOLLOW INSTRUCTIONS CAREFULLY

DO NOT ENTER WITHOUT PROTECTIVE EYEWEAR

(7) Adequate means shall be provided to enable a consumer to summon assistance from the exposure position.

(8) All persons hired for servicing and repair of tanning devices shall be an Agency licensed service technician or State of Oregon licensed electrician.

(9) Original Equipment Manufacturer (OEM) replacement parts (or equivalent) shall be used, if available, to prevent UL/ETL delisting of tanning devices. All local, State of Oregon, and National Electrical Codes must be observed during service and repair actions.

(10) Defective or burned out tanning lamps or bulbs shall be replaced with a type intended for use in the device and shall be of the same Ultraviolet range (A or B) as the manufacturer specifies, and shall be the original lamp type as specified by the manufacturer, or certified as an equivalent lamp per 21 CFR 1040.20.

(11) If equivalent lamps are used instead of the Original Equipment Manufacturer (OEM) required lamps, a copy of the equivalency certification, provided by the lamp supplier, shall be maintained on file for review by Agency inspectors.

(12) Defective or burned out tanning lamps and tanning lamps which have been operated in a tanning device for the manufacturer's maximum rated lamp hour life, shall be disposed of in a safe and proper manner to prevent unauthorized and unsafe use as lighting devices. Used tanning lamps are prohibited from being resold for any purpose.

(13) If the Ultraviolet tanning device is not in an individual cubicle, then a suitable screen, curtain, or other shield shall be provided, maintained, and used to prevent unnecessary exposure to Ultraviolet radiation of persons not using the device.

(14) The facility operator shall ensure that consumers do not exceed the exposure time indicated by the manufacturer.

(15) Each tanning device shall have a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20 (c)(2).

(a) The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.

(b) Tanning device timers shall be controlled by a properly trained operator. A remote timer control system shall be used for this purpose.

(c) Each tanning device shall be equipped with an emergency shut-off mechanism to allow manual termination of the UV exposure by the consumer, as required by 21 CFR 1040.20(c)(3).

(16) Each timer must be functional and accurate to within $\pm 10\%$.

(17) The registrant shall ensure that the timer is checked annually for accuracy.

(18) All tanning devices shall be maintained to the minimum requirements of the manufacturer.

(19) Each tanning device shall be equipped with an hour meter to accurately determine lamp hour use and recording of maintenance service on each device.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.655, 431.930 & 431.945

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-119-0120

Advertising

(1) No person or facility shall advertise the use of any Ultraviolet A or Ultraviolet B tanning device using wording such as "Safe", "Safe Tanning", "No Harmful Rays", "No Adverse Effect", or similar wording or concepts.

(2) No person, in any advertisement, shall refer to the fact that such person, or such person's facility, is registered with the Agency pursuant to the provisions of this Division, and no person shall state or imply that any activity under such registration has been approved by the Agency.

(3) No person or facility shall advertise or promote tanning packages labeled as "unlimited".

(4) Tanning packages shall include the following written tanning guidelines for all clients:

(a) Initial tanning sessions (three to five) are limited to intervals of at least 48 hours between sessions to allow adequate time for melanin activation and transit to occur prior to subsequent exposures. The manufacturer's recommended exposure schedule posted on tanning devices or listed in the operating manual for the tanning device shall be followed by tanning operators advising new clients during initial tanning sessions.

(b) After the initial (three to five) tanning exposures, tanning sessions are limited to one tanning session per 24-hour period (or one tanning session per 48 hours on tanning devices so labeled) with consumers being properly advised of the manufacturer's recommended exposure schedule posted on tanning devices or listed in the operating manual for the tanning device.

(c) Promotion of annual tanning packages shall include a written statement listing the total number of sessions allowed per person, per year (recommendations should generally not exceed two sessions per week and the maximum of 30-50 sessions per year as recommended by the International Radiation Protection Association (IRPA) and other authorities).

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0015

Definitions

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the becquerel (Bq) and the Curie (Ci). The becquerel is equal to one disintegration per second (dps) and the Curie is equal to 3.7×10^{10} dps.

(3) "Adult" means an individual 18 or more years of age.

(4) "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(5) "Airborne radioactivity area" means a room, enclosure, or area in which the airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(a) In excess of the derived air concentrations (DACs) specified in 10 CFR 20 Appendix B; or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours present in a week, and intake of 0.6 percent of the annual limit of intake (ALI) or 12 DAC hours.

(6) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B.

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(7) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the Agency.

(8) "Bioassay" (radiobioassay) means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(9) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days, for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of these regulations, "lung class" and "inhalation class" are equivalent terms.

(10) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50- year period following the intake.

(11) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum W_T H_{T,50}$).

(12) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

(13) "Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(14) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(15) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) Release of the property for unrestricted use and termination of the license; or

(b) Release of the property under restricted conditions and termination of the license.

(16) "Deep-dose equivalent" (H_d), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of 1 cm (1000 mg/cm²).

(17) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of 10 CFR 20 Appendix B.

(18) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(19) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(20) "Dose or radiation dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent, as defined in other paragraphs of 333-120-0015.

(21) "Dose equivalent" (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(22) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(23) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(24) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(25) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(26) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(27) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(28) "Eye dose equivalent" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²). (See "lens dose equivalent").

(29) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(30) "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(31) "Individual" means any human being.

(32) "Individual monitoring" means:

(a) The assessment of dose equivalent by the use of devices designed to be worn by an individual;

(b) The assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e. DAC-hours; or

(c) The assessment of dose equivalent by the use of survey data.

(33) "Individual monitoring devices" (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(34) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(35) "Lens dose equivalent (LDE)" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

(36) "Member of the public" means any individual except when that individual is receiving an occupational dose.

(37) "Minor" means an individual less than 18 years of age.

(38) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(39) "Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, "deterministic effect" is an equivalent term.

(40) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material for medical purposes and released, from voluntary participation in medical research programs, or as a member of the public.

(41) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(42) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee, or to any other source of radiation under the control of a licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material

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for medical purposes and released, or from voluntary participation in medical research programs.

(43) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(44) "Radiation" (ionizing radiation) means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Radiation, as used in this part, does not include non-ionizing radiation, such as radio- or microwaves, or visible, infrared, or ultraviolet light.

(45) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(46) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the reference man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(47) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site.

(48) "Restricted area" means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(49) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(50) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(51) "Shallow-dose equivalent" (H_S), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2) averaged over an area of 1 square centimeter.

(52) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(53) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, "probabilistic effect" is an equivalent term.

(54) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of radioactive material and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

(55) "Total Effective Dose Equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(56) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee.

(57) "Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates.^{1/}

^{1/} At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

(58) "Weighting factor" (w_T) for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Organ Dose Weighting Factors

Organ or Tissue — w_T
Gonads — 0.25
Breast — 0.15
Red bone marrow — 0.12
Lung — 0.12
Thyroid — 0.03
Bone surfaces — 0.03
Remainder — 0.30^{a/}
Whole Body — 1.00^{b/}

^{a/} 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^{b/} For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(59) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(60) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.

(61) "Working level month" (WLM) means an exposure to 1 working level for 170 hours (2,000 working hours per year/12 months per year equals approximately 170 hours per month).

Stat. Auth.: ORS 453.605 - 453.807

Stat. Imp.: ORS 453.615, 453.625 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0017

Implementation.

(1) Any existing license or registration condition that is more restrictive than OAR 333-120 remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or registration condition exempts a licensee or registrant from a provision of OAR 333-120 in effect on or before September 1, 2002, it also exempts the licensee or registrant from the corresponding provision of OAR 333-120.

(3) If a license or registration condition cites provisions of OAR 333-120 in effect prior to September 1, 2002, which do not correspond to any provisions of OAR 333-120, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

Stat. Auth.: ORS 453.605 - 453.807

Stat. Imp.: ORS 453.615, 453.625 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0100

Occupational Dose Limits For Adults

(1) Each licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures under OAR 333-120-0150, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(A) The total effective dose equivalent being equal to 0.05 Sv (5 rem);

or

(B) The sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.5 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:

(A) A lens dose equivalent of 0.15 Sv (15 rem), and

(B) A shallow-dose equivalent of 0.50 Sv (50 rem) to the skin or to any of the extremities.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits for planned special exposures, as defined in OAR 333-100-0005(97), that the individual may receive during the current year (OAR 333-120-0150(5)(a)) and during the individual's lifetime (OAR 333-120-0150(5)(b)).

NOTE: A licensee or registrant may permit a radiation worker to receive more than 0.05 Sv (5 rem) per year TEDE or 0.5 Sv (50 rem) to the skin, extremities, or organ, or 0.15 Sv (15 rem) to the lens of the eye during a planned special exposure (PSE) only if: (a) there are no other alternatives available or practical; (b) the PSE is authorized in writing before it occurs; (c) the individuals who will be exposed are told the reason for the PSE, the dose they are expected to receive, the risks from that dose and the conditions under which they will be working (e.g. radiation or contamination levels), and how to keep their doses ALARA; (d) the licensee or registrant determines the worker's prior doses (lifetime history); (e) the total dose expected from the PSE plus any previous doses over the annual limit do not exceed the standard annual dose limits (0.05 Sv/yr (5 rem/yr) whole body, 0.5 Sv/yr (50 rem/yr) skin, extremities or

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organ, 0.15 Sv/yr (15 rem/yr) lens of eye], or five times the standard limits in the worker's lifetime; (f) the licensee or registrant maintains the appropriate records and files the appropriate reports; and (g) after the PSE, the licensee or registrant records the dose received and notifies the worker in writing of the dose received within 30 days after the PSE. The dose received from the PSE does not affect the worker's ability to receive the standard annual doses but is included in the worker's lifetime history and added to any future PSEs.

The assigned deep-dose equivalent and shallow-dose equivalent must be for the part of the body receiving the highest exposure:

(a) The deep-dose equivalent, lens dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable; or

(b) When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in 333-120-0210(1)(d) the effective dose equivalent for external radiation shall be determined as follows:

(A) When only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation; or

(B) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in D.201a the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(C) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in 10 CFR Part 20 Table 1 of Appendix B to 20.1001 to 20.2401 and may be used to determine the individual's dose (OAR 333-120-0650) and to demonstrate compliance with the occupational dose limits.

(5) In addition to the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity (see 10 CFR Part 20 footnote 3 of Appendix B to 20.1001 to 20.2401).

(6) When monitoring is required by OAR 333-120-0210 each licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person (OAR 333-120-0630(5)).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0110

Compliance with Requirements for Summation of External and Internal Doses

(1) If the licensee is required to monitor under OAR 333-120-0210(1) and (2), the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee is required to monitor only under OAR 333-120-0210(1) or only under OAR 333-120-0210(2), then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses by meeting one of the conditions specified in 333-120-0110(2) and the conditions in 333-120-0110(3) and (4).

NOTE: The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) Intake by Inhalation. If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide, or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000, or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay

data using appropriate biological models and expressed as a fraction of the annual limit.

NOTE: An organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, wT, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10 percent of the maximum weighted value of $H_{T,50}$ (i.e. $w_T H_{T,50}$) per unit intake for any organ or tissue.

(3) Intake by Oral Ingestion. If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10 percent of the applicable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(4) Intake Through Wounds or Absorption Through Skin. The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be further evaluated.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0130

Determination of Internal Exposure

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required under OAR 333-120-0210, take suitable and timely measurements of:

- Concentrations of radioactive materials in air in work areas; or
- Quantities of radionuclides in the body; or
- Quantities of radionuclides excreted from the body; or
- Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in OAR 333-120-0320 or the assessment of intake is based in bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior or the material in an individual is known, the licensee may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record; and

(b) Upon prior approval of the Agency, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (e.g. aerosol size distribution or density); and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of given radionuclide (see 10 CFR Part 20 Appendix B to 20.1001 to 20.2401) to the committed effective dose equivalent.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in 333-120-0130(1), (2) or (3), the licensee may delay the recording and reporting of the assessments for periods up to 7 months, unless otherwise required by OAR 333-120-0710 or 333-120-0720, in order to permit the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours must be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value (e.g. D, W, Y) from 10 CFR Part 20 Appendix B to 20.1001 to 20.2401 for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture must be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, licensees may disregard certain radionuclides in the mixture if:

(a) The licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in OAR 333-120-0100 and in complying with the monitoring requirements in OAR 333-120-0210(2), and

(b) The concentration of any radionuclide disregarded is less than 10 percent of its DAC, and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of one ALI, or an exposure of 2,000

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DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) When the ALI (and the associated DAC) is determined by the non-stochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) (the stochastic ALI) is listed in parentheses in 10 CFR Part 20 Table 1 of Appendix B to 20.1001 to 20.2401. In this case, the licensee may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALIs, the licensee also must demonstrate that the limit in OAR 333-120-0100(1)(a)(B) is met.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0170

Dose to an Embryo/Fetus

(1) The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, as defined in OAR 333-100-0005(30), does not exceed 5 mSv (0.5 rem). Records shall be kept in accordance with OAR 333-120-0650.

NOTE: A woman is not a declared pregnant woman unless she says so in writing without being coerced. Unless a woman, who also is a radiation worker, has declared her pregnancy as required, she is to be treated as any other radiation worker. Pursuant to Title VII of the Civil Rights Act of 1964, as amended, no employer may restrict a fertile female's job because of concern for the health of the fetus that a woman might conceive. The court held that sex-specific fetal-protection policies are forbidden. Additionally, a female worker legally can declare pregnancy if she does not yet have documented medical proof. The document, "Instruction Concerning Prenatal Radiation Exposure", discusses declared pregnancy. It is available from Oregon Health Services, Radiation Protection Services Suite 260, 800 N.E. Oregon St., Portland, OR 97202, phone 503/731-4014.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman, as defined in OAR 333-100-0005(30), so as to satisfy the limit in 333-120-0170(1).

(3) The dose equivalent to an embryo/fetus shall be taken as the sum of:

(a) The deep-dose equivalent to the declared pregnant woman, as defined in OAR 333-100-0005(30); and

(b) The dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman, as defined in OAR 333-100-0005(30).

(4) If the dose equivalent to the embryo/fetus is found to have exceeded 4.5 mSv (0.45 rem) by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with 333-120-0170(1) if the additional dose to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.

NOTE: If a pregnant radiation worker declares in writing to the licensee that she is pregnant, the dose limit to the embryo/fetus is 5 mSv (0.5 rem) during the entire pregnancy. The dose that is controlled is the dose to the embryo/fetus, not the dose to the woman, although for external penetrating radiation, the two are virtually synonymous.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0180

Dose Limits for Individual Members of the Public

(1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, exclusive of the dose contribution from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with 333-116-0260, from voluntary participation in medical research programs, and the licensee's disposal of radioactive material into sanitary sewerage in accordance with OAR 333-120-0520; and

(b) The dose in any unrestricted area from external sources does not exceed 0.02 mSv (0.002 rem) in any one hour.

(2) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee, registrant or applicant may apply for prior Agency authorization to operate up to an annual dose limit for an individual member of the public of 5 mSv (0.5 rem). The licensee, registrant or applicant shall include the following information in this application:

(a) Demonstration of the need for and the expected duration of operations in excess of the limit in 333-120-0180(1); and

(b) The licensee's or registrant's program to assess and control dose within the 5 mSv (0.5 rem) annual limit; and

(c) The procedures to be followed to maintain the dose as low as is reasonably achievable.

(4) In addition to the requirements of this Division, a licensee or registrant subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR Part 190 shall comply with those standards.

(5) The Agency may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0190

Compliance with Dose Limits for Individual Members of the Public

(1) The licensee or registrant shall make or cause to be made, as appropriate, surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in OAR 333-120-0180.

(2) A licensee or registrant shall show compliance with the annual dose limit in OAR 333-120-0180 by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(b) Demonstrating that:

(A) The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in 10 CFR Part 20 Table 2 of Appendix B to 20.1001 to 20.2401; and

(B) If an individual were continually present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.5 mSv (0.05 rem) in a year.

(3) Upon approval from the Agency, the licensee or registrant may adjust the effluent concentration values in 10 CFR Part 20 Table 2 of Appendix B to 20.1001 to 20.2401 for members of the public, to take into account the actual physical and chemical characteristics of the effluents (e.g. aerosol size distribution, solubility, density, radioactive decay equilibrium, chemical form).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0200

General

(1) Each licensee or registrant shall make or cause to be made, surveys that:

(a) Are necessary for the licensee or registrant to comply with the rules in this Division; and

(b) Are reasonable under the circumstances to evaluate:

(A) The magnitude and extent of radiation levels; and

(B) The concentrations or quantities of radioactive material; and

(C) The potential radiological hazards that could be present.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g. dose rate and effluent monitoring) are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable Division or a license condition.

(3) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees or registrants to comply with OAR 333-120-0100, with other applicable provisions of this Division or with conditions

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specified in a license must be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0210

Conditions Requiring Individual Monitoring of External and Internal Occupational Dose

Each licensee or registrant shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this Division. As a minimum:

(1) Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in OAR 333-120-0100(1); and

(b) Minors likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of any of the applicable limits in Division OAR 333-120-0160 or 333-120-0170; and

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem); and

(d) Individuals entering a high or very high radiation area.

(e) Individuals working with medical fluoroscopic equipment.

(A) An individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to 333-120-0170(1), shall be located under the protective apron at the waist.

(B) An individual monitoring device used for lens dose equivalent shall be located at the neck, or an unshielded location closer to the lens, outside the protective apron.

(C) When only 1 individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to 333-120-0100(3)(b) it shall be located at the neck outside the protective apron. When a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist. The second individual monitoring device is required for a declared pregnant woman.

(2) Each licensee or registrant shall monitor (OAR 333-120-0130) the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in 10 CFR Part 20 Table 1, Columns 1 and 2, of Appendix B to 20.1001 to 20.2401; and

(b) Minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.5 mSv (0.05 rem).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0215

Location of Individual Monitoring Devices

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with 333-120-0210(1) wear individual monitoring devices as follows:

(1) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar);

(2) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to 333-120-0170(1), shall be located at the waist under any protective apron being worn by the woman;

(3) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with 333-120-0100(1)(b)(A), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye;

(4) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with 333-120-0100(1)(b)(B), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0220

Control of Access to High Radiation Areas

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(a) A control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep-dose equivalent of 1 mSv (0.1 rem) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates;

(b) A control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(c) Entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by 333-120-0220(1) for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) A licensee or registrant may apply to the Agency for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by 333-120-0220(1) and 333-120-0220(3) in a way that does not prevent individuals from leaving a high radiation area.

(5) Control is not required for each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the U.S. Department of Transportation (49 CFR) provided that:

(a) The packages do not remain in the area longer than 3 days; and

(b) The dose rate at 1 meter from the external surface of any package does not exceed 0.1 mSv (0.01 rem) per hour.

(6) Control of entrance or access to rooms or other areas in hospitals is not required solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this Division and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

(7) The licensee or registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in 333-120-0220 if the licensee or registrant has met all the specific requirements for access and control specified in other applicable Divisions of Chapter 333, such as, 333-105 for industrial radiography, 333-106 for x-rays in the healing arts, and 333-109 for particle accelerators.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0230

Control of Access to Very High Radiation Areas

(1) In addition to the requirements in OAR 333-120-0220, the licensee or registrant shall institute additional measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rad (5 grays) or more in 1 hour at 1 meter from a radiation source or any surface through which the radiation penetrates.

(2) The licensee or registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in 333-120-0220 if the licensee or registrant has met all the specific requirements for access and control specified in other applicable divisions of chapter 333, such as, 333-

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105 for industrial radiography, 333-106 for x-rays in the healing arts, and 333-109 for particle accelerators.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0240

Control of Access to Very High Radiation Areas — Irradiators

This section applies to licensees or registrants with sources of radiation in non-self-shielded irradiators. It does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

(1) Each area in which there may exist radiation levels in excess of 5 Gy (500 rad) in 1 hour at 1 meter from a sealed radioactive source that is used to irradiate materials must meet the following requirements.

(a) Each entrance or access point must be equipped with entry control devices which:

(A) Function automatically to prevent any individual from inadvertently entering the area when very high radiation levels exist; and

(B) Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the sealed source, to be reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(C) Prevent operation of the source if the source would produce radiation levels in the area that could result in a deep-dose equivalent to an individual in excess of 1 mSv (0.1 rem) in 1 hour.

NOTE: This rule applies to radiation from accelerators, and byproduct, source, NARM, or special nuclear radioactive materials that are used in sealed sources in non-self-shielded irradiators. This rule does not apply to radioactive or x-ray sources that are used in teletherapy or medical accelerators, in radiography, or in completely self-shielded irradiators in which the source is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual. This rule also does not apply to sources from which the radiation is incidental to some other use.

(b) Additional control devices must be provided so that, upon failure of the entry control devices to function as required by 333-120-0240(1)(a):

(A) The radiation level within the area, from the sealed source, or radiation source is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(B) Conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(c) The licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the radiation source's shield or shielded storage container:

(A) The radiation level from the radiation source is reduced below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour; and

(B) Conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee/registrant or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(d) When the shield for the stored source is a liquid, the licensee or registrant shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of 333-120-0240(1)(c) and 333-120-0240(d).

(f) Each area must be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source can be put into operation and in sufficient time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source from being put into operation.

(g) Each area must be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the radiation source.

(h) Each area must be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source, the radiation level from the source in the area is below that at which it would be possible for an individual to receive a deep-dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour.

(i) The entry control devices required in 333-120-0240(1)(a) must have been tested for proper functioning. Records of required testing shall be maintained in accordance with OAR 333-120-0680.

(A) Testing must be conducted prior to initial operation with the source of radiation on any day (unless operations were continued uninterrupted from the previous day); and

(B) Testing must be conducted prior to resumption of operation of the source of radiation after any unintended interruption; and

(C) The licensee or registrant shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(j) The licensee or registrant may not conduct operations, other than those necessary to place the source in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(k) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, must be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for processed materials must be equipped to detect and signal the presence of any loose radiation sources that are carried toward such an exit and to automatically prevent loose radiation sources from being carried out of the area.

(2) Persons holding licenses or registrations or applicants for licenses or registrations for radiation sources that are within the purview of 333-120-0240(1) and that will be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with certain requirements of 333-120-0240(1), such as those for the automatic control of radiation levels, may apply to the Agency for approval of the use of alternative safety measures. Any alternative safety measures must provide a degree of personnel protection at least equivalent to those specified in 333-120-0240(1). At least one of the alternative measures must include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such radiation sources are used.

(3) The entry control devices required by 333-120-0240(1) and (2) must be established in such a way that no individual will be prevented from leaving the area.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0250

Security of Stored Material

(1) The licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

(2) The registrant shall secure registered radiation machines from unauthorized removal.

(3) The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0320

Use of Individual Respiratory Protection Equipment

(1) If the licensee uses respiratory protection equipment to limit intakes pursuant to OAR 333-120-0310:

(a) The licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA).

(b) The licensee may use equipment that has not been tested or certified by NIOSH/MSHA, has not had certification extended by NIOSH/MSHA, or for which there is no schedule for testing or certification, the licensee shall submit an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance char-

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acteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(c) The licensee shall implement and maintain a respiratory protection program that includes:

(A) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; and

(B) Surveys and bioassays, as appropriate, to evaluate actual intakes; and

(C) Testing of respirators for operability immediately prior to each use; and

(D) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(E) Determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment.

(d) The licensee shall issue a written policy statement on respirator usage covering:

(A) The use of process or other engineering controls, instead of respirators; and

(B) The routine, nonroutine, and emergency use of respirators; and

(C) The periods of respirator use and relief from respirator use.

(e) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(f) The licensee shall use equipment within limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities (such as adequate skin protection) when needed.

(2) In estimating exposure of individuals to airborne radioactive materials, the licensee or registrant may make allowance for respiratory protection equipment used to limit intakes pursuant to OAR 333-120-0310, provided that the following conditions, in addition to those in 333-120-0320(1), are satisfied:

(a) The licensee selects respiratory protection equipment that provides a protection factor (10 CFR Part 20 Appendix A to 20.1001 to 20.2401) greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in 10 CFR Part 20 Table 1, Column 3 of Appendix B to 20.1001 to 20.2401. If the selection of a respiratory protection device with a protection factor greater than the peak concentration is inconsistent with the goal specified in OAR 333-120-0310 of keeping the total effective dose equivalent ALARA, the licensee or registrant may select respiratory protection equipment with a lower protection factor only if such a selection would result in keeping the total effective dose equivalent ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than estimated, the corrected value must be used; if the exposure is later found to be less than estimated, the corrected value may be used; and

(b) The licensee shall obtain authorization from the Agency before assigning respiratory protection factors in excess of those specified in 10 CFR Part 20 Appendix A to 20.1001 to 20.2401. The Agency may authorize a licensee to use higher protection factors on receipt of an application that:

(A) Describes the situation for which a need exists for higher protection factors; and

(B) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) The licensee shall use as emergency devices only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA.

(4) The licensee shall notify the Agency, in writing, at least 30 days before the date that respiratory protection equipment is first used under the provisions of either 333-120-0320(1) or (2).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0400

Caution Signs

(1) Standard radiation symbol: Unless otherwise authorized by the Agency, the symbol prescribed by this Division shall use the colors magenta, purple, or black on yellow background. The symbol prescribed by this Division is the three-bladed design: [Symbol not included. See ED. NOTE.]

(a) Cross-hatched area is to be magenta, or purple, or black; and

(b) The background is to be yellow.

(2) Exception To Color Requirements For Standard Radiation Symbol. Notwithstanding the requirements of 333-120-0400(1), licensees and registrants are authorized to label sources, source holders, or device components containing sources of licensed materials that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(3) Additional Information On Signs and Labels. In addition to the contents of signs and labels prescribed in this Division, the licensee may provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

[ED NOTE: Symbol referenced is available from the agency.]

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0420

Exceptions to Posting Requirements

(1) A licensee is not required to post caution signs in areas or rooms containing radioactive materials for periods of less than 8 hours, if each of the following conditions is met:

(a) The materials are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials in excess of the limits established in this Division; and

(b) The area or room is subject to the licensee's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to OAR 333-120-0410 provided that:

(a) A patient being treated with a permanent implant or therapeutic radiopharmaceutical could be released from confinement pursuant to 333-116-0260 and 333-116-0265 of this Chapter; and

(b) There are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this Division and to operate within the ALARA provisions of the licensee's radiation protection program.

(3) A caution sign is not required to be posted in a room or area containing a sealed source, provided the radiation level at 30 centimeters from the surface of the source container or housing does not exceed 0.05 mSv (0.005 rem) per hour.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0430

Labeling Containers

(1) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label must also provide sufficient information (such as the radionuclide(s) present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment) to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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333-120-0450

Procedures for Receiving and Opening Packages

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in 49 CFR 173.435 Table of A1 and A2 Values for Radionuclides, shall make arrangements to receive:

- (a) The package when the carrier offers it for delivery; or
- (b) Notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee shall:

(a) Monitor the external surfaces of a labeled package for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 333-118-0020;

(b) Monitor the external surfaces of a labeled package for radiation levels; and

NOTE: Labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations, 49 CFR 172.403 and 172.436-440

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee shall perform the monitoring required by 333-120-0450(2) as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mail-gram, or facsimile, the Agency when:

(a) Removable radioactive surface contamination exceeds the limits of OAR 333-118-0150 Table 3;

(b) External radiation levels exceed the limits of OAR 333-118-0150(11).

(5) Each licensee shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees transferring special form sources in licensee-owned or licensee-operated vehicles to and from a work site are exempt from the contamination monitoring requirements of 333-120-0450(2), but are not exempt from the survey requirement in 333-120-0450(2) for measuring radiation levels, which is required to ensure that the source is still properly lodged in its shield.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0460

Testing for Leakage or Contamination of Sealed Sources

(1) The licensee in possession of any sealed source shall assure that:

(a) Each sealed source, except as specified in 333-120-0460(2) is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee; and

(b) Each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the Agency, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission; and

(c) Each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the Agency, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission; and

(d) For each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall assure that the sealed source is tested for leakage or contamination before further use; and

(e) Tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium-226, shall be capable of detecting the presence of 185 Bq (0.005 μ Ci) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces

of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position; and

(f) The test for leakage for brachytherapy sources manufactured to contain radium-226 shall be capable of detecting an absolute leakage rate of 37 Bq (0.001 μ Ci) of radon-222 in a 24 hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume and time; and

(g) Tests for contamination from radium-226 daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 185 Bq (0.005 μ Ci) of a radium daughter which has a half-life greater than 4 days.

(2) A licensee need not perform test for leakage or contamination on the following sealed sources:

(a) Sealed sources containing only radioactive material with a half-life of less than 30 days; or

(b) Sealed sources containing only radioactive material as a gas; or

(c) Sealed sources containing 3.7 MBq (100 μ Ci) or less of beta or photon-emitting material or 370 kBq (10 μ Ci) or less of alpha-emitting material; or

(d) Sealed sources containing only hydrogen-3; or

(e) Seeds of iridium-192 encased in nylon ribbon; or

(f) Sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used, and identified as in storage. The licensee shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within 6 months before the date of use or transfer.

(3) Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the Agency, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission to perform such services.

(4) Test results shall be kept in units of becquerel or microcurie and maintained for inspection by the Agency.

(5) The following shall be considered evidence that a sealed source is leaking:

(a) The presence of 185 Bq (0.005 μ Ci) or more of removable contamination on any test sample; or

(b) Leakage of 37 Bq (0.001 μ Ci) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium-226; or

(c) The presence of removable contamination resulting from the decay of 185 Bq (0.005 μ Ci) or more of radium-226.

(6) The licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with this Division.

(7) Reports of test results for leaking or contaminated sealed sources shall be made pursuant to OAR 333-120-0720(1)(e).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0520

Disposal by Release into Sanitary Sewerage

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(a) The material is readily soluble (or is readily dispersible biological material) in water; and

(b) The quantity of licensed or other radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in 10 CFR Part 20 Table 3 of Appendix B to 20.1001 to 20.2401; and

(c) If more than one radionuclide is released, the following conditions also must be satisfied:

(A) The licensee shall determine the fraction of the limit in 10 CFR Part 20 Table 3 of Appendix B to 20.1001 to 20.2401 represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in 10 CFR Part 20 Table 3 of Appendix B to 20.1001 to 20.2401; and

(B) The sum of the fractions for each radionuclide required by 333-120-0520(1)(c)(A) does not exceed unity; and

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(d) The total quantity of licensed and other radioactive material that the licensee releases into the sanitary sewerage system in a year does not exceed 185 GBq (5 Curies) of hydrogen-3, 37 GBq (1 Curie) of carbon-14, and 37 GBq (1 Curie) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material is not subject to the limitations contained in 333-120-0520(1).

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.655

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0540

Disposal of Specific Wastes

(1) A licensee may dispose of the following licensed material as if it were not radioactive:

(a) 1.85 kBq (0.05 FCi), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(b) 1.85 kBq (0.05 FCi), or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee may not dispose of tissue under 333-120-0540(1)(b) in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee shall maintain records in accordance with OAR 333-120-0670.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635, 453.655 & 453.665

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0550

Transfer for Disposal and Manifests

(1) The requirements 333-120-0550 and 10 CFR Part 20 Appendix G to 20.1001 to 20.2401 are designed to control transfers of low-level radioactive waste intended for disposal at a land disposal facility (as defined in 10 CFR Part 61), establish a manifest tracking system, and supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Each shipment of radioactive waste intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest as specified in 10 CFR Part 20 section I of Appendix G to 20.1001 to 20.2401.

(3) Each shipment manifest must include a certification by the waste generator as specified in 10 CFR Part 20 section II of Appendix G to 20.1001 to 20.2401.

(4) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in 10 CFR Part 20 section III of Appendix G to 20.1001 to 20.2401.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.655

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0560

Compliance with Environmental and Health Protection Regulations

Nothing in chapter 333 divisions 100 through 121 relieves the licensee from complying with other applicable Federal, State, and local regulations or rules governing any other toxic or hazardous properties of materials that may be disposed of under division 333-120.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0600

General Provisions

(1) Each licensee shall use the SI units Becquerel, Gray, Sievert and coulomb per kilogram, or the special units curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this Division.

(2) The licensee shall make a clear distinction among the quantities entered on the records required by this Division (e.g total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0610

Records of Radiation Protection Programs

(1) Each licensee shall maintain records of the radiation protection program, including:

(a) The provisions of the program; and

(b) Audits and other reviews of program content and implementation.

(2) The licensee shall retain the records required by 333-120-0610(1)(a) until the Agency terminates each pertinent license or registration requiring the record. The licensee shall retain the records required by 333-120-0610(1)(b) for five years or until inspected by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.625 & 453.635

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0640

Records of Planned Special Exposures

(1) For each use of the provisions of OAR 333-120-0150 for planned special exposures, the licensee shall maintain records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; and

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; and

(c) What actions were necessary; and

(d) Why the actions were necessary; and

(e) How doses were maintained ALARA; and

(f) What individual and collective doses were expected to result, and the doses actually received in the planned special exposure.

(2) The licensee shall retain the records until the Agency terminates each pertinent license or registration requiring these records.

(3) Upon termination of the license or registration, the licensee or registrant shall permanently store records on Agency Form Y or equivalent, or shall make provision with the Agency for transfer to the Agency.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0650

Records of Individual Monitoring Results

(1) Recordkeeping Requirement. Each licensee shall maintain records of doses received by all individuals for whom monitoring was required pursuant to OAR 333-120-0210 and records of doses received during planned special exposures, accidents, and emergency conditions. These records must include, when applicable:

(a) The deep-dose equivalent to the whole body, lens dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities; and

(b) The estimated intake or body burden of radionuclides (OAR 333-120-0110); and

(c) The committed effective dose equivalent assigned to the intake or body burden of radionuclides; and

(d) The specific information used to calculate the committed effective dose equivalent pursuant to OAR 333-120-0130(3); and

(e) The total effective dose equivalent when required by OAR 333-120-0110; and

(f) The total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose.

NOTE: Assessments of dose equivalent and records made using units in effect before the licensee's adoption of this Division need not be changed.

(2) Recordkeeping Frequency: The licensee shall make entries of the records specified in 333-120-0650(1) at least annually.

(3) Recordkeeping Format. The licensee shall maintain the records specified in 333-120-0650(1) on Agency Form Z, in accordance with the instructions for Agency Form Z, or in clear and legible records containing all the information required by Agency Form Z.

(4) Privacy Protection. The records required under this rule are protected from public disclosure because of their personal privacy nature. These records are protected and if transferred to the Agency, are protected under ORS 192.

(5) The licensee shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman, as defined in

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OAR 333-100-0005(30). The declaration of pregnancy shall also be kept on file, but may be maintained separately from the dose records.

(6) The licensee shall retain each required form or record until the Agency authorizes disposition.

NOTE: The following information is required on Form Z, Occupational Exposure Record for a Monitoring Period: Name; identification number and type (Social Security Number (SSN), Passport Number (PPN), Canadian Social Insurance Number (CSI), Work Permit Number (WPN), INDEX Identification Number (IND), or Other (OTH)); sex; date of birth; monitoring period; licensee name; license or registration number; is dose is official record or estimate; if dose is routine or planned special exposure; intake, list radionuclide, class, mode, total intake (Ci); external dose(s), DDE (Deep Dose Equivalent in rems), LDE (Lens Dose Equivalent in rems), SDE(WB) (Shallow Dose Equivalent Whole Body in rems), SED(ME) (Shallow Dose Equivalent Maximum Extremity in rems), CEDE (Committed Effective Dose Equivalent in rems), CDE (Committed Dose Equivalent in rems), TEDE (Total Effective Dose Equivalent in rems) and TODDE Total Organ Dose Equivalent in rems). [ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.615, 453.635 & 453.695
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0660

Records of Dose to Individual Members of the Public

(1) Each licensee shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public (OAR 333-120-0180).

(2) The licensee shall retain the records required by 333-120-0660(1) until the Agency terminates each pertinent licensee requiring the record.

NOTE: The following information is required on Form Z, Occupational Exposure Record for a Monitoring Period: Name; identification number and type of number, such as SSN; sex; date of birth; monitoring period; licensee name; license or registration number; if dose is official record or estimate; if dose is routine or planned special exposure; intakes, list radionuclide, class, mode, and total intake (Ci); external dose(s), DDE, LDE, SDE(WB), SDE(ME), CEDE, CDE, TEDE and TODDE; signature of monitored individual and date signed; certifying organization and signature.
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.615, 453.635 & 453.695
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0670

Records of Waste Disposal

(1) Each licensee shall maintain records of the disposal of licensed materials made under Divisions OAR 333-120-0510, 333-120-0520, 333-120-0530, 333-120-0540, 10 CFR Part 61, and disposal by burial in soil, including burials authorized before January 28, 1981.

(2) The licensee shall retain the records required by 333-120-0670(1) until the Agency terminates each pertinent license requiring the record.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.615, 453.635, 453.655 & 453.695
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0680

Records of Testing Entry Control Devices for Very High Radiation Areas

(1) Each licensee shall maintain records of tests made under OAR 333-120-0240(1)(i) on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(2) The licensee shall retain the records required by 333-120-0680(1) for five years or until inspected by the Agency.

Stat. Auth.: ORS 453.605 - 453.807
Stats. Implemented: ORS 453.615, 453.625, 453.635 & 453.695
Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0700

Reports of Theft or Loss of Licensed Material

(1) Telephone reports: Each licensee or registrant shall report by telephone to the Agency as follows:

(a) Immediately after its occurrence becomes known to the licensee or registrant, any lost, stolen, or missing licensed or registered device, or licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 10 CFR Part 20 Appendix C to 20.1001 to 20.2401, under such circumstances that it appears to the licensee or registrant that an exposure could result to persons in unrestricted areas; or

(b) Within 30 days after the occurrence of any lost, stolen, or missing licensed or registered device, or licensed radioactive material, becomes known to the licensee or registrant, all licensed or registered material in a

quantity greater than 10 times the quantity specified in 10 CFR Part 20 Appendix C to 20.1001 to 20.2401 that is still missing at this time.

(2) Written Reports: Each licensee or registrant required to make a report under 333-120-0700(1) shall make a written report to the Agency, within 30 days after making the telephone report, setting forth the following information:

(a) A description of the device or licensed material involved, including kind, quantity, and chemical and physical form; and

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the device or licensed material involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the material; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of a device or licensed material; and

(g) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(3) The licensee shall prepare any report filed with the Agency pursuant to 333-120-0700 so that names of individuals who may have received exposure to radiation are stated in a separate and detachable part of the report.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.750

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0710

Notification of Incidents

(1) Immediate notification: Notwithstanding any other requirements for notification, each licensee shall immediately report any event involving a device or licensed radioactive material possessed by the licensee that may have caused or threatens to cause any of the following conditions:

(a) An individual to receive:

(A) A total effective dose equivalent of 0.25 Sv (25 rem) or more; or

(B) An lens dose equivalent of 0.75 Sv (75 rem) or more; or

(C) A shallow-dose equivalent to the skin or extremities of 2.5 Gy (250 rad) or more; or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational annual limit on intake (the provisions of 333-120-0710 do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures)

(2) Twenty-four hour notification: Each licensee or registrant shall, within 24 hours of discovery of the event, report any event involving loss of control of a device or licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(a) An individual to receive in a period of 24 hours:

(A) A total effective dose equivalent exceeding 0.05 Sv (5 rem); or

(B) An lens dose equivalent exceeding 0.15 Sv (15 rem); or

(C) A shallow-dose equivalent to the skin or extremities exceeding 0.15 Sv (15 rem); or

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational annual limit on intake (the provisions of 333-120-0710 do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures).

(3) The licensee shall prepare any report filed with the Agency pursuant to 333-120-0710 so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

(4) Reports made by licensees in response to the requirements of 333-120-0710 must be made as follows:

(a) Licensees having an installed Emergency Notification System shall make the reports required by paragraphs (a) and (b) of 333-120-0710 to the NRC Operations Center in accordance with 10 CFR 50.72; and

(b) All other licensees shall make the reports required by paragraphs (a) and (b) of 333-120-0710 by telephone to the NRC Operations Center

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and by telegram, mail-gram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in appendix D to part 20.1001-20.2401.

(5) The provisions of 333-120-0710 do not include doses that result from planned special exposures, that are within the limits for planned special exposures, and that are reported under OAR 333-120-0730.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.750

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

333-120-0720

Reports of Exposures, Radiation Levels, Leak Tests, and Concentrations of Radioactive Material Exceeding the Limits

(1) Reportable events: In addition to the notification required by OAR 333-120-0710, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

(a) Any incident for which notification is required by OAR 333-120-0710; or

(b) Doses in excess of any of the following:

(A) The occupational dose limits for adults in OAR 333-120-0100; or
(B) The occupational dose limits for a minor in OAR 333-120-0160;

or

(C) The limits for an embryo/fetus of a declared pregnant woman (as defined in OAR 333-100-0005(30)) in OAR 333-120-0170; or

(D) The limits for an individual member of the public in OAR 333-120-0180; or

(E) Any applicable limit in the license; or

(c) Levels of radiation or concentrations of radioactive material in:

(A) A restricted area in excess of any applicable limit in the license;

or

(B) An unrestricted area in excess of 10 times any applicable limit set forth in this Division or in the license (whether or not involving exposure of any individual in excess of the limits in OAR 333-120-0180); or

(d) For licensee subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR Part 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

(e) Leaking or contaminated sealed sources in excess of limits in OAR 333-120-0460, shall be reported within five days to the Agency describing the equipment involved, the test results and the corrective action taken.

(f) Erroneous overexposure dosimetry reports that resulted from non-personnel exposures;

(2) Contents of reports: Each report required by 333-120-0720(1) must describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(a) Estimates of each individual's dose; and

(b) The levels of radiation and concentrations of radioactive material involved; and

(c) The cause of the elevated exposures, dose rates, or concentrations; and

(d) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license conditions; and

(e) For each individual exposed: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report.

Note: With respect to the limit for the embryo/fetus (OAR 333-120-0170) the identifiers should be those of the declared pregnant woman, as defined in OAR 333-100-0005(30).

(3) All licensees who make reports under 333-120-0720(1) shall submit the report in writing to the Agency.

(4) The Agency shall prohibit the removal or expungement of any permanent dosimetry report submitted to the licensee or registrant. Evaluated erroneous personnel dose record changes to licensee or registrant records shall be recorded only on Form Z and retained by the licensee or registrant.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.615, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04

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Adm. Order No.: PH 37-2004

Filed with Sec. of State: 12-7-2004

Certified to be Effective: 12-7-04

Notice Publication Date: 10-1-04

Rules Adopted: 333-024-0241

Rules Amended: 333-024-0210, 333-024-0215, 333-024-0220, 333-024-0225, 333-024-0230, 333-024-0231, 333-024-0232, 333-024-0235, 333-024-0240

Rules Repealed: 333-024-0210(T), 333-024-0215(T), 333-024-0220(T), 333-024-0225(T), 333-024-0230(T), 333-024-0231(T), 333-024-0232(T), 333-024-0235(T), 333-024-0240(T), 333-024-0241(T)

Subject: Retroactively amends 333-024-0210, 333-024-0215, 333-024-0220, 333-024-0225, 333-024-0230, 333-024-0231, 333-024-0232, 333-024-0235, 333-024-0240 and adopts 333-024-0241 relating to testing for metabolic diseases. These rule changes were previously submitted to the Secretary of State's office and became effective on October 4, 2002. Excepting one new rule regarding the effective date, these rules are identical to the rules previously filed with the Secretary of State's office on October 4, 2002.

The amendments increased the number of disorders for which Oregon newborns are screened and modified the methods which are used; clarified guidelines for follow-up of infants when specimens are collected improperly or too early; and increased the test fee to cover the costs of the additional testing.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-024-0210

Infants Tested for Metabolic Diseases

No later than November 1, 2002, every newborn infant in Oregon shall be tested for at least the following Metabolic Diseases by the state public health laboratory:

(1) Phenylketonuria;

(2) Maple Syrup Urine Disease;

(3) Galactosemia;

(4) Hypothyroidism;

(5) Abnormal Hemoglobin;

(6) Biotinidase Deficiency;

(7) Amino Acid Disorders:

(a) Tyrosinemia (types I and II);

(b) Homocystinuria;

(8) Urea Cycle Disorders:

(a) Citrullinemia;

(b) Argininosuccinate lyase deficiency (ASA);

(9) Organic Acidemias:

(a) Isovaleryl-CoA dehydrogenase deficiency (Isovaleric acidemia);

(b) 3-methylcrotonyl-CoA carboxylase deficiency;

(c) 3-methylglutaconyl-CoA hydratase deficiency;

(d) 3-hydroxy-3-methylglutaryl-CoA lyase deficiency;

(e) Propionic acidemia (PA);

(f) Methylmalonic acidemia (MMA).

(10) Fatty Acid Oxidation Disorders:

(a) Very long chain acyl-CoA dehydrogenase deficiency (VLCADD);

(b) long chain L-3 hydroxyacyl-CoA dehydrogenase deficiency (LCHADD);

(c) Medium chain acyl-CoA dehydrogenase deficiency (MCADD);

(d) Short chain acyl-CoA dehydrogenase deficiency (SCADD);

(e) Glutaric aciduria, Type I (glutaryl-CoA dehydrogenase deficiency);

(f) Glutaric aciduria, Type II (multiple acyl-CoA dehydrogenase deficiency (MADD));

(g) Carnitine acylcarnitine translocase deficiency (CT);

(h) Carnitine palmitoyl transferase II deficiency (CPT II). In addition,

no later than July 1, 2003, every newborn infant in Oregon shall be tested for congenital adrenal hyperplasia (CAH).

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; HD 28-1994, f. 10-28-1994, cert. ef. 11-1-94; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0215

Person Responsible for Submitting Specimens for Metabolic Diseases

(1)(a) The person responsible for assuring that the specimen is submitted for testing the infant for Metabolic Diseases, shall be in order of responsibility:

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(A) The hospital, alternate birthing facility, or other health care facility licensed under ORS 441, or if the infant is not in such a facility;

(B) The practitioner, or if no practitioner is in attendance;

(C) The parent or legal guardian.

(b) For purposes of this section and OAR 333-024-0225, in the case of infants entering a health care facility before 48 hours of age as a result of transfer from another health care facility or from out-of-hospital birth, the receiving health care facility shall be responsible for the timely collection of specimens.

(2) The state public health laboratory may perform tests for certain Metabolic Diseases for patients from outside Oregon.

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0220

Manner of Submitting Specimens

(1) All specimens submitted to the state public health laboratory for testing for Metabolic Diseases shall be collected using kits available from the state public health laboratory according to procedures, protocols, and shipping instructions specified in the Guide to Services maintained by the state public health laboratory. The manual may be reviewed at or copies obtained from the state public health laboratory.

(2) Specimens collected for testing for Metabolic Diseases shall be sent to the state public health laboratory within 24 hours of collection.

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

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0225

Time of Collecting Specimens for Testing Infants

A specimen for testing for Metabolic Diseases shall be collected within ten days after birth from every infant surviving more than two days, as follows:

(1) In the case of infants born outside a hospital or other health care facility and of infants who will remain in the hospital or health care facility for 48 hours or more, a specimen shall be collected after 48 hours but before ten days after birth, preferably between 72 and 96 hours after birth. A second specimen shall be collected after 14 days but before two months of age.

(2) In the case of infants discharged from a hospital or other health care facility before 48 hours of age, a specimen shall be collected within eight hours prior to discharge from the facility, and a second specimen shall be collected from such infants after 72 hours but before 15 days after birth.

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0230

Methods of Testing

(1) Infants shall be tested for Metabolic Diseases by methods approved by rule of the Department. The following laboratory procedures are approved. No other method shall be approved unless it meets or exceeds these methods in respect to specificity, sensitivity, and precision of the assay. Persons wanting amendment of this rule to include another method must provide technical data to the state public health laboratory showing to the satisfaction of the state public health laboratory that the proposed method meets or exceeds the approved methods in these respects.

(2) Laboratory methods for detecting Metabolic Diseases shall be performed upon dried blood specimens and be as follows.

(3) Phenylketonuria: Bacterial Inhibition Assay for phenylalanine or tandem mass spectrometry.

(4) Maple Syrup Urine Disease: Bacterial Inhibition Assay for leucine or tandem mass spectrometry.

(5) Galactosemia: Enzyme immunoassay or fluorescent immunoassay for the presence or absence of detectable galactose uridyl transferase in erythrocytes and/or galactose.

(6) Hypothyroidism: Radioimmunoassay, enzyme immunoassay or fluorescent immunoassay of thyroxine (T4), and of thyroid stimulating hormone (thyrotropin or TSH).

(7) Abnormal Hemoglobin: Screening by Isoelectric Focusing and confirmation by High Pressure Liquid Chromatography to detect hemoglobin variants.

(8) Biotinidase Deficiency: Colorimetric assay for biotinidase activity.

(9) Congenital Adrenal Hyperplasia (CAH): Radioimmunoassay, enzyme immunoassay or fluorescent immunoassay of 17-alpha hydroxyprogesterone (17-OHP).

(10) Additional Amino Acid Disorders: Tandem mass spectrometry.

(11) Urea Cycle Disorders: Tandem mass spectrometry.

(12) Organic Acidemias: Tandem mass spectrometry.

(13) Fatty Acid Oxidation Disorders: Tandem mass spectrometry.

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; HD 28-1994, f. 10-28-1994, cert. ef. 11-1-94; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0231

Procedures for Follow-Up of Samples Administered Too Early, Improperly Collected, and Those That Show Abnormal Results

The purpose of this rule is to establish procedures to be followed by the state public health laboratory in cases where initial testing of metabolic diseases is administered too early to detect these diseases, where the sample submitted for testing is improperly collected, and where a sample shows an abnormal result:

(1) Initial testing administered too early. The state public health laboratory will maintain an ongoing system of monitoring, which will identify the time period during which each newborn infant has had a sample taken and submitted for testing.

(2) Improperly collected samples. Where samples contain insufficient blood or are contaminated (refer to Newborn Screening Specimen Collection in the state public health laboratory's Guide to Services), a repeat sample will be requested. A letter and a collection kit will be mailed to the health care provider who submitted the original specimen within two working days after receiving the sample. If there is no response after ten working days, the state public health laboratory will send a follow-up letter. If there is no response within ten working days after the second letter, a registered letter will be sent indicating that the state public health laboratory will no longer be tracking that infant.

(3) Samples that show abnormal results. The state public health laboratory will refer abnormal results to the screening program's medical consultants. Reports of abnormal findings will be made by the medical consultants to individual health care providers. Requests for repeat or follow-up samples will be made through the medical consultants by letter or telephone call, depending upon the urgency of the situation. The state public health laboratory will be informed of the final resolution or confirmation of each case by the medical consultants to ensure timely and complete follow-up.

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

Stat. Auth.: ORS 433.285

Stats. Implemented: ORS 433.285

Hist.: HD 6-1985, f. 4-26-85, ef. 5-1-85; HD 10-1986, f. & ef. 6-11-86; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0232

Demographic Data

The state public health laboratory will maintain demographic data records on newborn infants to be used for the purposes of monitoring statistical trends and screening practices in hospitals, birthing facilities, and individual practices. This monitoring will enable the state public health laboratory to:

(1) Identify facilities and health care providers that submit inadequate samples;

(2) Evaluate the overall effectiveness of the screening program;

(3) Monitor and ensure timely and complete follow-up; and

(4) Ensure that the most effective newborn screening program for the State of Oregon will be maintained.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433.285 & 433.290

Hist.: HD 6-1985, f. 4-26-85, ef. 5-1-85; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

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333-024-0235

Religious Exemption from Testing

(1) A religious exemption from testing for Metabolic Diseases may be claimed if the infant is being reared as an adherent to in a religion the teachings of which are opposed to such testing.

(2)(a) In the event a religious exemption is claimed from the requirements for testing for Metabolic Diseases, the person otherwise responsible for submitting the specimen for testing shall be responsible for submitting a completed statement to the state public health laboratory signed by the infant's parent using the following language:

STATEMENT OF RELIGIOUS EXEMPTION
The undersigned parent of _____ states that this child is exempt from testing for detection of METABOLIC DISEASES in that the child is being reared as an adherent to a religion the teachings of which are opposed to such testing.

(parent's signature)

(date)

(b) The completed statement in subsection (a) of this section may be made on the reverse side of the original specimen identification form which otherwise accompanies the dried blood specimen used to test the infant for Metabolic Diseases.

Stat. Auth.: ORS 431
Stats. Implemented: ORS 433.285
Hist.: HD 18-1981(Temp), f. & ef. 9-11-81; HD 3-1982, f. & ef. 2-25-82; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; HD 8-1991, f. & cert. ef. 6-19-91; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0240

Fees

(1)(a) The person responsible for submitting specimens for those tests performed on specimens received in the state public health laboratory on or after April 1, 1998, shall pay a test fee upon billing by the Department, in accordance with the following schedule:

- (A) Mycology/virus serology — \$20.30;
- (B) Virus isolation — \$35;
- (C) Reference test — \$40;
- (D) Blood lead — \$10;
- (E) Chlamydia — \$7;
- (F) Hepatitis B pre- or post-vaccine screen — \$3;
- (G) HIV antibody screen — \$12;
- (H) HIV confirmation — \$40;
- (I) Hepatitis acute panel — \$40;
- (J) Hepatitis B carrier status panel — \$40;
- (K) Hepatitis B contact panel — \$27.30;
- (L) Hepatitis B infant of HBsAg positive mother — \$27.30;
- (M) Rule out flu culture — \$15;
- (N) Syphilis screen — \$5;
- (O) Syphilis FTA-AB(DS) — \$12;
- (P) Syphilis VDRL CSF — \$7;
- (Q) Virus special test — \$25.

(b) Public and private non-profit agencies may apply for a reduction or waiver of the test fees stated in section (1)(a) of this rule. Reduction or waiver requests must be sent to the Director of the state public health laboratory and be accompanied by proof of non-profit status. Requests should include estimated number and type of tests anticipated per year. The decision to reduce or waive fees is discretionary with the state public health laboratory.

(2) For Metabolic Disease Test kits purchased by prepayment on or after October 14, 2002:

- (a) \$27 per specimen; or
- (b) \$54 per two-specimen kit.

(3) Specimens which are submitted in an inadequate quantity or any unsatisfactory condition shall be subject to the fee of \$5 per repeat specimen except for metabolic screening specimens, which may be subject to a charge of \$27 per specimen. Additional specimens from the same infant or patient specifically required or requested by the state public health laboratory, but not because the original specimen was inadequate or unsatisfactory, shall be exempt from additional fees.

(4)(a) The state public health laboratory may provide kits upon request to persons authorized to submit specimens to the state public health laboratory. The state public health laboratory shall bill for the performance of other tests in accordance with the fees stated in sections (1) and (3) of this rule;

(b) Kits requested for testing for Metabolic Diseases shall be prepaid by the requestor in the amount as specified in section (2) of this rule. Kits must be requested in writing and the request must be accompanied by a check or money order for the full amount of the order;

(c) No Oregon infant shall be denied testing for Metabolic Diseases because of inability of the infant's parent to pay the fee for a test or kit:

(A) A practitioner or parent requesting exemption from fees shall complete a statement such as the following:

STATEMENT OF FEE EXEMPTION

The undersigned states that the parents of _____ are unable to pay the fee for testing for METABOLIC DISEASES because of lack of sufficient funds.

(parent's signature)

(date)

(B) The above completed statement shall be made either:

(i) On the original specimen identification form which accompanies the dried blood specimen used to test the infant for Metabolic Diseases; or

(ii) On a listing of exempt infants which listing shall include each infant's name and birth date, the name of the parent or practitioner, and date;

(iii) Exemption statements must be received within one year of the first metabolic screening.

(C) Upon receipt of the statement in paragraph (4)(c)(A) of this rule, and confirmation of Department records, the Department will issue a refund check. The Department will replace or refund fees for kits, damaged or unused, which are returned to the laboratory. By special arrangement, credits may be issued.

(5) Specimens submitted to the state public health laboratory for the diagnosis of the reportable communicable diseases identified in OAR 333-018-0005(1) and (2) are not subject to the fees specified in these rules. For tests performed for or on behalf of Oregon state or local government agencies, as determined by the Administrator to have a significant public health impact, a lesser fee, calculated to recover costs, may be charged.

(6) All specimens submitted to the state public health laboratory shall be collected according to procedures, protocols, and shipping instructions specified in the Oregon State Public Health Laboratory's Guide to Services. The guide may be reviewed at or copies obtained from the state public health laboratory.

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

Stat. Auth.: ORS 431.310 & 433.285
Stats. Implemented: ORS 431.310 & ORS 433.285
Hist.: HB 18-1981(Temp), f. & ef. 9-11-81; HB 3-1982, f. & ef. 2-25-82; HD 12-1982, f. 6-11-82, ef. 7-1-82; HD 27-1982(Temp), f. 12-15-82, ef. 12-16-82; HD 9-1983, f. 6-24-83, ef. 7-1-83; HD 11-1983(Temp), f. & ef. 7-11-83; HD 17-1983, f. & ef. 10-12-83; HD 10-1986, f. & ef. 6-11-86; HD 7-1987, f. & ef. 7-15-87; HD 12-1990, f. & cert. ef. 5-22-90; HD 8-1991, f. & cert. ef. 6-19-91; HD 28-1994, f. 10-28-1994, cert. ef. 11-1-94; HD 12-1997, f. 9-26-97, cert. ef. 10-1-97; OHD 3-1998, f. 3-31-98, cert. ef. 4-1-98; OHD 15-2002, f. & cert. ef. 10-4-02; PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

333-024-0241

Effective Date

The effective date for rules 333-024-0210, 333-024-0215, 333-024-0220, 333-024-0225, 333-024-0230, 333-024-0231, 333-024-0232, 333-024-0235, 333-024-0240 and 333-024-0241 shall be October 4, 2002.

Stat. Auth.: ORS 431.310 & 433.285
Stats. Implemented: ORS 431.310 & 433.285
Hist.: PH 30-2004(Temp), f. & cert. ef. 9-17-04 thru 3-13-05; PH 37-2004, f. & cert. ef. 12-7-04

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

Adm. Order No.: SPD 33-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 411-335-0010, 411-335-0020, 411-335-0030, 411-335-0040, 411-335-0050, 411-335-0060, 411-335-0070, 411-335-0080, 411-335-0090, 411-335-0100, 411-335-0110, 411-335-0120, 411-335-0130, 411-335-0140, 411-335-0150, 411-335-0160, 411-335-0170, 411-335-0180, 411-335-0190, 411-335-0200, 411-335-0210, 411-335-0220, 411-335-0230, 411-335-0240, 411-335-0250, 411-335-0260, 411-335-0270, 411-335-0280, 411-335-0290, 411-335-0300, 411-335-0310, 411-335-0320, 411-335-0330, 411-335-0340, 411-335-0350, 411-335-0360, 411-335-0370, 411-335-0380, 411-335-0390

Subject: Chapter 411, Division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities has been per-

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manently adopted effective 01/01/2005. These rulemaking actions are being taken to:

- a) Adopt rules governing Proctor Care Residential Services for Individuals with Developmental Disabilities;
- b) Implement system to provide consistent guidelines for practice and monitoring of Proctor Care.
- c) Strengthen the Departments ability to take sanctioning activities.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-335-0010

Statement of Purpose and Statutory Authority

PURPOSE. These rules prescribe administrative, policy, procedure, documentation, and personnel requirements for Proctor agencies providing intensive, child focused services to children with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment, to make positive changes in his or her adaptive skills that will enable him or her to move to a less restrictive setting. These rules also prescribe standards and procedures by which the Department of Human Services certifies programs to safely operate and oversee Proctor care homes, and provide training and support to children with developmental disabilities.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0020

Definitions

- (1) "Abuse" means:
 - (a) Abuse of a child is defined in ORS 418.005, 419B.005. 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, which are deliberately inflicted;
 - (C) Neglect including, but not limited to, failure to provide food, shelter, 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 411-325-0020(1)(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 proctor provider 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, supervi-

sion, 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 BSP.

(D) An inappropriate, unauthorized restraint resulting in injury.

(i) A restraint 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 restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without ISP team approval as identified on the ISP and is described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if 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 his/her 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 411-325-0020 (1)(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 to provide Proctor Care for children with developmental disabilities.

(H) The definitions of abuse described in OAR 411-325-0020 (2)(c)(A-F) also apply to staff of the CMHDDP or a Support Services Brokerage.

(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 placing a medication in, or on, an individual's body by a person who is responsible for the individuals care.

(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) "Advocate" means a person other than paid staff who has been selected by the individual and by the individual's guardian 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.

(7) "Agency Staff" means a person responsible for providing services to children in proctor care, and whose wages or fees are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(8) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed or certified provider may petition the suspension, denial or revocation of their license or certifi-

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cate or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensive child focused contracted services to children with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(11) "Baseline Level of Behavior" means the frequency, duration or intensity of a behavior, objectively measured, described and documented prior to the implementation of an initial or revised behavior support plan. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior should be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(12) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident reports for each episode of physical intervention, only in circumstances when the physical intervention implemented is:

(a) The Oregon Intervention System (OIS) defined technique of evasion; or

(b) For episodes of physical positioning, as defined in 411-325-0020(60).

(14) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment and teach new skills.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individual while at the proctor home to assure their health, safety and welfare. "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(17) "Child" means an individual under the age of 18 and who has a provisional eligibility determination of developmental disability.

(18) "Choice" means the individual's and guardian'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 Developmental Disability Program Director" means the director of a community mental health and developmental disability program which 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 County Financial Assistance Contract with the Department of Human Services.

(21) "Competency Based Training Plan" means a written description of the agency's process for providing training to newly hired agency staff and proctor providers. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan will describe competencies; training methods; timelines; how competencies of staff are determined and documented, including steps for remediation; and when a competency(ies) may be waived by the agency to accommodate a staff person's or proctor provider's specific circumstances.

(22) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken

an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(23) "Condition" means a provision attached to a new or existing certificate, which limits or restricts the scope of the certificate or imposes additional requirements on the agency or proctor provider.

(24) "Contracting Entity" means the CDDP or agency contracting with the Department.

(25) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS. 427 and an 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.

(26) "Denial" is the refusal of the Department of Human Services to issue a certificate to operate a residential home/facility for individuals because the Department has determined that the home/facility is not in compliance with one or more of these administrative rules.

(27) "Department" means Department of Human Services (DHS), Seniors and People with Disabilities (SPD), 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.

(28) "Developmental Disability" for adults 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 individual to function in society; and

(d) The condition or impairment must not otherwise primarily be 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 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.

(29) "Developmental Disability" for children five years and younger means 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; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: Self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-320-0020(21).

(30) "Developmental Disability" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation; or

(b) There is a diagnosis of developmental disability; and

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; and

(B) The condition or impairment must be expected to last indefinitely and 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; and

(C) The individual is expected to need multiple, specialized supports indefinitely.

(31) "Direct Nursing Services" means the provision of child-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality

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assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(32) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(33) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule entry means admission to a certified proctor provider home.

(34) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of the programs services for individuals.

(35) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within the agency.

(36) "Foster Care" for the purpose of this rule means 24-hour substitute care for children in a certified foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the Proctor Agency.

(37) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(38) "Guardian" means a parent for individuals under the age of 18 years or a person or agency appointed by the courts that is authorized by the court to make decisions about services for the individual.

(39) "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.

(40) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual, and written by the proctor provider or agency representative involved in or witnessing the incident.

(41) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(42) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(43) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(44) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for the individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(45) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, the foster provider, agency representatives who provide service to the individual if appropriate for in-home supports, the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(46) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together having 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. (See ORS 427.005.)

(47) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian.

(48) "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 Services Coordinator, or advocacy agencies will be considered as one member of the ISP team for the purpose of reaching majority agreement.

(49) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reason-

able 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.

(50) "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.

(51) "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.

(52) "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.

(53) "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.

(54) "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 these needs will be met. It includes which tasks will be taught or delegated to the provider and staff.

(55) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(56) "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.

(57) "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.

(58) "Physical restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(59) "Prescription Medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(60) "Proctor Agency" means an entity certified by the Department of Human Services to provide contracted and supervised services in foster homes.

(61) "Proctor Care" means a comprehensive residential program certified by the Department of Human Services, that provides intensive child focused contracted foster care, training, and support to children with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(62) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(63) "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.

(64) "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.

(65) "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, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(66) "Respite Care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(67) "Revocation" is the action taken to rescind a proctor provider home or agency certificate after the Department has determined that the

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program is not in compliance with one or more of these administrative rules.

(68) "Self-Administration of Medication" means without supervision, 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 or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s).

(69) "Services Coordinator" means an employee of the CDDP or other agency which contracts with the County or Department, who is selected to plan, produce, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities as long as the Department holds the direct contract with the Proctor Agency.

(70) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

(71) "Significant Other" means a person selected by the individual and guardian to be his/her friend.

(72) "Specialized 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.

(73) "Support" means those services that assist the individual in maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence. Support also includes services the Proctor Agency provides to its contracted proctor providers. Provider support can include respite, individualized training, and consultation.

(74) "Suspension of Certificate" is an immediate withdrawal of the approval to operate a proctor provider home or agency when the Department determines that there is imminent danger to the health or safety of the individuals served.

(75) "Transfer" means movement of an individual from one proctor home to another within the same agency.

(76) "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 assure health and safety, and the assessments and consultations necessary for the ISP development.

(77) "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.

(78) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the proctor provider or agency.

(79) "Volunteer" is any person assisting in a proctor home or the agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0030

Program Management and Personnel Practices

(1) Non-discrimination. The agency must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The agency must have and implement personnel policies and procedures, which address suspension, increased supervision, or other appropriate disciplinary employment

procedures when an agency staff member, or subcontractor, including respite providers and volunteers, has been identified as an alleged perpetrator in an abuse investigation or when the allegation of abuse has been substantiated.

(3) For investigations conducted by the Department in homes certified as Proctor Provider Care Agency homes for individuals, the definitions of abuse of an adult described in OAR 411-320-0020(2)(b)(A-E) shall apply.

(4) Prohibition against retaliation. The agency must not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctors providers who report in good faith suspected abuse, or retaliate against the individual in care, with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program or person that 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, will be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence 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 individual or adult because of the report and includes, but is not limited to:

(A) Discharge or transfer from the program, 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 program or the individuals served by the program.

(5) Responsibilities of Proctor Agency. The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure provider payment and agency support is commensurate to the support needs of individual children in the proctor home. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to: respite care in the proctor providers home during day hours only, respite care in the home of someone other than the proctor provider for day time only, overnight care in the proctor providers home, and overnight care at someone other than the proctor providers home.

(d) Implement policies and procedures to assure confidentiality of child and family information.

(e) Implement policies and procedures to review and document each individual's continued need for proctor care services. Policies and procedures must include frequency of review and the criteria as listed below.

(A) The child does not require a formal BSP based on the Children's Risk Tracking Record (CRTR).

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) Assure that preliminary certification work is completed per individual foster care statutes and OAR chapter 411, division 346 and that it is

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submitted to Department of Human Services Seniors and People with Disabilities for final approval.

(g) Provide and document training and support to agency staff, proctor provider, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(h) Provide and document training and support to the agency staff, proctor provider, subcontractors, volunteers, and respite providers to implement the ISP, Children's Risk Tracking Record, protocols and BSP for each individual served.

(i) Have a plan for emergency back-up including but not limited to, use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(j) Coordinate and document entries, exits, and transfers.

(k) Report to the Department, and the CDDP, any placement changes due to a crisis plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(l) Assure that each proctor provider has a current emergency disaster plan on file in the proctor provider home and in the agency office.

(6) General Requirements for Safety and Training. All proctor providers, respite providers, babysitters, agency staff and volunteers providing unsupervised direct support for individuals, except for those providing services in a crisis situation must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS Certification is required if physical restraint is most likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that restraint will be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age, and have a valid social security card.

(f) Be cleared by a Criminal History Check, which includes a DHS Child Welfare Check.

(g) Have a valid Oregon Driver's License, and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(7) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) Proctor Providers:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411-335 and chapter 411, division 346.

(b) Skills Trainers, Advisors, or other Agency Staff

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, division 335 and chapter 411, division 346.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved Criminal History Clearance and Child Welfare background check per OAR chapter 410, division 007.

(D) Must assure health and safety guidelines for alternative caregivers, including but not limited to:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for a child in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the child's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents the individuals from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms will never be carried in any vehicle while it is being used to transport a child.

(vii) First aid supplies must be available in the home and in the vehicles that will be used to transport children.

(c) Respite Providers

(A) In Proctor Provider Home — Day or Night

(i) Must be trained on basic health needs of the children.

(ii) Must be trained on basic safety in the home including, but not limited to first aid supplies, the emergency plan, and the fire evacuation plan.

(B) In other than Proctor Provider Home — Day or Night. Must assure health and safety guidelines for alternative caregivers, including, but not limited to:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for a child in respite must be finished, attached to the house, and not a common living area, storage area, closet, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the child's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents the children from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms will never be carried in any vehicle while it is being used to transport a child.

(vii) First aid supplies must be available in the home and in the vehicles that will be used to transport children.

(d) Alternate Care Givers:

(A) Day Care, Camp. When a child is cared for by a childcare provider, camp, or child care center, the Proctor agency must assure that the camp, provider home or center is certified, licensed, or registered as required by the State Individual Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, childcare center, or childcare provider home.

(B) Social Activities for less than 24 hours, including overnight arrangements.

(i) Proctor Agency must assure the person providing care is capable of assuming child care responsibilities, and will be present at all times.

(ii) Proctor Agency must assure that the ISP team is in agreement with the planned social activity.

(iii) Proctor agency must assure that the proctor provider maintains back-up responsibilities for the child.

(8) General Crisis Requirements for Children already in Proctor Agency Homes.

(a) Crisis Service Providers must:

(A) Be 18 years of age.

(B) Have approval to work based on current Department policies and procedures for review of criminal history per Oregon Administrative Rules Chapter 410, Division 007 prior to supervising any child. Criminal History Check and Individual Welfare check must be completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individuals needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The Agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the child's and provider support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(9) Mandatory abuse reporting personnel policies and procedures. Proctor agency staff and caregivers are mandatory child abuse and neglect reporters under Oregon State law (ORS 419B.005). Upon reasonable cause to believe that abuse or neglect has occurred, all members of the household and any proctor provider, employees, independent contractors or volunteers must report pertinent information to DHS-CW or law enforcement. For reporting purposes the following will apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers shall be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

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(10) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of experience in the identified fields may be substituted for a degree.

(11) Proctor agency staff and proctor providers, including subcontractors and volunteers qualifications. Any agency staff including skill trainers, respite providers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age, and have a valid social security card.

(b) Have approval to work based on current Department policies and procedures for review of Criminal History Check per OAR chapter 410, division 007.

(c) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, Services Coordinators and appropriate others, and be able to respond to emergency situations at all times.

(d) Have met the basic qualification in the agency's training plan.

(12) Personnel files and qualification records. The agency must maintain clear, written, signed, and up to date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee. The record must include the following.

(a) Written documentation that references and qualifications were checked.

(b) Written documentation of an approved Criminal History Check clearance by the Department.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any substantiated abuse allegations.

(e) Written documentation kept current that the agency staff person has successfully completed competency-based training in areas identified by the agency's training plan as required by Oregon Core Competency Rule in OAR 411.325 and 411-335 and that is appropriate to their job description.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the certification standards as written in the child foster certification OAR 411.325 and 411-335 and Child Welfare administrative rules, chapter 413, divisions 200 and 220.

(13) Agency documentation requirements. All documentation required by this rule, OAR 411-335, must:

(a) Be prepared at the time, or immediately following the event being recorded.

(b) Be accurate and contain no willful falsification.

(c) Be legible, dated and signed by the person(s) making the entry.

(d) Be maintained for no less than three years.

(e) Be made readily available for the purposes of inspection.

(14) Dissolution of agency. Prior to the dissolution of an agency, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangement for the transfer of individual's records.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007,430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0040

Safety: Staffing Requirements

General Staffing Requirements. Each proctor agency must assure that the appropriate number of agency staff, proctor providers, respite providers and support staff are available to meet the safety needs and identified ISP goals for individuals served.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007,430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0050

Issuance of Certificate

(1) Certificate. No person, agency or governmental unit acting individually or jointly with any other person, agency or governmental unit will establish, conduct, maintain, manage or operate Department funded Proctor Services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) Not transferable. No certificate is transferable or applicable to any other agency, management agent or ownership other than that indicated on the application and certificate.

(3) Terms of certificate. The Department will issue a certificate to an agency found to be in compliance with these rules. The certificate will be in effect for two years from the date issued unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with Seniors and People with Disabilities OAR for Children's Foster provider homes: 411-346-0100 through 311-346-0240.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007,430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0060

Application for Initial Certificate

(1) Application. At least 30 days prior to anticipated certification the agency must submit an application. The application will be provided by the Department and must include all information requested by the Department.

(2) Number of homes and children. The agency must identify the number of homes and children the agency is presently capable of managing at the time of application, considering ancillary service capability and the requirements as specified by these rules. For purposes of certification renewal, the number of homes to be certified and the number of children to be served must not exceed the number identified on the certificate to be renewed unless approved by the Department.

(3) Certification required prior to providing services. Agency must not recruit, train, perform preliminary certification activities or provide any proctor services prior to receiving a written confirmation of Proctor Agency Certification from the Department.

(4) Demonstrated Capability and Performance History:

(a) If an agency fails to provide complete, accurate, and truthful information during the application and certification process, the Department may cause initial certificate to be delayed, or may deny or revoke the certificate.

(b) Any applicant or person with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such agency for purpose of certification.

(c) The Department may consider the background and operating history of the agency and each person with a controlling ownership interest when determining whether to issue certificate.

(d) When an application for initial certification is made by an agency who manages, owns or operates other certified services or licensed facilities in Oregon, the Department may deny the certificate if the agency's existing home(s) or facility(ies) are not, or have not been, in substantial compliance with the Oregon Administrative Rules.

(5) Admittance of individuals:

(a) No proctor agency or home contracted with the proctor agency will admit children to a home whose care needs or age, exceed the home's certificate including conditions on the certificate, without prior written consent of the Department.

(b) No proctor agency or home contracted with the proctor agency will admit or continue to serve children whose numbers exceed the numbers on the proctor provider's Child Foster Home Certificate.

(c) No proctor agency or home contracted with the proctor agency, will admit or continue to provide proctor services to children who can be safely and appropriately supported in foster care, if available, or the individual's family home, as outlined in this OAR 411-335-0030(5)(e)(A-H).

(d) No proctor agency or home contracted with the proctor agency will admit a child from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior approval from both placing agencies.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007,430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0070

Certificate Expiration, Termination of Operations, Certificate Return

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a proctor agency will expire two years following the date of issuance.

(2) Termination of operation.

(a) If the agency operation is discontinued for any reason, the certificate will be automatically terminated.

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(b) Each certificate will be considered void immediately if the operation is discontinued by voluntary action of the agency or if there is a change in ownership.

(3) Return of certificate. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when the operation is voluntarily or involuntarily discontinued.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0080

Renewal of Certification

(1) Renewal application required. A certificate is renewable upon submission of an application to the Department.

(2) Filing of application extends date of expiration. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application is not submitted prior to the expiration date, the agency will be considered as not certified to provide Proctor Care Services for individuals with developmental disabilities funded by the Department.

(3) Certification review. The Department will conduct a certification review of the agency and agency services prior to the renewal of the certificate. The review may be unannounced, may be conducted prior to expiration of the certificate and will review compliance with OAR chapter 411, division 335 and where appropriate, chapter 411, division 346.

(4) Refusal to renew a certification. The Department will not renew a certificate if the agency or its services are not in substantial compliance with these rules.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0090

Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) Notice of pending change in ownership, legal entity, legal status, or management corporation. The agency must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation.

(2) New certificate required. A new certificate will be required upon change in a program's ownership, legal entity or legal status. The program must submit a certification application at least 30 days prior to change in ownership, legal entity or legal status.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0100

Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance, certificate renewal and onsite inspections; including a review of records at the agency office, as well as onsite review of at least one proctor provider home.

(b) Complaint investigations; and

(c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) Inspections and investigations by the Department, its designee or proper authority. The Department, its designee, or proper authority must perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). 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 must not conduct an internal investigation. 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 person who may have knowledge of the facts of the abuse allegation or related circumstances, reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or its designee must conduct investigations in accordance with procedures prescribed in OAR 309-040-0200 through 309-040-0290, and any successor rules as they may change from time to time, and must complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or law enforcement agency, an agency may conduct an investigation to determine if any personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), and any successor rules as may change from time to time, the sections of the report, which are public records and not exempt from disclosure under the public records law will be provided to the appropriate provider(s). The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0110

Mid-Cycle Review

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the agency and its services nine to fifteen months after renewal of the agency's certificate under the following circumstances:

(a) Failure by the agency to successfully complete certificate renewal as evidenced by two of more follow-up reviews; or

(b) Failure by the agency to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or agency.

(2) Self-Assessment Required. As part of the mid-cycle process the agency must conduct a self-assessment based upon the requirements of this rule.

(a) The agency must document the findings of the self-assessment on forms provided by the Department;

(b) The agency must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The agency must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR chapter 411, division 320. The review will be conducted for compliance with OAR chapter 411, division 320 and where applicable, OAR chapter 411, division 346. The review may be announced or unannounced based on the discretion of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0120

Variations

(1) Criteria for a variance. The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of individuals.

(2) Variance application. The agency requesting a variance must submit, in writing, an application to the Services Coordinator from the entity that holds the contract. Variance applications must contain the following:

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- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and

(d) Evidence that the variance is consistent with a currently approved ISP according to OAR chapter 411, division 335.

(e) Any variance that applies to a proctor provider home must be submitted in accordance with the Proctor Rule OAR chapter 411, division 335, and any successor rules as they may change from time to time.

(3) Program review. The Manager or designee of the contracting entity will forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) Department review. The Administrator or designee may approve or deny the request for a variance.

(5) Notification. The Department must notify the proctor agency and the contracting entity of the decision. The Department will send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Appeal. Appeal of the denial of a variance request will be made in writing to the Administrator with a copy sent to the contracting entity. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance.

(8) Written approval. The agency or proctor provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0130

Direct Contracted Services

For purposes of this rule OAR chapter 411, division, 335, Proctor Agencies directly contracting services with the Department will submit required documentation to the Department Residential Services Coordinator, in addition to the CDDPs, unless otherwise specified.

Stat. Auth.: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0140

Individual/Family Involvement Policy

Individual/family involvement policy needed. The agency must have and implement a written policy that addresses:

(1) Opportunities for the individual and guardian to participate in decisions regarding the operations of the agency;

(2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the agency to interact;

(3) Opportunities for families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the agency.

Stat. Auth.: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0150

Rights: General

(1) Abuse prohibited. Individuals must not be abused, nor will abuse be tolerated by any foster provider, agency employee, or volunteer of the agency.

(2) Protection and well-being. The agency must assure the health and safety of individuals from abuse including the protection of individual's rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. With the exception of individuals under the age of 18, where a parent or guardian has placed reasonable limitations, these rights must, at a minimum, provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

(b) Adequate food, housing, clothing, medical and health care;

(c) Visits and communication with family members, guardians, friends, advocates and others of the individual's choosing, as well as legal and medical professionals; unless limited due to legal process;

(d) Confidential communication including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical/ physical restraints;

(h) Freedom to choose whether or not to participate in religious activities;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and, for adults over the age of 18, the freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision-making and control of personal affairs appropriate to age;

(m) Services, which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker is allowed to consent or refuse. For children, consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109-610) or limited by court order;

(o) Individual choice to participate in community activities, except where limited by a court order;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The agency must have and implement written policies and procedures that protect an individual's rights as listed in OAR chapter 411, division 335.

(4) Notification of policies and procedures. The agency must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise these rights. This must be completed at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's and family/guardian's needs and abilities.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0160

Rights: Behavior Support

(1) Written policy required. The agency must implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) Development of an individualized plan to alter an individual's behavior. A decision to develop a plan to alter an individual's behavior must be made by the ISP team, and must be based on the Children's Risk Tracking Record. Documentation of the ISP team decision must be maintained by the agency.

(3) Functional assessment required. The agency must conduct a functional assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional assessment must include:

(a) A clear, measurable description of the behavior that includes frequency, duration and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, which includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) BSP requirements. The BSP must include:

(a) An individualized summary of the individual's needs, preferences and relationships;

(b) A summary of the function(s) of the behavior, (as derived from the functional assessment);

(c) Strategies that are related to the function(s) of the behavior and are expected to be effective in reducing problem behaviors;

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(d) Prevention strategies including environmental modifications and arrangement(s);

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan that includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

(i) Specific instructions for agency staff to follow regarding the implementation of the plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Additional documentation requirements for implementation of behavioral support plans. The agency must maintain the following additional documentation for implementation of behavioral support plans:

(a) Written evidence that the individual, guardian or legal representative (if applicable) and the ISP team are aware of the development of the plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the BSP; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) Notification of policies and procedures. The agency must inform each individual and guardian of the behavior support policy and procedures at the time of entry to the program and as changes occur.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0170

Rights: Physical Intervention

(1) Circumstances allowing the use of physical intervention. The agency must assure that agency staff and foster providers employ only physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

(a) When the health and safety of the individual or 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) Staff and training. Agency staff members and foster providers who support individuals with a history of behavior that may require the application of physical intervention, and 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.

(3) Modification of OIS physical intervention procedures. The program 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 agency's executive director or designee within one hour of application. Review will verify the following:

(A) The restraint was used in an emergency and only until the individual was no longer an immediate threat to self or others.

(B) An incident report is prepared and submitted within one working day to the Services Coordinator and the individual's guardian.

(C) Determine the need for an ISP team meeting if the emergency intervention is used three times in a six-month period.

(5) Incident report. Any use of physical restraint(s) must be documented in an incident report. Agency staff or proctor providers who are

involved in the incident, or who have witnessed the event, must write the report. The report must include:

(a) The name of the individual to whom the physical restraint was applied;

(b) The date, type, and length of time the physical restraint were applied;

(c) A description of the incident precipitating the need for the use of the physical restraint;

(d) Documentation of any injury;

(e) The name and position of the agency staff member(s) or proctor provider(s) applying the physical restraint;

(f) The name(s) and position(s) of the agency staff or proctor provider(s) witnessing the physical restraint;

(g) The name and position of the person providing the initial review of the use of the physical restraint; and

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded to the Services Coordinator and the legal guardian within five working days of the incident.

(a) Copies of incident reports will not be provided to a legal guardian, personal or other service providers, when the report is part of an abuse or neglect investigation.

(b) Copies provided to a legal guardian, personal agent, or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(c) All interventions resulting in injuries must be documented in an incident report and forwarded to the Services Coordinator and the legal guardian within one working day of the incident.

(7) Behavior data summary. The program may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others.

(b) The intervention utilized is not a physical restraint.

(c) There is a formal written functional assessment and written behavioral support plan.

(d) The individual's behavior support plan defines and documents the baseline level of behavior.

(e) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual's behavior support plan and OIS curriculum.

(f) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-350(5)(a)-(c) and (e)-(h).

(g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(8) Copy to Services Coordinator. A copy of the behavior data summary must be forwarded to the Services Coordinator, Department designee, and the individual's legal guardian every thirty days.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0180

Rights: Psychotropic Medications and Medications for Behavior

(1) Requirements. Psychotropic medications and medications for behavior must be:

(a) Prescribed by physician or health care provider through a written order; and

(b) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences.

(2) Balancing test. 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 prescribed form content into the provider's agency 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.

(3) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

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411-335-0190

Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. The agency staff or proctor provider who was involved in the incident must write the incident report. Someone who witnessed the event may also write the report. The report must include:

- (a) Conditions prior to or leading to the incident.
- (b) A description of the incident.
- (c) Agency staff or proctor provider response at the time.
- (d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of incident reports will be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of incident reports will not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP and the Department, if the Department holds the direct contract, immediately of an incident or allegation of abuse falling within the scope of OAR 411-325-0020(2)(a)(A)-(G), (b)(A)-(E), and (c)(A)-(H). When an abuse investigation has been initiated, the contracting entity will assure that either the Services Coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

- (a) The individual's guardian or conservator, parent, next of kin or other significant person;
- (b) The CDDP and the Department, if the Department holds the direct contract.

- (c) Any agency responsible for or providing services to the individual.
- (5) Emergency notification. In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

- (a) The individual's guardian, if any, or nearest responsible relative;
- (b) The individual's designated contact person;
- (c) The local police department; and
- (d) The CDDP and the Department, if the Department holds the direct contract.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0200

Rights: Individuals' Personal Property

Record of personal property. The program 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:

- (1) The description and identifying number, if any;
- (2) Date of inclusion in the record;
- (3) Date and reason for removal from the record;
- (4) Signature of agency staff or proctor provider making each entry;

and

- (5) A signed and dated annual review of the record for accuracy.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0210

Rights: Handling and Managing Individuals' Money

(1) Policies and procedures. The program must implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

- (a) Safeguarding of the individual's funds;
- (b) Individuals receiving and spending their money; and
- (c) Taking into account the individual's interests and preferences.

(2) Individual written record. The agency must assure that documentation of the individual's financial plan is completed under Section VII of the Proctor Care Individual Support Plan for each individual served.

(3) Reimbursement to individual. The agency must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of any agency staff member or proctor provider, for any funds within the custody of the agency that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0220

Safety: Individual Summary Sheets

A current one to two page summary sheet must be maintained for each individual receiving services from the proctor agency. The record must include:

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status.

(2) The name, address and telephone number of:

(a) The individual's legal representative, family, advocate or other significant person, and for children, the individual's parent or guardian, education surrogate, if applicable.

(b) The individual's preferred physician, secondary physician or clinic.

(c) The individual's preferred dentist.

(d) The individual's identified pharmacy.

(e) The individual's school, day program, or employer, if applicable.

(f) The individual's CDDP Services Coordinator, and for Department direct contracts, a Department representative.

(g) Other agency representatives providing services to the individual.

(3) For children under the age 18 any court ordered or guardian authorized contacts or limitations.

(4) Individual Crisis Plan including identification of alternate providers and staffing.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0230

Individual Support Plan

(1) Department Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter. The agency must assure that agency staff and proctor providers are trained to implement the new Department Proctor ISP process.

(2) Preparation for ISP. The following information must be collected and summarized within 45 days prior to the ISP meeting:

(a) Children's Risk Tracking Record;

(b) Necessary protocols or plans that address health, behavioral, and safety supports as identified on the Children's Risk Tracking Record;

(c) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Children's Risk Tracking Record; and

(d) Other documents required by the ISP team.

(e) Personal Focus Worksheet is recommended, but not mandatory.

(3) Content of Individual Support Plan. A completed ISP must be documented on the Department required form. Documentation of ISP Team members' signatures must be attached to the ISP.

(4) Any protocols as required by the Children's Risk Tracking Record must be available for the proctor provider.

(5) Documentation required. The agency must maintain documentation of implementation of each support and service noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP and Department representatives.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0240

Health: Medical

(1) Written policies and procedures. The agency must assure implementation of policies and procedures that maintain and protect the physical health of individuals placed in certified proctor provider homes operated and overseen by the Proctor Agency. Policies and procedures must address the following:

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- (a) Each child's individual health care;
- (b) Medication administration;
- (c) Medication storage;
- (d) Response to emergency medical situations;
- (e) Nursing service provision, if needed;
- (f) Disposal of medications; and
- (g) Early detection and prevention of infectious disease.

(2) Children's individual health care. Each child receiving proctor provider services must receive care that promotes their health and well-being as follows:

(a) The agency must assure each individual has a primary physician or qualified health care provider that the individual or guardian chooses from among qualified providers;

(b) The agency must assure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

(c) The agency must assure that the health status and physical conditions of each individual is monitored, and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) The agency must assure that a physician's or qualified health care providers written, signed order is obtained prior to the usage or implementation of all 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 agency must maintain a copy of the order in the individual's central record, and assure that the original is maintained in the proctor provider home.

(f) The agency must assure that a physician's or qualified health care provider's order is implemented as written, by its contracted proctor provider, their designee, or proctor agency staff.

(3) Required documentation. The agency must maintain records on each individual to aid physicians, licensed health professionals and proctor providers 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.

(4) 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.

(5) 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 topical medications and treatments 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.

(6) 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.

(7) Self-administration medications unavailable to other individuals. The program must assure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same proctor provider home, and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication affects safeguards. 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 which 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, proctor provider, or respite provider.

(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 agency must:

(a) Coordinate with the nurse or nursing service and the ISP team to assure that the 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 the registered nurse.

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the agency, the Services Coordinator must be notified immediately and that notification documented.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0250

Health: Food and Nutrition

(1) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the agency must assure that the proctor provider:

(a) Maintains menus for the current week that provide food and beverages that consider the individuals preferences and are appropriate to the modified or special diet; and

(b) Maintains documentation that identifies how modified texture or special diets are prepared and served for the individual.

(2) Supply of food. The agency must assure that each proctor provider maintains in their home: adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0260

Safety: Transportation

(1) Vehicles operated to transport individuals. Proctor providers, agency employees and volunteers, that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry a first aid kit in vehicles.

(2) Seat belts and appropriate safety devices. When transporting, the driver must assure that all individuals use seat belts. Child car or booster

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seats will be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must assure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers. Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a valid driver's license.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0270

Emergency Plan and Safety Review

(1) Written emergency plan. The agency must write an emergency plan to include instructions for the proctor provider and agency staff in the event of a fire, explosion, earthquake, accident, or other emergency including evacuation, if appropriate, of individuals served at the proctor provider home.

(2) Emergency telephone numbers. Emergency telephone numbers must be readily available in each proctor provider home, in close proximity to phone(s):

(a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Executive Director, emergency physician and other persons to be contacted in the case of an emergency.

(3) Monthly safety review. A documented safety review that is specific to each proctor provider home must be conducted monthly to assure that the home is free of hazards. The agency must keep these reports for three years and make them available upon request to the Services Coordinator and Department representatives.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0280

Safety: Assessment of Fire Evacuation Assistance Required

(1) Assessment of level of evacuation assistance required. The agency must assure that the proctor provider and agency staff assess the individual's ability to evacuate the home in response to an alarm or simulated emergency within 24 hours of entry to the home.

(2) Documentation of level of assistance required. The agency must assure documentation of the level of assistance needed by each individual to safely evacuate the residence. The documentation must be maintained in the individual's entry records.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0290

Safety: Individual Fire Evacuation Safety Plans

(1) Written fire safety evacuation plans are required for all individuals residing in proctor provider homes who are unable to evacuate the home in three minutes or less. For individuals who are unable to evacuate the proctor provider home within the required evacuation time, or who the ISP team determines should not participate in fire drills, the agency must develop a written safety plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition and behavioral status;

(b) Identification of the alternative practices used to evacuate his/her home including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan will be practiced and reviewed by the individual, the proctor provider, and any staff working in the proctor provider home.

(f) Approval of the plan by the individual's guardian, Service Coordinator and the program director.

(g) A plan to encourage the individual's future participation.

(2) Required documentation of practice and review of safety plans. The agency must maintain documentation of the practice and review of the safety plan by the individual and the proctor provider.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0300

Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records, service providers under these rules are considered "providers" as defined in ORS 179.505 (1)

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) The proctor agency, proctor provider and the proctor provider's family must treat personal information about a child or child's family in a confidential manner. Confidential information is to be disclosed only on a need to know basis to law enforcement, Services Coordinator, DHS-CW child protective services staff, SOSCF DHS-CW caseworker, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health and safety, and service needs of the child.

(4) The proctor agency, proctor provider and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(a) To law enforcement, CDDP, SPD, DHS-CW staff;

(b) As authorized by the child's personal representative, including but not limited to a guardian appointed under ORS 125.305, 419C.481 or 419C.555;

(c) For purposes of obtaining healthcare and treatment of the child;

(d) For purposes of obtaining payment for health care treatment; or

(e) As permitted or required by state or federal law or by order of a court.

(5) The proctor agencies and the proctor providers must keep all written records for each child in a manner that assures their confidentiality.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0310

Rights: Informal Complaints and Formal Grievances

(1) Grievances. The agency must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) Informal complaint resolution. This provides an opportunity for an individual or guardian to informally discuss and resolve any allegation that an agency has taken action on which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity will not preclude the individual or guardian to pursue resolution through formal grievance processes.

(b) Formal grievances and grievance log must include a description of how the agency receives and documents grievances from individuals or guardians. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Services Coordinator from the agency that holds the contract, and the Executive Director or designee. The formal grievance policies and procedures must require:

(A) Investigation of the facts supporting or disproving the grievance;

(B) That the Executive Director or designee provide a formal written response to the grievance within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or Designee will submit to the CDDP and Services Coordinator for review, grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or Designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Program's Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. In addition, the agency must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, and the nature of the grievance, the resolution, and the date of the resolution.

(2) Notification of policies and procedures. The program must inform each individual and guardian orally and in writing, of its grievance policy

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and procedures. This must be done at entry to the agency and in a timely manner thereafter as changes occur. Information must be presented using language, format and methods of communication appropriate to the individuals and family/guardians needs and abilities.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0320

Rights: Medicaid Fair Hearings

Medicaid service recipient's policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0330

Entry, Exit and Transfer: General

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

- (a) Be referred through the CDDP;
- (b) Be determined to have a developmental disability by the Department or its designee; and
- (c) Not be discriminated against because of race, color, creed, disability, national origin, duration or Oregon residence, or other forms of discrimination under applicable state or federal law.

(d) Be in the custody of the State of Oregon, DHS Child Welfare, or OYA; or have a Developmental Disabilities Individual Placement Agreement from the Department signed by the child's parent or guardian.

(2) Authorization of Services. The Department must authorize admission into Children's Residential Services.

(3) Information required for entry meeting. The agency must acquire the following information prior to or upon entry ISP team meeting:

- (a) A copy of the individual's eligibility determination document;
- (b) A statement indicating the individual's safety skills including the ability to evacuate 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) Written documentation that the individual is participating in out of residence activities including school enrollment until the age of 21; and

(h) A copy of the most recent Functional Assessment, BSP, ISP and IEP.

(i) The entry agreement for family contact and visits that includes, but is not limited to, the names of the family members who can visit, with the level of agency staff supervision needed during visits; and any limitations on location or length of visits.

(j) Medical insurance information and medical card.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-335 is not available the agency will assure that they assess the child upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after entry. This must include a written justification as to why the information is not available.

(5) Entry meeting. An entry 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-entry information required by 411-325.

(e) Documentation of the decision to serve or not serve the individual, 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.

(6) 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 planned exit;
- (e) Documentation of the discussion of strategies to prevent an unplanned exit from service (unless the individual, individual's parent or 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 documentation of discussion and criteria, as outlined in this OAR 411-335-0030(5)(e)(A-H).

(g) Documentation of the proposed plan for services to the individual after the exit.

(7) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

- (a) The individual and his/her guardian or legal representative requests an immediate move from the home; or
- (b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings other than detention.;

(8) Transfer meeting. A meeting of the ISP team must precede transfer of an individual before any decision to transfer 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 transfer;
- (b) The date of the meeting or telephone call(s);
- (c) Documentation of the participants included in the meeting or telephone call(s) including, a parent or guardian who is participating to sign documents;
- (d) Documentation of the circumstances leading to the proposed transfer;
- (e) Documentation of the alternatives considered instead of transfer;
- (f) Documentation of the reasons any preferences of the individual, guardian, legal representative, parent or family members cannot be honored;

(g) Documentation of a majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0340

Entry, Exit and Transfer Appeals

(1) Appeals. In cases where the parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal, a request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(2) In cases where the ISP team cannot reach majority agreement or when the parent or guardian objects to an entry refusal, a request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the appeal is resolved.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the appeal is resolved.

(2) Appeal to the CDDP. All appeals must be made to the CDDP Director or designee in writing, in accordance with the CDDPs dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDPs dispute resolution policy.

(3) Appeal to Department. In cases where the CDDPs decision is in dispute written appeal must be made to the Department within ten days of receipt of the CDDPs decision.

(4) Department appeal process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a writ-

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ten response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(5) Documentation required. Documentation of each appeal and its resolution must be filed or noted in the individual's record.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0350

Respite Care Services

(1) Qualifications for respite care services. All individuals considered for proctor respite care services must:

(a) Be referred by the Department;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(2) Respite care plan. The individual and the guardian, or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services. This meeting may occur by phone and the Services Coordinator or Proctor Agency will assure that any critical information relevant to the individuals health and safety, including physicians' orders, will be made immediately available. The outcome of this meeting will be a written respite care plan which must take effect upon entry and be available on site, and must:

(a) Address the individual's health, safety and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the plan; and

(c) Specify the anticipated length of stay at the residence up to 14 days.

(3) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(4) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0360

Crisis Services

(1) Proctor Agency Responsibilities in Provision of Crisis Services. All individuals considered for crisis services funded through the Department must:

(a) Be referred by the Department or designee;

(b) Be determined to have a developmental disability by the Department or its designee;

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(2) In-Home Support Services Plan, ISP or Plan of Care, and Crisis Addendum required. Individuals receiving CDDP in-home supports or foster care who require crisis services must have a crisis addendum to their current plan of care upon entry to proctor care services.

(3) Plan of Care required for individuals not enrolled in CDDP in-home support services. Individuals not enrolled in CDDP support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individuals health and safety including current physicians orders.

(4) Children's Risk Tracking Record required. Individuals not enrolled in CDDP in-home support services, receiving crisis services for 90 days or more must have a completed Children's Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Children's Risk Tracking Record.

(5) Entry meeting required. Entry meetings are required for individuals receiving crisis respite services.

(6) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(7) Waiver of appeal rights for entry, exit and transfers. Guardians of individuals receiving crisis services do not have appeal rights regarding entry, exit or transfers.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0370

Conditions on Certificate

Attaching conditions to a certificate. The Department may attach conditions to the certificate, which limit, restrict or specify other criteria for operation of the agency and its proctor service.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0380

Conditions

(1) Circumstances under which conditions may be applied to a certificate. Conditions may be attached to a certificate 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 individuals;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home/agency is not being operated in compliance with these rules; or

(e) The proctor provider is certified to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a certificate include, include but not limited to:

(a) Restricting the total number of individuals;

(b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional agency staff or agency staff qualifications;

(e) Requiring additional training of proctor providers and agency staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The agency will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS chapter 183.310 to 183.550.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the duration of the certificate period (two years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the certificate.

Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

411-335-0390

Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a certificate where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) Imminent danger to individuals. The Department will immediately suspend the home or agency certificate where imminent danger to health or safety of individuals exists.

(3) Debarred providers or individuals. The Department will deny, suspend, revoke or refuse to renew a certificate or license where it finds that a provider or agency is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with rules of the Department and ORS Chapter 183.

(5) Failure to disclose requested information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the agency fails to implement a plan of correction or comply with a final order of the Department.

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Stat. Auth: ORS 409.050, 410.070, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05

Adm. Order No.: SPD 34-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 411-346-0165

Rules Ren. & Amended: 309-046-0100 to 411-346-0100, 309-046-0120 to 411-346-0120, 309-046-0140 to 411-346-0140, 309-046-0160 to 411-346-0160, 309-046-0180 to 411-346-0180, 309-046-0200 to 411-346-0200, 309-046-0220 to 411-346-0220, 309-046-0110 to 411-346-0110, 309-046-0130 to 411-346-0130, 309-046-0150 to 411-346-0150, 309-046-0170 to 411-346-0170, 309-046-0190 to 411-346-0190, 309-046-0210 to 411-346-0210, 309-046-0240 to 411-346-0230

Subject: The permanent adoption of Chapter 411, Division 346 moves the rules governing Child Foster Care from Chapter 309 to Chapter 411. These changes also serve to:

(a) Reorganize the rule to improve readability and updates definitions to make them consistent with current practice and application.

(b) Implement system improvements by updating rule language to be consistent with current practices and Oregon's response to the CMS Regional Protocol for Review of Home and Community Based Waiver Services;

(c) Clarify rule requirements for applicants of a foster care certificate, (currently certified foster care providers), reducing the need to submit variance requests for exceptions to common practices;

(d) Update financial reporting requirements to meet the 2000 DHS Audit recommendations for children's trust fund accounts.

(f) Update behavior support and physical intervention requirements to be consistent with current practices;

(g) Reduce language differences between DHS-CW, DHS-SPD 24 hour residential and the CDDP administrative rules whenever applicable; and finally:

(e) Strengthen the Department's ability to take sanctioning activity.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-346-0100

Purpose and Statutory Authority

Purpose. These rules prescribe the standards and procedures for the provision of care and services for children with developmental disabilities in child foster homes (CFH) certified by the Department of Human Services and Senior and People with Disabilities, as a condition for certification and payment. By these rules, the Department seeks to ensure that the health, safety and best interests of the children are served, through a partnership process with the Department, the family/guardian, and the foster family.

Stat. Auth.: ORS 443.830, 430.215, 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0100; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0110

Definitions

(1) "Abuse of a child" is defined in ORS 419B.005, 418.015, and 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, 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 stimulates 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.

(2) "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.

(3) "Alternative Care" is any person over the age of 18 having unsupervised contact with the child.

(4) "Aversive Stimuli" is the use of any natural or chemical product to alter a child's behavior. Aversive stimuli can include, but not limited to the following: the use of hot sauce or soap in the mouth, spraying ammonia or lemon water in the face of a child.

(5) "Alternative Educational Plan" (AEP) means any school plan that does not occur within the physical school setting.

(6) "Appeal" is the process that the foster provider may petition the suspension, denial or revocation of their certificate or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(7) "Applicant(s)" is a person who wants to become a child foster provider and is applying for a child foster home certificate and lives at the residence where a child(ren) in care will live.

(8) "Service Coordinator" means an employee of the Department, a Community Development Disability Program, or other agencies that contracts with the CDDP or the Department who is selected to plan, procure, coordinate, and monitor individual support services and acts as a proponent for individuals with developmental disabilities. For purposes of this rule the term case manager is synonymous with services coordinator.

(9) "Case Plan" is the goal-oriented, time-limited, individualized program of action for a child and the child's family developed by the Department of Human Services, Child Welfare (DHS-CW) and the family for promotion of the child's safety, permanency, and well being.

(10) "Case Worker" is an employee of DHS-CW within CAF (Children, Adults, and Families).

(11) "Certificate" is a document that notes approval to operate a child foster home, for a period not to exceed one year, and is issued by the Department.

(12) "Certifier" means an employee of The Department or CDDP who is authorized to gather required documentation for the issuance of a child foster home certificate.

(13) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior or treatment plan.

(14) "Child" means an individual under the age of 18 and who has a provisional eligibility determination of developmental disability.

(15) "Child Foster Home" or "CFH" refers to a home certified by the Department that is maintained and lived in by the person named on the foster home certificate.

(16) "Child Foster Home Contract" means an agreement between a provider and the Department that describes the responsibility of the foster care provider and the Department.

(17) "Child Placing Agency" is the Department or CDDP, or DHS-CW, or Oregon Youth Authority (OYA).

(18) "Commercial Basis" means providing temporary care for individuals not identified as members of the household, and receiving compensation for the care provided.

(19) "Community Development 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) "Denial" is the refusal of the certifying agency to issue a certificate of approval to operate a foster home for children because the agency has determined that the home is not in compliance with one or more of these administrative rules.

(21) "Developmental Disability" means:

(a) For children five years and younger is always provisional and means 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; and be expected to last indefinitely; and

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(A) There are standardized tests demonstrating adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(B) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (21)(a) above.

(b) For children six years and older is always provisional and means:

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(i) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self-care, receptive and expressive language, learning, mobility, and self-direction; AND

(ii) The condition or impairment must be expected to last indefinitely and 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; and be expected to last indefinitely; AND

(iii) The individual is expected to need multiple, specialized supports indefinitely.

(22) "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.

(23) "Department-Approved Intervention Methods" means the method or intervention used for behavior management currently approved by the Department. Currently the Department-approved intervention method is the Oregon Intervention System (OIS).

(24) "Department of Human Services, Child Welfare (DHS-CW)" Child Welfare was formerly known as SCF (Services to Children and Families) and is part of Children, Adults and Families (CAF), which is within DHS.

(25) "Discipline" for the purpose of this rule discipline is synonymous with Behavior Support.

(26) "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.

(27) "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/facility. 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 the foster provider or alternative care givers.

(28) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when; the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(29) "Exception" is the process that the Department uses to determine that the subject individual possesses the qualifications to be a foster provider despite a record of criminal conviction or arrests.

(30) "Foster Care" means 24-hour substitute care in a certified foster home for children placed away from their parents or guardians.

(31) "Foster Provider" is not the parent or legal guardian and refers to the certified care provider who resides at the address listed on the foster home certificate. The "Foster Provider" for the purpose of this rule is synonymous with child foster parent relative care giver.

(32) "Founded Reports" means the DHS-CW or Law Enforcement Authority (LEA) determination based on the evidence that there is reasonable cause to believe that conduct in violation of the child abuse statutes has occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(33) "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 foster child.

(34) "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.

(35) "Home Inspection" means an on site, physical review of the applicant's home to assure the applicant meets all health and safety requirements within these rules.

(36) "Home Study" is the assessment process used for the purpose of determining an applicant's abilities to care for children in need of foster care placement.

(37) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving the foster child.

(38) "Individualized Education Plan" or "IEP" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(39) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for a child to meet the health, safety, financial and personal goals of the foster child. The ISP is the individual's Plan of Care for Medicaid purposes.

(40) "Individual Support Plan Team" or "ISP team" in child foster care means a team composed of the child in foster care, when appropriate, the foster provider, the guardian, relatives of the child, the CDDP services coordinator and any other approved persons who are well liked by the child and approved by the child and the child's guardian to serve on the team.

(41) "Mandatory Reporters" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that abuse or neglect has occurred as defined in ORS 419B.005. All foster providers' employees, independent contractors or volunteers are mandatory reporters under Oregon State law ORS 430.765 and must report suspected abuse and neglect to DHS-CW or law enforcement.

(42) "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 child's body.

(43) "Member of the Household" means any adults and children living in the home, including any foster provider, employees or volunteers assisting in the care provided to children placed in the home, and excluding the foster children placed in the home.

(44) "Monitoring" is the observation by The Department or designee of certified child foster home to determine continuing compliance with certification rules.

(45) "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.

(46) "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 foster provider and alternative care givers.

(47) "Occupant" means any person having official residence in a certified foster home.

(48) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.

(49) "Oregon Youth Authority" (OYA) is an agency that has been given custody and supervision responsibilities over those youth offenders, by order of the juvenile court under ORS 137.124 or other statute until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(50) "Permanent Foster Care Placement Agreement" means a long term contractual placement agreement between the foster parent and DHS-CW, approved by the juvenile court that specifies the responsibilities and authority of the foster parent and the commitment by the permanent foster parent to raise a child until the age of majority.

(51) "Physical restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(52) "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.

(53) "Protected Health Information" means any oral or written health information that identifies the child and relates to the child's past, present or future physical or mental health or condition, health care treatment provided or payment for health care treatment.

(54) "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, anxiolytic

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(anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(55) "Respite care" means short-term services for a period of up to 14 consecutive days. Respite care may include both day and overnight care.

(56) "Revocation" is the action taken to rescind a foster home certificate of approval after the certifying agency has determined that the foster home is not in compliance with one or more of these administrative rules.

(57) "Specialized 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.

(58) "Suspension of Certificate" is a temporary withdrawal of the approval to operate a foster home after the certifying agency determines that the foster home is not in compliance with one or more of these administrative rules.

(59) "30 Day Emergency Certificate" refers to a foster care home certificate issued, not to exceed 30 days.

(60) "Unauthorized Absence" is any length of time, as specified on the ISP, when a child is absent from the foster home, without prior approval.

(61) "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.

(62) "Unsupervised Contact" is time the foster child is cared for, supported or monitored in the foster home without the direct supervision or presence of the certified foster provider.

(63) "Variance" is a temporary exemption from a regulation or provision of these rules that may be granted by the Department, upon written application by the CDDP.

(64) "Volunteer" is any individual assisting in a foster home without pay to support the care provided to children placed in the foster home.

Stat. Auth.: ORS 443.830, 430.215, 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0120

Certification Required

(1) Any home that meets the definition of a CFC must be certified by one of the following agencies: the Department, DHS-CW, or the OYA.

(2) Children will only be placed in a CFC home that is certified.

Stat. Auth.: ORS 443.830, 430.215, 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0120; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0130

Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) gives federally recognized Indian tribes the authority to select homes for children protected by the Act. Tribes and Alaskan Native Regional Corporations may license, approve or specify a foster home for children protected by the Act. The tribe is authorized to decide which of these three preferences to use, or whether to request that The Department or DHS-CW certify the home. When the tribe requests the Department to certify the home, the Department will use the Department standards for certification. Indian children placed in relative homes, whether licensed, certified or selected by the tribe are eligible for foster care payments when DHS-CW has legal custody. Preference will be given for placement with:

(1) A member of the Indian child's extended family;

(2) A foster home licensed, approved, or specified by the Indian child's tribe; or

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

Stat. Auth.: ORS 443.830, 430.215, 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0130; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0140

Selection

(1) The Department or CDDP will select foster providers who have the abilities and commitment to carry out the responsibilities set forth in

these rules and can meet the Department's specific need for homes. The Department will determine which applicants will undergo a complete certification study and which applicants will be certified. The CDDP staff will determine which home is best for a particular child.

(2) The foster provider will be a responsible, stable, emotionally mature adult who exercises sound judgment and has the capacity to meet the mental, physical and emotional needs of children placed in foster care.

(3) The foster provider will demonstrate the following traits: capacity to give and receive affection, kindness, flexibility, a sense of humor, and the ability to deal with frustration and conflict.

Stat. Auth.: ORS 443.830; 430.215; 409.050 and 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0140; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0150

General Requirements for Certification

(1) The applicant or foster provider must participate in certification and certification renewal studies, and in the ongoing monitoring of their homes.

(2) The applicant or foster provider must give the information required by the Department to verify compliance with all applicable rules, including change of address and change of number of persons in the household such as relatives, employees or volunteers of the applicant or foster provider.

(3) The applicant seeking certification from the Department must complete the Department application forms. When two or more adults living in the home share foster provider responsibilities to any degree, they shall be listed on the application as applicant and co-applicant.

(4) The applicant or foster provider may request in writing to withdraw their application any time during the certification process. Written documentation by the certifier of verbal notice can substitute for written notification.

(5) Information provided by the applicants will include:

(a) Proposed number, gender, age range and disability/support needs of children to be served in foster care;

(b) School reports will be obtained for any child of school age living in the home at the time of initial application, and may be required for any child of school age living in the home within the last year.

(c) Names and addresses of at least four persons, three of whom are unrelated, who have known each applicant for two years or more and who can attest to their character and ability to care for children. The Department may contact schools, employers, adult children and other sources as references;

(d) A statement noting if each applicant has operated or currently is operating a licensed or certified care facility or foster home for children or adults, and reasons for any termination of such license or certification;

(e) Reports of all criminal charges, arrests or convictions, the dates of offenses, and the resolution of those charges for all employees or volunteers and persons living in the home. Applicants must list reports of all criminal or juvenile delinquency charges, arrests or convictions, the dates of offenses, and the resolution of those charges of Applicant's minor children living in the home.

(f) Founded reports of child abuse and neglect, with dates, locations and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors and volunteers;

(g) Demonstration, upon initial certification, of income sufficient to meet their needs and to ensure the stability and financial security of the family, independent of the foster care payment;

(h) All child support obligations in any state, whether the obligor is current with payments or in arrears, and whether any applicant's or foster provider's wages are being attached or garnished for any reason;

(i) A physician's statement that each applicant is physically and mentally capable of providing care on a form provided by the Department;

(j) A floor plan of the house showing the location of rooms indicating the bedrooms for the foster child, caregiver, other occupants of the home; and the locations of windows, exit doors, smoke detectors and fire extinguishers and wheel chair ramps, if applicable;

(k) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures and fencing;

(l) Falsification or omission of any of the information for certification may be grounds for denial or revocation of foster home certification.

(6) Applicants must be at least 21 years of age. Applicants who are "Indian," as defined in the Indian Child Welfare Act, may be 18 years of

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age or older, if an Indian child to be placed is in the legal custody of DHS-CW.

(7) Applicants, or providers, substitute caregivers, providers' employees or volunteers, other occupants in the home who are 18 years or older, and other adults having regular or unsupervised contact in the home with the foster children must consent to a criminal history check by the Department. The Department may require a criminal history on members of the household under 18 if there is reason to believe that a member may pose a risk to children placed in the home.

(8) The Department will not issue or renew a certificate if an applicant or member of the household does not have an approved criminal record clearance by the Department as defined in the DHS Criminal History Check Rules OAR chapter 410, division 007.

(9) The Department will not issue or renew a certificate if a applicant or member of the household has been found to have abused or neglected a child as defined in ORS 419B.005, 418.015.

(10) A Department employee may be a foster provider, or an employee of an agency that contracts with the Department as a foster provider, if the employee's position with the Department does not influence referral, regulation or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from the Department Administrator. The written approval must be on file with the Department Administrator and in the Department certification file.

(11) An application is incomplete and void unless all supporting materials are submitted to the Department within 90 days from the date the application.

(12) An application will not be considered complete until all required information is received and verified by the Department. Upon receipt of the completed application, a decision will be made by the Department to approve or deny certification within 60 days.

(13) The Department will determine compliance with these rules based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study, and a personal interview with the provider. A certificate is valid for one year unless revoked or suspended.

(14) The Department may attach conditions to the certificate that limit, restrict, or specify other criteria for operation of the CFC home.

(15) A condition may be attached to the certificate, which limits the provider to the care of a specific individual. No other referrals will be made to a provider with this limitation.

(16) A CFC home certificate is not transferable or applicable to any location or persons other than those specified on the certificate.

(17) An application for a license or certification for a foster home or group home has been denied or revoked by any placing agency may not reapply for certification for a period of five years after the date of that action.

(18) The foster provider who cares for children funded by the Department must enter into a contract with the Department and follow the Department rules governing reimbursement for services and refunds.

(19) The foster provider cannot be the parent or legal guardian of any children placed in their home for foster care services funded by the Department.

Stat. Auth.: ORS 443.830; 430.215; 409.050 and 410.070
Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0160

Renewal of Certificate

(1) At least 90 days prior to the expiration of a certificate, the Department will send a reminder notice and application for renewal to the currently certified provider. Submittal of a renewal application prior to the expiration date will keep the certificate in effect until the Department takes action. If the renewal application is not submitted prior to the expiration date, the CFH will be treated as an uncertified home.

(2) The renewal application will include the same information as required for a new application, except that a physician's or physician assistant's statement, financial statement, references and school reports will not be required if the Department or CDDP can reasonably assume this information has not changed or is not necessary.

(3) The Department or CDDP may investigate any information in the renewal application and must conduct a home inspection.

(4) The provider will be given a copy of the inspection form documenting any deficiencies and a time frame to correct deficiencies, but no longer than 60 days from the date of inspection. If documented deficiencies

are not corrected within the time frame specified, the renewal application will be denied.

(5) Applicants; providers; providers' substitute caregivers, employees, volunteers and any other occupants in the home 18 years of age and older must submit to an Oregon CHC and must continue to meet all certification standards as outlined in these rules.

(6) Each foster provider must provide documentation of a minimum of 10 hours of Department approved training per year prior to annual renewal of the certificate. A mutually agreed upon training plan may be part of the re-certification process.

Stat. Auth.: ORS 443.830; 430.215; 409.050 and 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0160; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0165

Emergency Certification

(1) An emergency certificate may be issued by the Department for up to 30 days, provided the following conditions are met:

(a) An Oregon Criminal History Check (CHC) indicates no immediate need for fingerprinting for all persons living in the home;

(b) A DHS-CW background check identifies no founded allegations of abuse or neglect committed by persons living in the home;

(c) Applicant has no previous revocations or suspensions of any license or certificate by any issuing agency for a foster, group home or any other care or support services;

(d) A review of support enforcement obligations and public assistance cases identifies no substantial financial concerns;

(e) Application and two references are submitted;

(f) An abbreviated Home Study is done; and

(g) A satisfactory home inspection and a Health and Safety Checklist are completed.

(2) Emergency certificates may be issued if the renewal process is incomplete at the time of annual renewal.

Stat. Auth.: ORS 443.830; 430.215; 409.050 and 410.070

Stats. Implemented: ORS 443.835

Hist.: SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0170

Personal Qualifications of the Applicant and Foster Provider

The applicant and foster provider:

(1) Will be responsible, stable, emotionally mature adults who exercise sound judgement;

(2) Must have the interest, motivation, and ability to nurture, support and meet the mental, physical, developmental and emotional needs of children placed in the home;

(3) Must be willing to receive training, and have the ability to learn and use effective child-rearing practices, to enable children placed in their home to grow, develop, and build positive personal relationships and self esteem;

(4) Must demonstrate that they have the knowledge and understanding of positive non-punitive discipline and ways of helping children build positive personal relationships, self-control and self esteem;

(5) Must respect the child's relationship with his or her parents and siblings and be willing to work in partnership with agencies and schools involved with the child to attain the goals as listed in the IEP, ISP and case plan;

(6) Must respect the child's privacy in accordance with the child's age;

(7) Must have supportive ties with others who might support, comfort and advise them. Supportive ties include but are not limited to: family, friends, neighborhood contacts, churches, and community groups;

(8) Must demonstrate that they have lifestyles and personal habits free from abuse or misuse of alcohol or drugs;

(9) Will be at least 21 years of age, unless otherwise specified through ICWA and placement of Indian Children requirements;

(10) Must be able to realistically evaluate which children they can accept, work with, and integrate into their family.

(11) Health qualifications:

(a) The applicant and foster provider will provide the Department with the health history of each member of the household, including physical and mental health services and treatment received. Within one working day, the foster provider will inform the Department if any member of the household has or develops a serious communicable disease or other serious health condition that could affect the provider's ability to care for the child, or could affect the health and safety of the child.

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(b) The applicant, foster provider and other adults in the household caring for foster children must be physically and mentally able to perform the duties of foster provider as prescribed in these rules.

(c) The applicant, foster provider and others in the household must be free from abuse or misuse of alcohol or drugs. In the case of alcoholism or substance abuse, the applicant, foster provider or others in the household must demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(d) When requested by the Department either during the application process or while certified, the applicant or foster provider must, at their expense and from a source acceptable to the Department, supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to the Department.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0170; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0180

Professional Responsibilities of the Foster Provider

(1) Training and Development:

(a) The foster provider must complete a minimum of 12 hours of pre-service training prior to certification, and 10 hours annually for certification renewal.

(b) The foster provider must participate in training provided or approved by the Department or CDDP. Such training will include educational opportunities designed to enhance the foster provider's awareness, understanding and skills to meet the special needs of children placed in their home.

(c) The foster provider must complete mandatory reporting training prior to initial certification and annually thereafter.

(2) Relationship with the Child Placing Agency. The foster provider will:

(a) Take part in planning, preparation, pre-placement and visitation for the children placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP Service Coordinator for the children placed in their home;

(c) Notify the certifier of changes likely to affect the life and circumstances of the foster family or the safety in the home, in advance or within one working day. The following must be reported including but not limited to:

(A) Foster family illness;

(B) Sivorce;

(C) Significant change in financial circumstances;

(D) New household members, placement of a foster child by another agency; including respite care;

(E) Arrests or criminal involvement,

(F) The addition of fire arms;

(G) Swimming pools; or

(H) Pets.

(d) Immediately notify the child's CDDP Service Coordinator and guardian of injury, illness, accidents, or any unusual incidents or circumstances that may have a serious effect on the health, safety, physical or emotional well being of the foster child;

(e) Notify the legal guardian and CDDP staff within 12 hours, or other mutually agreed upon time, as determined by the ISP Team, of any unauthorized absence of a foster child;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract or Agreement;

(g) Allow the certifying and placing agency reasonable access to their home and to the children placed in their care. This includes access by family members when placement is voluntary. Reasonable access means with prior notice, unless there is cause for not giving such notice.

(3) Accepting Children for Care.

(a) A single (one) certified foster provider in a home will not accept more than five children in foster care, including the foster provider's children. Two certified foster providers in a home will not accept more than eight children, including the foster provider's children. The foster provider will not care for more than two children under two years of age, including the foster provider's children. The number of children served in the child foster home cannot exceed the capacity of the child foster home certificate.

(b) At the time of referral, the foster provider will be given available information about the child, including behavior, skill level, medical status and other relevant information. The foster provider will retain the right to

decline any child, based on the referral information, if they feel the child cannot be supported safely or effectively in the foster home.

(c) A foster provider may provide respite care in the provider's home for a child upon approval by the CDDP or Department.

(d) A child who turns 18 may continue to reside in their current child certified foster home when it has been determined by the ISP team it is in the best interest of the child to remain in the same home. When it has been determined by the ISP team a child who is turning 18 will remain in their current child certified foster home the foster provider needs to complete the following:

(A) Submit a variance request to the Department in accordance to 411-346-0210(1)(9);

(B) Submit to the Department and CDDP certifier, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the foster child to remain in the current certified foster home

(e) Any variance to 411-346-0180(3)(a)-(d) will take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adult to child;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and the desirability of keeping siblings placed together.

(f) The foster provider will not care for unrelated adults on a commercial basis in their own home or accept children for day care in their own home while currently certified as a foster provider.

(g) The foster provider may exit a foster child by giving 30 days written notice to the designated CDDP staff, except where undue delay will jeopardize the health, safety or well being of the child or others.

(h) The Foster provider must notify the Department prior to a voluntary closure of a child foster home, and give the foster child(ren)'s guardian and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of the foster child(ren), or foster provider.

(4) Relationship with the child's family. In accordance with the child's ISP and the guardian the foster provider will:

(a) Support the child's relationship with the child's family members, including siblings;

(b) Assist the CDDP staff, and the guardian in planning visits with the child and the child's family members; and

(c) Provide children reasonable opportunities to communicate with their family members.

(5) Confidentiality.

(a) The foster provider and the provider's family must treat personal information about a child or a child's family in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, CDDP staff, DHS-CW child protective services staff, DHS-CW case worker, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety and service needs of the child.

(b) In addition to the requirements in (5)(a) above, the foster provider and the provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(A) To law enforcement, CDDP staff, DHS-CW staff;

(B) As authorized by the child's personal representative, including but not limited to a guardian appointed under ORS 125.305, 419B.370, 419C.481 or 419C.555;

(C) For purposes of obtaining healthcare treatment of the child;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court;

(c) The foster provider must keep all written records for each foster child in a manner that ensures their confidentiality

(6) Mandatory Reporting.

(a) The foster provider is a mandatory child abuse and neglect reporter under Oregon State law (ORS 419B.005). Upon reasonable cause to believe that abuse or neglect has occurred, all members of the household and any foster provider, employees, independent contractors or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) Any restraint or intervention that results in an injury to the child must be reported by the foster provider. Same day verbal notification is required. The foster provider will notify DHS-CW in accordance with ORS 419B.005, and the child's CDDP Service Coordinator.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

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Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346- 0190

Standards and Practices for Care and Services

(1) The foster provider will:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual and emotional development of the foster children in their home.

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books appropriate to the chronological age, culture, and developmental level of the child.

(c) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan encourage the children to participate in community activities with family, friends, and on their own when appropriate.

(d) Help the children placed in their home develop skills and perform tasks that promote independence and self-sufficiency.

(e) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan ask children placed in the provider's care to participate in household chores appropriate to the child's age and ability and commensurate with those expected of their own children.

(f) Provide the child with reasonable access to a telephone and to writing materials.

(g) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan, permit and encourage the child to have visits with family and friends.

(h) Allow regular contacts and private visits or phone calls with the child's CDDP Service Coordinator and, if applicable, the DHS-CW case worker.

(i) Not allow foster children to baby-sit in the foster home or elsewhere without permission of the CDDP Service Coordinator and the guardian.

(2) Religious, ethnic, and cultural heritage:

(a) The foster provider will recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity and language of a child and his/her family.

(b) In accordance with the ISP and guardian preferences, the foster provider will participate with the ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from of the provider.

(c) The foster provider will not require a child to participate in religious activities or ethnic events contrary to the child's beliefs.

(3) Education. The foster provider will:

(a) Enroll each child of school age in public school within five school days of the placement and arrange for transportation.

(b) Comply with any alternative educational plan described in the foster child's Individualized Education Plan (IEP).

(c) Be actively involved in the child's school program and will participate in the development of the child's Individualized Education Plan (IEP). The Foster provider may apply to be the child's educational surrogate, if requested by the parent or guardian.

(d) To consult with school personnel when there are issues with the child in school, and report to the guardian and CDDP Service Coordinator any serious situations that may require agency involvement.

(4) Alternate caregivers.

(a) The foster provider must arrange for safe and responsible child care.

(b) The foster provider must have a child care plan approved by the Department, CDDP, or DHS-CW, as appropriate, if the foster provider is employed outside of the home. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280), or be a certified foster provider.

(c) The foster provider, when absent overnight or using unsupervised alternate caregivers for any period of time, must have a respite plan approved by the CDDP or the Department.

(d) The foster provider must assure the alternative caregiver is:

(A) 18 years of age or older, capable of assuming foster care responsibilities, present in the home;

(B) Physically and mentally able to perform the duties of the foster provider as prescribed in these rules;

(C) Cleared by a Criminal History Check including a DHS-CW background check (IIS);

(D) Able to communicate with the child, individuals, agencies providing care to the child, CDDP Service Coordinator and appropriate others;

(E) Trained on fire safety and emergency procedures;

(F) Trained on the child's ISP, BSP and any related protocols and able to provide the care needed for each child;

(G) Trained on the required documentation for health, safety and behavioral needs of the child;

(H) A licensed driver and with vehicle insurance in compliance with the Oregon DMV laws, when transporting children by motorized vehicle; and

(I) Not be a person who is placed in the foster home who needs care.

(e) When the foster provider uses an alternate caregiver and the child will be staying at the alternate caregiver's home, the foster provider must assure the alternate caregiver's home meets the necessary health, safety and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider will assure that the person will be responsible and capable of assuming child care responsibilities, and be present at all times. The foster provider still maintains back-up responsibility for the child.

(5) Food and Nutrition:

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community. Daily meals will include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a physician or physician assistant. There will be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration will be given to cultural and ethnic background in food preparation.

(b) The foster provider must implement special diets only as prescribed in writing by the child's physician or physician assistant.

(c) The foster provider will prepare and served meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(d) A Child who must be bottle-fed and cannot hold the bottle must be held during bottle-feeding.

(6) Clothing and personal belongings:

(a) The foster provider will provide each child with his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) School-age children should participate in choosing their own clothing whenever possible.

(c) The foster provider will allow children to bring and acquire appropriate personal belongings.

(d) The foster provider must send all personal clothing and belongings with the child when the child leaves the foster home.

(7) Behavior Support and Discipline Practices

(a) The foster provider will teach and discipline children with respect, kindness, and understanding, using positive behavior management techniques. Unacceptable punishments include, but are not limited to:

(A) Physical force, spanking or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or his or her family that undermine a child's self-respect;

(C) Denial of food, clothing or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or, if applicable, the DHS-CW case plan;

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of physical interventions;

(G) Threatened or unauthorized use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment; and

(L) Group discipline for misbehavior of one child.

(b) The foster provider will set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) If time-out separation from others is used to manage behavior, it must be included on the child's ISP and the foster provider must provide it in an unlocked, lighted, well-ventilated room of at least 50 square feet. The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out. The time limit must take into consideration the child's chronological age, emotional condition and devel-

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opment level. Time-out is to be used for short duration and frequency as approved by ISP Team.

(d) No foster child or other child in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm as defined in ORS 418.740 and OAR 413-030-0120. Sexual abuse and sexual exploitation include all sexual acts defined in ORS Chapters 163 and 167.

(e) Behavior Support Plan (BSP). For children who have demonstrated a serious threat to self, others or property and for whom it has been decided a BSP is needed, the BSP must be developed with the approval of the ISP team.

(f) Physical Restraint or Intervention. A physical restraint or intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the child's ISP team approved Behavior Support Plan.

(i) When physical restraint or intervention will be employed as part of the BSP the foster provider and alternative caregivers must complete OIS training prior to the implementation of the BSP.

(ii) The use of any modified OIS physical restraint or intervention must have approval from the OIS Steering Committee in writing prior to their implementation. Documentation of the approval must be maintained the child's records.

(B) As in a health-related protection prescribed by a physician, or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists;

(C) As an emergency measure, if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) Mechanical Restraint:

(A) The foster provider must not use mechanical restraints on children in care other than car seat belts or normally acceptable infant safety products unless ordered by a physician, or health care provider and with an agreement of the ISP team.

(B) The foster provider will maintain the original order in the child's records, and forward a copy to the CDDP Service Coordinator and guardian.

(h) Documentation and notification of use of restraint or intervention. The foster provider will document the use of all physical interventions or mechanical restraints in an incident report. A copy of the incident report is to be provided to the CDDP Service Coordinator and guardian.

(A) If an approved restraint is used the foster provider is required to send a copy of the incident report within five (5) working days.

(B) If an emergency or non ISP team approved restraint is used the foster provider is required to send a copy of the incident report within twenty-four hours (24 hours). The foster provider must make verbal notification to the CDDP Service Coordinator and guardian no later than the next working day.

(C) The original incident report must be on file with the foster provider in the child's records.

(D) The incident report must include:

(i) The name of the child to whom the restraint was applied;

(ii) The date, location, type and duration of restraint and of entire incident;

(iii) The name of the provider and witnesses or persons involved in applying the restraint;

(iv) The name and position of the person notified regarding the use of the restraint; and

(v) A description of the incident, including precipitating factors, preventive techniques applied description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(8) Medical and Dental Care. The foster provider must:

(a) Provide care and services, as appropriate to the child's chronological age, development level and condition of the child, and as identified in the ISP.

(b) Assure that physician or qualified health care provider orders and those of other licensed medical professionals are implemented as written.

(c) Inform the child's physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments or medications.

(d) Inform the guardian and CDDP Service Coordinator of any changes in the child's health status except as otherwise indicated in the DHS-CW Permanent Foster Care Placement Agreement and as agreed upon in the Child's ISP.

(e) Obtain the necessary medical, dental, therapies and other treatments of care, including but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments;

(C) Obtain emergency medical care.

(f) Have prior consent from the guardian for medical treatment that is not routine, including surgery and anesthesia except in cases where an SOSCF Permanent Foster Care Placement Agreement exists.

(9) Medications and Physician or Qualified Health Care Provider Orders.

(a) There must be authorization by a physician or qualified health care provider in the child's file prior to the usage of or implementation of any of the following:

(A) All prescription medications;

(B) Non prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or special diets;

(F) Adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have a copy of an authorization in the format of a written order signed by a physician or a qualified health care provider; or

(c) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the medication administration record (MAR), including the name of the individual giving the order, the date and time, and the name of the person receiving the telephone order or

(d) A current pharmacist prescription or manufacturer's label as specified by the physician's order on file with the pharmacy.

(e) A provider or substitute caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes must not be made without a physician or a qualified health care provider's authorization.

(f) Each child's medication, including refrigerated medication, must be clearly labeled with the pharmacist's label, or in the manufacturer's originally labeled container, and kept in a locked location, or stored in a manner that prevents access by children.

(g) Unused, outdated or recalled medications must not be kept in the foster home and must be disposed of in a manner that will prevent illegal diversion into the possession of people other than for whom it was prescribed.

(h) The foster provider must keep a medication administration record (MAR) for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(i) 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) A transcription of the printed instructions from the package for topical medications and treatments without a physician's order;

(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 reactions and procedures that maintain and protect the physical health of the children placed in the foster home.

(j) Treatments, medication, therapies and special diets must be documented on the MAR when not used or applied according to the order

(k) Self-administration of medication. For any child who is self-administering medication, the foster provider must:

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(A) Have documentation that a training program was initiated with approval of the child's ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication and time of delivery;

(C) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program; and

(D) Assure that the child is able to handle his/her own medication regime; and

(E) Keep medications stored in a locked area inaccessible to others.

(F) Maintain written documentation of all delegation training in the child's medical record.

(I) Any medication, with the intent to alter behavior, and prescribed by a physician or qualified health care provider for a child with a developmental disability will be documented on the ISP.

(m) Balancing test. When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the DHS Balancing Test Form. Foster 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.

(n) PRN (i.e., as needed) Psychotropic medication are prohibited. PRN orders will not be allowed for psychotropic medication.

(o) Within one working day of any new prescription for psychotropic medication the foster provider must notify the CDDP Service Coordinator, and if applicable the DHS-CW caseworker. This notification from the foster provider to the CDDP Service Coordinator will contain:

(A) The name of the prescribing physician, or qualified health care provider;

(B) The name of the medication;

(C) The dosage administration schedule prescribed; and

(D) The reason the medication was prescribed.

(10) Direct nursing services. When direct nursing services are provided to a child the foster provider must:

(a) Coordinate with the nurse and the ISP team to ensure that the 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 the registered nurse.

(c) When nursing tasks are delegated, they must be delegated by a licensed Registered Nurse and in accordance with OAR 851-047-0000 through 851-047-0040.

(11) Child Records.

(a) General Information or Summary Record. The provider will maintain a record for each child in the home. The record must include:

(A) The child's name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status;

(B) The names, addresses, and telephone numbers of the child's guardian, family, advocate, or other significant person;

(C) The name, address, and telephone number of the child's preferred primary health provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice;

(D) The name, address, and telephone number of the child's school program; and

(E) The name, address, and telephone number of the CDDP Service Coordinator and representatives of other agencies providing services to the child.

(b) Medical and Behavioral Information will include:

(A) History of physical, emotional and medical problems, accidents, illnesses or mental health status that may be pertinent to current care;

(B) Current orders for all medications, treatments, therapies, use of restraint or intervention, special diets and any known food or medication allergies;

(C) Completed Medication Administration Records (MAR) from previous months;

(D) Pertinent medical and behavioral information such as hospitalizations, accidents, immunization records including Hepatitis B status and previous TB tests, incidents or injuries affecting the health, safety or emotional well-being of the child; and

(E) Documentation or other notations of guardian consent for medical treatment that is not routine, including surgery and anesthesia.

(c) Individual Support Plan. Within 60 days of placement the child's ISP is prepared by the ISP team and at a minimum is updated annually.

(A) The foster provider will participate with the ISP Team in the development and implementation of the ISP to address each child's behavior, medical, social, financial, safety and other support needs.

(B) Prior to or upon entry to or exit from the foster home, the foster provider will participate in the development and implementation of a transition plan for the foster child.

(i) The transition plan will include a summary of the services necessary to facilitate the adjustment of the child to the foster home or after care plan; and

(ii) Identify the supports necessary to ensure health, safety, and any assessments and consultations needed for ISP development.

(d) Financial records.

(A) The foster provider must maintain a separate financial record for each child. The financial record must include:

(i) The date, amount and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the provider at the beginning of each month;

(iii) The date, amounts and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single item over \$25 purchased with the child's personal funds, unless otherwise indicated in the child's ISP, will be documented including receipts, in the child's financial record.

(C) The child's ISP team may address how the child's personal spending money will be managed..

(D) If the child has a separate commercial bank account, records from that account must be maintained with the financial record.

(E) The child's personal funds are to be maintained in a safe manner and separate from other members of the household funds.

(e) Personal Property Record. The foster provider is to maintain a written record of each child's property that has significant personal value to the child, parent or guardian or as determined by the ISP team.

(f) Personal property records are not required for children who have a court approved Permanent Foster Care Placement Agreement, unless requested by the child's guardian

(g) The personal property record must include:

(A) The description and identifying number, if any;

(B) The date when the child brought in the personal property or made a new purchase;

(C) The date and reason for the removal from the record; and

(D) The signature of the person making the entry.

(h) Child records will be available to representatives of the Department and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian, or other legally authorized persons.

(i) Child records will be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information will be transferred to the child's new home.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0200

Environmental Standards

(1) General Conditions.

(a) The buildings and furnishings must be clean and in good repair and grounds will be maintained. Walls, ceilings, windows and floors will be of such character to permit frequent washing, cleaning, or painting. There will be no accumulation of garbage, debris, or rubbish.

(b) The home must have a safe, properly installed, maintained, and operational heating system. Areas of the home used by a foster child will be maintained at normal comfort range during the day and during sleeping hours. During times of extreme summer heat, the provider will make reasonable effort to make the child comfortable using available ventilation, fans or air-conditioning.

(2) Exterior Environment.

(a) The premises must be free from objects, materials and conditions that constitute a danger to the occupants; and

(b) Swimming pools, wading pools, ponds, hot tubs, and trampolines must be maintained to assure safety, kept in clean condition, equipped with sufficient safety barriers or devices to prevent injury, and used by foster children only under direct supervision by the provider or approved alternate caregiver.

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(c) The home must have a safe outdoor play area on the property or within reasonable walking distance.

(3) Interior Environment.

(a) Kitchen:

(A) Equipment necessary for the safe preparation, storage, serving and cleanup of meals must be available and kept in working and sanitary condition;

(B) Meals will be prepared in a safe and sanitary manner that minimizes the possibility of food poisoning or food-borne illness; and

(C) If the washer and dryer are located in the kitchen or dining room area, soiled linens and clothing must be stored in containers in an area separate from food, and food storage prior to laundering.

(b) Dining Area: The home will have a dining area so those children in placement can eat together with the foster family.

(c) Living or Family Room: The home will have sufficient living or family room space that is furnished and accessible to all members of the family including the foster child.

(d) Bedrooms used by children in care must:

(A) Have adequate space for the age, size and specific needs of each child;

(B) Be finished and attached to the house, and have 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) Have windows that open and provide sufficient natural light and ventilation, with window coverings provided that take into consideration the safety, care needs and privacy of the child;

(D) Have no more than four children to a bedroom;

(E) Have safe and age appropriate furnishings provided for each child and including:

(i) A bed or crib including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a water proof mattress cover, if the child is incontinent;

(ii) A private dresser or similar storage area for personal belongings that is readily accessible to the child;

(iii) A closet or similar storage area for clothing that is readily accessible to the child;

(iv) An adequate supply of clean bed linens, blankets and pillows;

(F) Be on the ground level for children who are non-ambulatory or have impaired mobility;

(G) The foster provider shall not permit the following sleeping arrangements for children placed in their home:

(i) Children of different sexes in the same room when either child is over the age of five years of age; and

(ii) Children over the age of 12 months sharing a room with an adult;

(H) Provide flexibility in the decoration for the personal tastes and expressions of the children placed in the provider's home;

(I) Be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with a working monitor;

(J) Have doors that do not lock;

(K) Have no three-tier bunk beds in bedrooms occupied by foster children;

(L) No child of the foster provider shall be required to sleep in a room also used for another purpose in order to accommodate a foster child.

(e) Bathrooms

(A) Have tubs or showers, toilets and sinks operable and in good repair with hot and cold water. A sink will be located near each toilet. There will be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(B) Will have hot and cold water in sufficient supply to meet the needs of the child for personal hygiene. Hot water temperature sources for bathing/cleaning areas that are accessible by the foster child will not exceed 120 degrees F;

(C) Will have grab bars and non-slip floor surfaces for toilets, tubs, and/or showers for the child's safety as necessary for the child's care needs; and

(D) Will have barrier-free access to toilet and bathing facilities with appropriate fixtures if there is non-ambulatory child; alternative arrangements for the non-ambulatory child must be appropriate to the child's needs for maintaining good personal hygiene.

(E) Foster provider will provide each child with the appropriate personal hygiene and grooming items that will meet each child's specific needs and minimize the spread of communicable disease.

(F) Window coverings in bathrooms will take into consideration the safety, care needs, and privacy of the child.

(4) General Safety.

(a) The foster provider will protect the child from safety hazards;

(b) Stairways will be equipped with handrails. A functioning light will be provided in each room and stairway;

(c) In homes with foster children age three or under, or children with impaired mobility, the stairways are protected with a gate or door;

(d) Hot water heaters will be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location;

(e) Adequate safeguards are taken to protect young children or children who may be at risk for injury from electrical outlets, extension cords, and heat-producing devices;

(f) The foster provider will have a working telephone and service, with emergency phone numbers readily accessible in the home and in close proximity to the phone;

(g) The foster provider will store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by children;

(h) The foster provider must restrict children's access to potentially dangerous animals. Only domestic animals will be kept as pets. Pets will be properly cared for and supervised;

(i) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by local ordinances will be available to the Department upon request;

(j) The foster provider will take appropriate measures to keep the house and premises free of rodents and insects;

(k) The foster provider and members of the household must store any ammunition and firearms, unloaded, in separate locked places. Trigger locks alone are not approved as the sole source of locking firearms. The foster provider must notify the certifier within one working day whenever a firearm is brought to the premises;

(l) Loaded firearms must not be carried in any vehicle used while transporting a child in foster care unless a law enforcement officer is transporting the child;

(m) Ammunition will be kept in a locked container while transporting the child;

(n) The foster provider and members of the household, including law enforcement officers, who possess a concealed weapons permit must provide the Department or CDDP with a copy of the permit and a written plan to keep concealed weapons secure from foster children in the home and in vehicles;

(o) The foster provider must have first aid supplies in the home in a designated place easily accessible to adults;

(p) There must be emergency access to any room that has a lock;

(q) An operable flashlight, at least one per floor, must be readily available in case of emergency;

(r) House or mailbox numbers must be clearly visible and easy to read for easy identification by emergency vehicles; and

(s) Use of video monitors will only be used as indicated in the ISP or BSP.

(5) Fire Safety.

(a) Smoke detectors must be installed in accordance with manufacturer's instructions, equipped with a device that warns of low battery, and maintained to function properly.

(A) Smoke detectors must be installed in each bedroom, adjacent hallways, common living areas, basements, and at the top of every stairway in multi-story homes.

(B) Ceiling placement of smoke detectors is recommended. If wall-mounted, smoke detectors must be between 6" and 12" from the ceiling and not within 12" of a corner.

(b) At least one class 2:A:10:B:C rated fire extinguisher must be visible and readily accessible on each floor, including basements. A qualified worker who is well versed in fire extinguisher maintenance must inspect every fire extinguisher at least once per year. All recharging and hydrostatic testing will be completed by a qualified agency properly trained and equipped for this purpose.

(c) Use of space heaters is limited to only electric space heaters equipped with tip-over protection. Space heaters must be plugged directly into the wall. No extension cords are to be used with such heaters. No free-standing kerosene, propane or liquid fuel space heaters will be used in the foster home.

(d) An emergency evacuation plan must be developed, posted and rehearsed at least once every 90 days with at least one drill practice per year occurring during sleeping hours. Alternate caregivers and other staff will be familiar with the emergency evacuation plan, and new children placed in

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care will be familiar with the emergency evacuation plan within 24 hours. Fire drill records must be retained for one year.

(A) Fire drill evacuation rehearsal will document the date, time for full evacuation, location of proposed fire, and names of all persons participating in the evacuation rehearsal.

(B) The foster provider must be able to demonstrate the ability to evacuate all children from the home within three minutes.

(e) Foster homes must have two unrestricted exits in case of fire. A sliding door or window that can be used to evacuate children can be considered a usable exit.

(A) Barred windows used for possible exit in case of fire must be fitted with operable quick release mechanisms.

(B) Second, third or basement bedrooms must have a secondary exit that allows safe and direct exit to the ground.

(f) Every bedroom used by children in care must have at least one operable window, of a size that allows safe rescue, with safe and direct exit to the ground, or a door for secondary means of escape or rescue;

(g) Fireplaces and wood stoves must include barriers to keep children away from exposed heat sources;

(h) Solid or other fuel-burning appliances, stoves or fireplaces must be installed according to manufacturer's specifications and under permit, where applicable;

(i) Chimneys must be inspected at the time of initial certification and if necessary the chimney must be cleaned. Chimneys must be inspected annually, unless the fireplace and or solid fuel-burning appliance was not used through the year of certification and will not be used in the future.

(j) A signed statement by the foster provider and certifier assuring that the fireplace and or solid fuel burning appliance will not be in use must be submitted to the Department with the renewal application if a chimney inspection will not be completed.

(k) Flammable and combustible materials must be stored away from any heat source.

(6) Sanitation and Health.

(a) A public water supply must 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 must be retained for two years; corrective action must be taken to ensure potability;

(b) All plumbing must be kept in good working order. If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order;

(c) The foster provider must use only pasteurized liquid or powdered milk for consumption by children in care;

(d) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, and pending weekly removal;

(e) Smoking:

(A) The foster provider will not provide tobacco products in any form to children under the age of 18 placed in their home.

(B) Foster children will not be exposed to second hand smoke in the foster home or when being transported.

(7) Transportation Safety.

(a) The foster provider must ensure that safe transportation is available for children to access schools, recreation, churches, medical care and community facilities;

(b) The foster provider must maintain all vehicles used to transport children in a safe operating condition and must ensure that a first aid kit is in each vehicle;

(c) All motor vehicles owned by the foster provider and used for transporting children must be insured to include liability;

(d) Only licensed adult drivers will transport children in care in motor vehicles that are insured to include liability;

(e) When transporting children in foster care, the driver must ensure that all children in foster care use seat belts or appropriate safety seats. Car seats or seat belts must be used for transporting all children in accordance with the Department of Transportation under ORS 815.055.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0200; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0210

Variance

(1) Criteria for a variance. The Department may grant a variance to these rules based upon demonstration by the foster provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of the child.

(2) Variance application. The foster provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP.

(3) Community Developmental Disability Program review. The CDDP shall forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) Department review. The Administrator or designee may approve or deny the request for a variance.

(5) Notification. The Department must notify the foster provider and the CDDP of the decision. The Department will send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Grievance. Any Grievance of a denial for a variance request must be made in writing within 30 days to the Administrator with a copy sent to the CDDP. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance.

(8) Granting a variance. Granting a variance does not set a precedent that must be followed by the child placing agency when evaluating subsequent requests for variances.

(9) Written approval. The foster provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0210; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0220

Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) Inactive Referral Status. The Department may require that a foster provider go on inactive referral status. Inactive Referral Status is a period, not to exceed 12 months, or beyond the duration of the foster provider's current certificate. During that time no agency will refer additional children to the home and the provider will not accept additional children. The foster provider may request to be placed on inactive referral status. The certifier may recommend that the Department initiate inactive referral status.

(a) The Department may place a foster provider on Inactive Referral Status for reasons including, but not limited to the following:

(A) The Department or DHS-CW is currently assessing an Allegation of Abuse in the home.

(B) The special needs of the children currently in the home require so much of the foster provider's care and attention that additional children should not be placed in the home.

(C) The foster provider has failed to meet individualized training requirements or the Department has asked the foster provider to obtain additional training to enhance his or her skill in caring for the children placed in the home.

(D) The family or members of the household are experiencing significant family or life stress that may be impairing their ability to provide care. Examples include, but are not limited to:

(i) Changes in physical or mental health conditions such as separation or divorce and relationship conflicts;

(ii) Marriage;

(iii) Death;

(iv) Birth of a child;

(v) Adoption;

(vi) Employment difficulties;

(vii) Relocation;

(viii) Law violation; or

(ix) Significant changes in the care needs of their own family members (children or adults).

(b) The Department will notify the foster provider immediately upon placing them on inactive referral.

(c) Within 30 days of initiating inactive referral status the Department will send a letter to the foster provider that confirms the inactive status, and states the reason for the status, and the length of inactive referral status.

(d) When the foster provider initiates Inactive Referral Status, the inactive status ends at the request of the foster provider and when the

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Department has determined the conditions that warranted the Inactive Referral Status have been resolved.

(A) There must be no conditions in the home that compromise the safety of the children already placed in the home.

(B) If applicable a mutually agreed upon plan, must be developed to address the issues prior to resuming active status.

(C) The foster provider must be in compliance with all certification rules, including training requirements, prior to a return to active status.

(2) Denial, Suspension, Revocation, Refusal to Renew.

(a) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a child foster care certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information. Failure to disclose requested information on the application or providing incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(c) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the foster provider fails to implement a plan of correction or comply with a final order of the Department. Failure to submit a plan will constitute a withdrawal from certification.

(d) Non Compliance with Fire Safety rules. Failure to comply with Fire Safety rules as outlined in OAR 411-346-0200(5) may constitute grounds for denial, revocation, or refusal to renew.

(e) Imminent danger to individuals. The Department may suspend the child foster home certificate where imminent danger to health or safety of individuals exists.

(f) Suspension. Suspension will result in the removal of children placed in the foster home and no placements will be made during the period of suspension.

(g) Denied or revoked certificates. The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(h) Written notice. The Department will provide the applicant or the foster provider a written notice of denial, suspension or revocation that states the reason for such action.

(i) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with rules of the Department and ORS Chapter 183 that governs notices, timelines, corrective actions, contested cases, and final orders.

Stat. Auth.: ORS 443.830; 430.215; 409.050, 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0220; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

411-346-0230

Appeals

(1) Appeal Rights. Upon written notice of denial, suspension, revocation or non-renewal of a certificate from the Department, an applicant or foster provider may request an informal conference to appeal the decision. The written request will be submitted to the Assistant Administrator, or designee, of the Department.

(2) Request for Informal Conference. The written request must be submitted within ten days of the denial, suspension, revocation or non-renewal notification date and must specifically state the reasons for the appeal. The applicant or foster provider must submit documentation and explain the basis for the appeal at the informal conference. Following the informal conference, the Department will notify the applicant or foster provider of its decision by mail.

(3) Contested Case Hearing. No judicial review is available following a decision from an informal conference and appeals process with the Department. If an applicant or foster provider is not satisfied with the decision rendered by the Department during the informal conference, the applicant or foster provider may request a contested case hearing pursuant to ORS 183.413-183.470. The applicant or foster provider must notify the Department in writing of the request for a contested case hearing within 60 days of the decision of the informal conference. The request for the contested case hearing must specifically state the reason for requesting the hearing.

Stat. Auth.: ORS 443.830; 430.215; 409.050 and 410.070

Stats. Implemented: ORS 443.835

Hist.: MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0230; SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05

Adm. Order No.: SPD 35-2004

Filed with Sec. of State: 11-30-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 11-1-04

Rules Adopted: 411-034-0035, 411-034-0040, 411-034-0055

Rules Amended: 411-034-0000, 411-034-0010, 411-034-0020, 411-034-0030, 411-034-0050, 411-034-0070, 411-034-0090

Subject: Chapter 411, Division 034 Personal Care Service Rules are permanently amended effective 12/1/04 allowing for updates to the following:

- Name change from Division 034, Personal Care Service Rules to Division 034, "State Plan Personal Care Services,"
- Definitions and terminology,
- Criminal history rule reference,
- Terms of provider hours and payment for services,
- Requirements with regard to case manager reassessments and nursing referrals and to RN care planning and assessment, and
- Who, when and how services can be authorized.

Additionally, this rule adopts three new rules for this Division, which

- a) Specify where one can apply for these services;
- b) Designates the client as employer and as such can terminate provider employment;
- c) Defines when DHS can deny or terminate provider employment.

Finally, there is general housekeeping to the rule and language updates to comply with current DHS standards and practices.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-034-0000

Purpose

(1) These administrative rules (OAR 411-034-0000 through 411-034-0090) are established to ensure personal care services will support and augment independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to eligible clients. Personal care services are intended to supplement the client's own personal abilities and resources.

(2) Medicaid State Plan services are health care benefits defined by the state. Certain services are required by the Centers for Medicare and Medicaid (CMS) to be included in the state plan and others are optional services selected by states from a menu of options. Each state determines what medical services will be covered. Personal Care is one of the optional services that Oregon selected for its Medicaid State Plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0010

Definitions

As used in these rules, unless the context demands otherwise, the following definitions apply:

(1) "Activities of Daily Living" (ADL) means those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(2) "Case Management" means those functions, performed by a Case Manager or Service Coordinator that ensure the effective provision of personal care and supportive services to the client.

(3) "Case Manager" or "Service Coordinator" means a DHS employee or an employee of a designee who ensures client entry, assessment, case planning, service authorization and implementation, and evaluation of the effectiveness of the services.

(4) "Client" means the individual eligible for personal care services.

(5) "Contract agency" means an entity or person contracting with the Seniors and People with Disabilities or its designee to provide personal care services.

(6) "Cost Effective" means that a specific service meets the client's service needs and costs less than other service options considered.

(7) "Designee" means Children, Adults and Families (CAF), Mental Health Services, Developmental Disabilities Services, or an Area Agency on Aging, or any organization with whom Seniors and People with Disabilities has an interagency agreement or contract.

(8) "Department" means the Oregon Department of Human Services.

(9) "Fiscal Improprieties" means the Personal Care Attendant committed financial misconduct involving the client's money, property or benefits. Improprieties may include financial exploitation, borrowing money

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from the client, taking the client's property or money, having the client purchase items for the provider, forging the client's signature, falsifying payment records, claiming payment for hours not worked, and similar acts intentionally committed for financial gain.

(10) "Full Assistance" means the client is unable to do any part of a task listed in OAR 411-034-0020 and that the task must be done entirely by someone else.

(11) "Homecare Worker" means a provider enrolled through the Department to provide services to seniors and persons with physical disabilities as described in OAR 411, division 031.

(12) "Lacks the skills, knowledge and ability to adequately or safely perform the required work" means the Personal Care Attendant does not possess the skills to perform services needed by Department clients. The Personal Care Attendant may not be physically, mentally, or emotionally capable of providing services to persons with developmental disabilities or mental health diagnoses. 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.

(13) "Legally responsible relative" means the parent, or step-parent of a minor child, a spouse, or other family member who has legal custody or legal guardianship according to ORS 125.005, 125.300, 125.315, and 125.320.

(14) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(15) "Personal Care Attendant" means a provider with an individual Medicaid provider number who is enrolled through the Department to provide Personal Care Services, as described in these rules, to DHS Developmental Disabilities Services and Mental Health Services clients.

(16) "Personal Care Services" means a task, which helps with the client's activities of daily living and other activities as listed in OAR 411-034-0020.

(17) "Provider" or "Qualified Provider" means the individual who actually performs the service and meets the description cited in OAR 411-034-0050.

(18) "Provider Enrollment" means the authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a Medicaid provider number.

(19) "Service Need" means those functions or activities with which the client requires personal care support.

(20) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to a patient with a condition that prevents the patient from being discharged home yet they do not require acute hospital care.

(21) "Substantial Assistance" means a client can perform only a small portion of a task and requires assistance with a majority of a task.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0020

Scope of Services

(1) Personal care services are essential supportive services performed by a qualified provider, which enable an individual to move into or remain in his or her own home.

(2) The extent of the services may vary, but the number of hours is limited to twenty (20) hours of services per client per month. The services include:

(a) Basic personal hygiene - providing or assisting a person with such needs as bathing (tub, bed bath, shower), shampoo, hair grooming, shaving, nail care, foot care, dressing, skin care,

(b) Toileting, bowel and bladder care — assisting to and from bathroom, on and off toilet or commode, managing incontinence, bedpan, external cleansing of perineal area, external cleansing of Foley catheter, emptying catheter drainage bag, changing colostomy or ileostomy bag in stabilized situations, encouraging adequate fluid intake, maintenance bowel care,

(c) Mobility, transfers, comfort — assisting with ambulation with or without assistive devices, repositioning of bed-bound or wheelchair-using individuals, encouraging active range-of-motion exercises, assisting with passive range-of-motion exercise, assisting with transfers with or without assistive devices,

(d) Nutrition — preparing nutritious meals, planning and preparing special diets, assuring adequate fluid intake, feeding,

(e) Medications and Oxygen — assisting with administration of medications, assuring medication is taken as ordered by physician, observing

for reactions, reminding appropriate persons when prescriptions need to be refilled, maintaining clean oxygen equipment, assuring adequate oxygen supply, and

(f) Delegated nursing tasks.

(3) When any of the services listed in section (2)(a) to (f) of this rule are essential to the health and welfare of the client and the client is receiving a paid personal care service, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the client in a healthy and safe environment,

(b) Arranging for necessary medical appointments,

(c) Observation of client's status and reporting of any significant changes to physician or other appropriate person,

(d) First aid and handling of emergencies, and

(e) Extra support due to confusion, dementia, mental illness, or other cognitive deficits.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0030

Eligibility

(1) To be eligible for state plan personal care services under these rules, a person must be a current recipient of at least one of the following programs: GA, EXT, MAA, MAF, OHP, OSIPM, TANF, or REF. These terms are defined in OAR 461-101-0010.

(2) Persons receiving services from a licensed residential service program that provides ADL care, such as the services received by residents of a foster home, assisted living facility, group home, or other residential care program are not eligible to receive state plan personal care services under these rules.

(3) Personal care services are not available for persons in a prison, hospital, sub-acute care facility, nursing facility, or other institution.

(4) Payment for personal care services is provided for a person needing the service when authorized by the Department or its designee in accordance with a plan of care.

(5) Care plans will be based upon the least costly means of providing adequate care. Payment for personal care services is not intended to replace the resources available to a client from their relatives, friends, or neighbors. They are not intended to replace routine care commonly needed by an infant or child typically provided by a parent. Additionally, they should not be used to replace other governmental services.

(6) Clients served under the Title XIX 1915(c) Home and Community-Based Services waiver for the aged and physically disabled are not eligible to receive personal care services under the state plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0035

Where Clients Are Served

(1) A client eligible for or receiving mental health case management services or other services through Mental Health Services will apply for State Plan Personal Care services through the local County Mental Health Services office.

(2) Clients eligible for or receiving developmental disabilities case management services or other services through Developmental Disabilities Services will apply for State Plan Personal Care services through the local County Developmental Disability Services office or through the local support service brokerage.

(3) Clients eligible for or receiving case management services from a Senior and People With Disabilities (SPD)/Area Agency on Aging (AAA) office serving seniors and persons with physical disabilities, will apply for State Plan Personal Care services through the local SPD or AAA office that provides Medicaid programs to seniors or persons with physical disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0040

Employment Relationship

(1) The relationship between the provider and the client is that of employee and employer. The client carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees.

(2) Termination of Employment: It is the responsibility of the employer to establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal and any requirements to

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provide advance notice before resigning. The client has the right to terminate their employment relationship with their provider at any time and for any reason.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0050

Qualified Provider

(1) A qualified provider is an individual who, in the judgment of the Department or its designee, can demonstrate by background, skills, and abilities the capability to safely and adequately provide the services authorized.

(2) A qualified provider must maintain a drug-free work place and must have an acceptable criminal history clearance as described in OAR chapter 410, division 007.

(3) A qualified provider paid by the Department must not be the parent, or step-parent of a minor child, the client's spouse or another legally responsible relative.

(4) A qualified provider must be authorized to work in the United States, in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules.

(5) A qualified provider must be 18 years of age or older. A Homecare Worker enrolled in the Client-Employed Provider Program who is at least sixteen years of age may be approved for limited enrollment as a qualified provider, as described in OAR 411-031-0040(8)(d).

(6) A qualified provider may be employed through a contract agency or as a Homecare Worker or Personal Care Attendant under an individual provider number. Rates for these services are established by the Department.

(7) Homecare Workers enrolled in the Client-Employed Provider Program providing state plan personal care services must meet the standards in OAR chapter 411, division 031.

(8) Criminal History Clearance Re-checks:

(a) Criminal history clearance re-checks may be conducted at the discretion of the Department or designee, in accordance with OAR 410-007-0200 through 410-007-0380.

(b) Providers will comply with criminal history clearance re-checks by completing a new criminal history authorization form when requested to do so by the Department.

(c) The provider's failure to complete a new criminal history clearance authorization will result in the inactivation of the provider enrollment. Once inactivated, a provider must reapply and meet all of the standards described in OAR 411-034-0050 to have their provider enrollment reactivated.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0055

Personal Care Attendant Enrollment Standards

The Department may deny or terminate a Personal Care Attendant's provider enrollment and provider number if the Personal Care Attendant:

(1) Has an unacceptable criminal history as defined in OAR chapter 410, division 007;

(2) Lacks the skills, knowledge, or ability to adequately or safely perform the required work;

(3) Violates protective service and abuse rules in OAR chapter 411, division 020, or 413, division 015;

(4) Commits fiscal improprieties;

(5) Fails to provide the authorized services required by the client;

(6) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by the client;

(7) Has been intoxicated by alcohol or drugs while providing authorized services to the client or while in the client's home;

(8) Has manufactured or distributed drugs while providing authorized services to the client or while in the client's home; or

(9) Has been excluded as a provider by the Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare or any other federal health care programs.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0070

Quality Assurance, Assessment, Authorization, and Monitoring

(1) This rule details quality assurance responsibilities in the assessment, case planning, prior authorization of payment for services, and on-

going monitoring of a care plan as performed by case managers, registered nurses, or other persons designated by the Department or interagency agreement to perform similar activities.

(2) Case Manager Quality Assurance Responsibilities:

(a) Assessment: The case manager or designated person will assess the service needs of the client by identifying services the client is currently eligible for, services currently being provided, and resources meeting any, some, or all of the person's needs. The case manager will interview the client and, if appropriate, other interested persons to assess the client's ability to perform the tasks listed in OAR 411-034-0020.

(b) Prior Authorization: Payment for personal care services must be prior authorized by the Department or its designee based on these rules, the service needs of the client as documented in the written care plan, and the cost effectiveness of the proposed services. If a client is served by a Department designee that does not provide, assessment, planning and authorization of personal care services, then the local Seniors and People With Disabilities (SPD) or the Area Agency on Aging (AAA) office will be responsible for case planning and service payment authorization.

(c) Case Planning:

(A) The case manager will prepare a care plan identifying those tasks for which the client requires minimal, substantial or full assistance, the supports that currently address some or all of those assistance needs, and the number of authorized hours of service.

(B) The care plan will describe the tasks to be performed by the qualified provider, authorize the maximum number of hours that can be reimbursed for those services, indicate the expected outcomes and estimate the cost of the care. The case manager will review the plan with the client and, if appropriate, interested parties prior to implementation.

(d) Nursing Referral: The case manager or designee may refer a registered nurse (RN) for nursing assessment and monitoring when it appears the client may need services requiring RN monitoring or delegation under the Oregon State Board of Nursing, Nurse Delegation Rules (OAR chapter 851 division 047). Indicators of the need for RN assessment and monitoring include:

(A) Medical instability, as demonstrated by frequent emergency care, physician visits or hospitalizations;

(B) Potential for skin breakdown or pressure ulcers;

(C) Multiple health problems or frailty with a strong probability of deterioration;

(D) Potential for increased self-care, but instruction and support for the client are needed to reach goals; or

(E) Complex medication regimen including PRN prescribed medications, use of psychoactive medications insulin or blood-thinning medication with frequent lab work.

(e) On-going Monitoring and Authorization: The case manager will meet with the client and, when appropriate, interested parties at least once every 365 days to review the client's service needs. The case manager will review the cost effectiveness of the plan, and will authorize a new service plan, if appropriate, based on the client's current service needs.,

(2) Registered Nurse Quality Assurance Responsibilities:

(a) Assessment: The registered nurse will assess the need of each client if referred by the case manager, or designee for medically-related services to assist with tasks listed in OAR 411-034-0020,

(b) Nursing Care Plan:

(A) The nursing care plan must comply with the Nurse Practice Act, Oregon Revised Statutes 678.010 to 678.410, and the Oregon State Board of Nursing Administrative Rules chapter 851, divisions 045 and 047.

(B) The nursing care plan will be reviewed with the client, the provider and the case manager prior to implementation. The plan will indicate the interventions needed, the expected outcomes of care and the schedule of authorized nursing visits. The frequency of review will be based on the client's need, but the plan will be reviewed at least every 180 days. A copy of the nursing care plan must be included in the referring case manager's case plan file.

(c) Maximum hours and hourly rates for contracted nurse services are established by the Department.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

411-034-0090

Payment Limitations

(1) The number of ADL service hours authorized for each client per calendar month will be based on projected amounts of time to perform specific assistance to the client. The total of these hours must not exceed twenty

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ty (20) hours per client per month. These hours may be spread throughout the month or used in large blocks.

(2) The monthly maximum hours for personal care services described in section (1) of this rule do not include authorized nursing assessment and monitoring services provided by a registered nurse.

(3) The Department will not guarantee payment for services until all acceptable provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Department is authorized.

(4) In accordance with OAR 410-120-1300, all provider claims for payment must be submitted within 12 months of the date of service.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04

Department of Justice Chapter 137

Adm. Order No.: DOJ 14-2004

Filed with Sec. of State: 11-22-2004

Certified to be Effective: 11-22-04

Notice Publication Date: 10-1-04

Rules Adopted: 137-076-0016, 137-076-0018

Rules Amended: 137-076-0010, 137-076-0020, 137-076-0025, 137-084-0001

Subject: OAR 137-076-0016 is adopted to establish rules that clarify which statutory eligibility criteria need to be met when filing for crime victim compensation awards.

OAR 137-076-0018 is adopted to establish rules that clarify individual award amounts to victims and indirect victims of crime.

OAR 137-076-0010 is amended to implement legislative changes to ORS 147.005, 147.025 and 147.035 relating to crime victims compensation as well as to clarify and further define terms associated with claim eligibility.

OAR 137-076-0020 is amended to further define "medical practitioner."

OAR 137-076-0025 is amended to implement legislative changes to loss of earnings and loss of support benefits.

OAR 137-084-0001 is amended to define "application form" as used in reference to the Sexual Assault Victims' Emergency Medical Response Fund.

Rules Coordinator: Carol Riches—(503) 378-6313

137-076-0010

Definitions

As used in ORS 147.005 through 147.375, unless the context requires otherwise:

(1) "Program" means the Crime Victims' Compensation Program.

(2) "Administrator" or "Program Director" means the Administrator or Program Director of the Crime Victims' Compensation Program as designated by the Attorney General of the State of Oregon.

(3) "Failure to Cooperate" means any act or omission by a victim that prejudices a law enforcement agency in the timely investigation of a crime or which causes the agency to abandon its investigation, or which prejudices a prosecuting official in a timely prosecution of the crime or causes or contributes to a decision by the official to abandon prosecution.

(4) "Good Cause for Failure to Cooperate" exists when the victim receives express or implied threats that cooperation will result in death or serious physical injury to the victim or another person and that these expressed or implied threats can be documented by the Program.

(5) "Good Cause for Failure to Notify the Appropriate Law Enforcement Officials within 72 Hours from the Perpetration of the Crime" means physical or mental trauma causing an inability to report the crime within 72 hours as required by statute.

(6) "Substantially Attributable to the Victim's Wrongful Act" means directly or indirectly attributable to a wrongful act from which there can be a reasonable inference that, had the act not been committed, the crime complained of likely would not have occurred.

(7) "Wrongful Act" means any intentional, reckless, negligent or careless act that is unlawful or meets the elements of a crime, violation or infraction. "Wrongful Act" could include but is not limited to a felony, misdemeanor, violation, traffic crime, traffic violation, parole or probation violation, custody release agreements or participating, either directly or indi-

rectly, in the cultivation, purchase, sale, manufacture or possession of a controlled substance as defined by ORS 475.991 to 475.995 and 167.225.

(8) "Substantial Provocation" means a voluntary act by the victim which caused or provoked another to take action as the result of anger, resentment or deep feelings, which would have been foreseeable by a reasonable and prudent person, and from which there can be a reasonable inference that, had the act not occurred, the crime likely would not have occurred.

(9) "Contribution" means a voluntary action by the victim, which, directly or indirectly, produced the victim's injury. In determining whether contribution exists, the Department may consider all relevant circumstances of the behavior of the victim that may have contributed to the victim's injury or death, including but not limited to gestures, words, prior conduct and the use of alcohol or controlled substances.

(10) "Reject With Prejudice" means denial of the applicant's claim with conclusive and final effect.

(11) "Medical Fee Schedule" means the Oregon Workers' Compensation Medical Fee and Relative Value Schedule in regards to processing medical bills for reimbursement. Dental and mental health bills are processed using other fee schedules adopted by the program.

(12) "Financial Obligation" means a financial debt ordered or imposed by a court, within or outside of the State of Oregon, as a result of a previous criminal conviction.

(13) "Mental or Nervous Shock" means the psychological injury and emotional distress or mental harm directly incurred and experienced as a result of a person crime as defined in ORS chapter 163.

(14) "Family" means related by blood, marriage or adoption, or any person who had the same primary residence as the victim at the time of the compensable crime.

(15) "Immediate Family" means father, mother, child, sibling, parent, spouse, grandparent, stepparent and stepchild and any other relative of the victim or victim's spouse, or any other person who had the same primary residence as the victim at the time of the compensable crime.

(16) "Friend" means someone that had a friendship or friendly relations with the victim.

(17) "Acquaintance" means someone that had been introduced to, or who knew the victim, but who may not have been a particularly close friend.

(18) "Law Enforcement Official" as defined in ORS 147.005(10) also includes Judges and protective services personnel from the Department of Human Services.

(19) "Good Cause for Failure to Satisfy a Financial Obligation" means a physical or mental injury that can be documented by a medical doctor that is causing an inability to satisfy a financial obligation within one-year of notification of the financial obligation.

Stat. Auth.: ORS 147.205(3)

Stats. Implemented: ORS 147.015(2), 147.015(3), 147.015(5) & 147.125(1)(c)

Hist.: JD 4-1983, f. & ef. 9-1-83; JD 1-1987(Temp), f. & ef. 1-8-87; JD 2-1992, f. & cert. ef. 3-2-92; JD 18-1992, f. 10-30-92, cert. ef. 11-2-92; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0016

Eligibility Criteria

For the purpose of ORS 147.005 through 147.365 and unless otherwise specified by statute, when a victim files a claim for crime victim compensation benefits, the Department must use those statutory eligibility criteria in effect at the date of the victim's crime in order to evaluate the claim for eligibility, even if that eligibility criteria is currently not in use by the Department.

Stat. Auth.: ORS 147.205(3)

Stats. Implemented:

Hist.: DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0018

Award Limits

(1) For the purposes of ORS 147.035(1)(a)(A)(i) in the case of injury, an award to a victim for medical and hospital expenses, including psychiatric, psychological or counseling expenses shall have a maximum amount of up to \$20,000 per claim. This same award, in the case of child sex abuse, rape of a child and exploitation described in ORS 419B.005(1)(a)(C), (D) or (E), may be used to pay for the counseling expenses of the victim's family. In no instance does there ever exist a separate individual award of \$20,000 specifically for family counseling in child sex abuse cases. However, once a child sex abuse victim described above reaches the age of 18, family counseling benefits will cease to exist.

(2) For the purposes of ORS 147.035(1)(a)(A)(ii) in the case of children who witness domestic violence, an individual award of up to a maxi-

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imum amount of \$10,000 can be awarded for counseling expenses to each individual child associated with the claim who witnessed the domestic violence as documented by law enforcement.

(3) For the purposes of ORS 147.035(1)(a)(A)(iii) in the case of a victim of international terrorism, an individual award of up to a maximum amount of \$1,000 can be awarded for counseling expenses to each relative of the victim in association to trauma suffered as a result of the victim's crime.

(4) For the purposes of ORS 147.025 and 147.035, and unless otherwise specified in statute, when a victim files a claim for crime victim compensation benefits, only those awards and limits in effect at the date of the victim's crime can be used to compute the type and amount of award(s) granted by the Department.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented:
Hist.: DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0020

Definition of Reasonable Expenses

(1) As used in this rule, "necessary services" are those services necessary for the treatment of physical and/or psychological injury suffered by the victim as a direct result of a crime.

(2) For purposes of ORS 147.035, reasonable hospital expenses shall be limited to expenses for necessary services provided by licensed hospitals and by other health care facilities licensed to provide services that may otherwise be supplied by hospitals.

(3) For purposes of ORS 147.035, reasonable medical expenses shall be limited to ambulance expenses and expenses for necessary services provided by medical practitioners licensed under ORS chapters 677 through 679. Medical treatment provided by any other medical provider may be reimbursable if at the time treatment began it was approved by and provided under the supervision of a medical practitioner licensed under ORS chapters 677 through 679. Medical treatment provided by any other medical provider without a referral from a medical practitioner, licensed under ORS chapters 677 through 679, may be compensated for a period of 90-days from the date of the first crime-related visit by the victim, or up to 5 visits, whichever occurs first, so long as the medical provider is licensed under the provisions governing that provider's profession.

(4) For purposes of ORS 147.025 and 147.035, reasonable psychiatric, psychological or counseling expenses are limited to expenses for necessary services provided by psychiatrists or physicians licensed under ORS chapter 677, or psychiatric mental health nurse practitioners licensed under ORS chapter 678, or licensed psychologists, licensed clinical social workers, licensed professional counselors, licensed psychologist associates or licensed marriage and family therapists licensed under ORS chapter 675, or qualified mental health professionals as defined in OAR 309-039-0510(12). The Administrator or Program Director shall have the authority to grant an exception to the above requirements when justification is provided that none of the above referenced mental health treatment providers is a reasonable option for addressing the crime-related needs of a specific victim.

(5) For purposes of ORS 147.035, compensable rehabilitation expenses shall be limited to expenses for necessary services to provide physical rehabilitation, vocational training, or to assist with adaptations necessary to allow a victim to conduct daily living tasks.

(6) For purposes of this rule, "medical practitioner" means a medical provider who is licensed under ORS chapters 677 through 679 and who is able to prescribe controlled substances in the course of professional practice and includes:

- (a) Doctor of Medicine;
- (b) Doctor of Osteopathy;
- (c) Podiatric Physician or Surgeon;
- (d) Dentist;
- (e) Nurse Practitioner, and;
- (f) Physicians Assistant with drug dispensing authority from the Board of Medical Examiners for the State of Oregon.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.025 & 147.035
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 18-1992, f. 10-30-92, cert. ef. 11-2-92; DOJ 3-2001(T), f. & cert. ef. 4-5-01 thru 5-31-01; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-076-0025

Lost Earnings Compensation

(1) Net lost earnings shall be computed on the basis of the victim's actual documented net earnings determined as of the date of the compensable injury. Dependency benefits shall be computed on the basis of the deceased victim's documented net earnings at the time of death. Possible

future earnings shall not be considered as a basis for lost earnings compensation. Benefits can also be paid for subsequent periods of disability, such as surgeries. The rate of the loss should be recalculated to reflect the victim's present net earnings and should be paid at the higher rate if different. No earnings may exceed the \$200 per week maximum.

(2) Lost earnings compensation shall accrue only during the period of medical disability as confirmed by a medical practitioner licensed under ORS chapters 677 and 679.

(3) Where a replacement person is hired to fulfill the duties of an injured victim and the cost of this replacement person is a direct financial cost to the victim, such documented replacement cost shall be used as the basis for lost earnings compensation, but in no instance shall the compensation exceed the maximum weekly amount of \$200 or an aggregate of \$10,000. If a victim was not working at the time of the criminal incident but has a history of annual earnings, such as seasonal work, contracting, or temporary assignments, he/she may still be eligible for lost wages/support if the program receives proper documentation to support the net earnings. For this purpose the program must have either W-2's or an income tax return that reflects earnings for the preceding twelve month period. This figure will then be used to reflect annual income/support and provide a basis for calculating the disability period.

(4) Loss of support compensation shall be based on the victim's documented net earnings at the time of death. The net amount shall be divided by the number of dependents, including the victim. The result shall be based on the number of survivors, not to exceed the maximum weekly amount of \$200.

(5) Loss of support compensation shall include the documented loss of child support. Loss of child support shall be based on the amount of child support received by the child at the time of the victim's death.

(6) Dependency compensation benefits shall be paid to dependent children under 18, dependent spouse of a deceased victim until remarriage, and any relative who was a financial dependent of the deceased victim at the time of the death of the victim.

(7) Where a deceased victim and surviving spouse both have income at the time of the criminal occurrence resulting in the death of one spouse, the independent income of each spouse shall be used to determine dependency benefits.

Stat. Auth.: ORS 147.205(3)
Stats. Implemented: ORS 147.035
Hist.: JD 4-1983, f. & ef. 9-1-83; JD 2-1992, f. & cert. ef. 3-2-92; JD 2-1997, f. & cert. ef. 7-9-97; DOJ 4-2001, f. & cert. ef. 6-1-01; DOJ 14-2004, f. & cert. ef. 11-22-04

137-084-0001

Definitions

"Application Form" means the most current version of the Application for Payment Sexual Assault Victims' Emergency Medical Response Fund form issued by the Department of Justice. (A copy of the Application Form is set out as an Appendix to these administrative rules.) [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 14-2004, f. & cert. ef. 11-22-04

Adm. Order No.: DOJ 15-2004

Filed with Sec. of State: 11-22-2004

Certified to be Effective: 11-22-04

Notice Publication Date: 10-1-04

Rules Adopted: 137-086-0000, 137-086-0010, 137-086-0020, 137-086-0030, 137-086-0040, 137-086-0050

Subject: The rules set out guidelines for the operation of the Oregon Domestic and Sexual Violence Services Fund. The rules create a Division (86) within the Department of Justice Chapter 137.

Rules Coordinator: Carol Riches—(503) 378-6313

137-086-0000

Purpose

These rules set out guidelines for the operation of the Oregon Domestic & Sexual Violence Services Fund ("the Fund") including the review and revision of the allocation plan mandated in ORS 147.456 & 134.459, the functioning of the advisory council established in ORS 147.471, and the administration of the grant program established in ORS 147.465. They also describe the grievance procedure with regard to grant award decisions and other Fund activities described in ORS 147.468.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)
Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)
Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

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137-086-0010

Definitions

(1) "Advisory Council" is the Oregon Domestic and Sexual Violence Services Fund Advisory Council, as established in ORS 147.471.

(2) "Allocation Plan" is the plan for distributing money in the Fund that is developed pursuant to ORS 147.456 and 147.459 and periodically reviewed and adjusted according to these rules.

(3) "Applicant" is an agency that is eligible to apply for Oregon Domestic and Sexual Violence Services Fund money through the grant-making process carried out by the Department pursuant to ORS 147.465.

(4) "The Fund" is the Oregon Domestic & Sexual Violence Services Fund.

(5) "Fund Coordinator" is the person designated by the Department to provide programmatic oversight of Oregon Domestic and Sexual Violence Services Fund.

(6) "Grant term" is the period from the date of an effective award until the end date or the termination of such an award.

(7) "Grantee" is an agency that successfully applies for and receives Oregon Domestic and Sexual Violence Services Fund money through the grantmaking process carried out by the Department pursuant to ORS 147.465.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)

Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)

Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0020

Advisory Council

An Advisory Council of no fewer than fifteen and no more than twenty members shall be selected and serve terms in accordance with ORS 147.471 and with the by-laws established by the Advisory Council. Copies of the by-laws and other open records are available by contacting the Department.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)

Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)

Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0030

Allocation Plan

(1) Frequency. An allocation plan for distribution of legislatively authorized funds for the upcoming or current biennium will be developed each biennium by the Advisory Council. The final allocation plan must be approved by the Attorney General or designee.

(2) Purpose. The allocation plan shall help to accomplish one or more of the following:

(a) Increase the effective use of Fund dollars;

(b) Support the greater efficiency of the administration and use of grant dollars; and

(c) Further the objectives set forth in ORS 147.453.

(3) Process. The following process shall be followed in making revisions:

(a) The Advisory Council shall review current Oregon Domestic and Sexual Violence Services Fund data, including outcomes, challenges and successes.

(b) The Advisory Council shall gather input from a broad range of stakeholders.

(c) The Advisory Council shall review other relevant information including, but not limited to: the amount of funds available for grant awards; existing funding data from other state-administered funds available to applicants; and current state and national research on program effectiveness and victims' needs.

(d) Based upon information gathered pursuant to paragraphs (a-c) of this section, the Advisory Council shall create a list of suggested revisions.

(e) The Advisory Council shall consider the list created according to paragraph d) of this section in order to make recommendations to the Attorney General or his designee as to revisions to the allocation plan. The recommendations shall address the specific categories in which awards will be made, whether each award category shall be competitive or non-competitive, the portion of total funds appropriated that will be available in each award category, and eligibility criteria. The Advisory Council may recommend that a specific portion of the Fund be reserved for a specific subgroup of eligible applicants or that funding prioritize a specific sub-group of eligible applicants.

(f) The final decision as to revisions to the allocation plan shall be made by the Attorney General or his designee.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)

Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)

Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0040

Grant Program Application Process

(1) Frequency. An Oregon Domestic and Sexual Violence Services Fund grant application packet shall be issued by the Department and grant awards shall be made at least once in each biennium, so long as sufficient funds are appropriated to the Fund.

(2) Eligibility to Be Awarded Grant Funds. Eligible applicants for grant awards include public and private entities that are recommended by the Advisory Council and approved by the Attorney General or designee as part of the allocation plan. In addition to other criteria established by the Advisory Council, in order to be considered eligible for a grant award an applicant must be current in its financial and other reporting for all previous Oregon Domestic and Sexual Violence Services Fund awards to that applicant. An applicant's ability to successfully manage any previous Fund awards, and a demonstrated history of program stability of two years will be included in the criteria used for making Fund awards. A demonstration of program stability must include:

(a) An applicant's history of providing cost-effective direct services to victims of domestic violence and/or sexual assault;

(b) A clear indication of support for applicant's services from one or more community agencies or organizations familiar with the needs of victims to be served, as well as the caliber of services provided by the applicant; and

(c) Financial support of at least 10% from at least one other revenue source. If an applicant cannot demonstrate stability as required by paragraphs a through c of this section, in order to be eligible for an Oregon Domestic and Sexual Violence Services Fund award, the applicant must demonstrate that at least 25% of its financial support comes from sources other than the Oregon Domestic and Sexual Violence Services Fund.

(3) Content of the Application Packet. Each application packet issued shall describe:

(a) The total grant funds available;

(b) The categories in which awards will be made, and whether each category is competitive or non-competitive;

(c) The total funds available for award in each category;

(d) The amount of individual awards, if such amount is part of the allocation plan;

(e) Instructions specifying the requirements for a successful application in each category;

(f) The last date by which applications must be submitted and/or received by DOJ;

(g) The manner in which the application must be submitted;

(h) All necessary application forms and materials;

(i) All other information required for application preparation and submission;

(j) A description of the application review process, including review criteria;

(k) A description of grant reporting requirements; and

(l) A description of the grievance process for unsuccessful applicants.

(4) Review:

(a) Review Criteria. The Department staff and the Advisory Council shall review applications according to objective criteria described in the application packet. Non-competitive applications may be reviewed solely by Department staff, so long as the review is made according to a methodology recommended by the Advisory Council and approved by the Department. Competitive applications may be reviewed by Department staff with regard to satisfaction of minimum qualifications for eligibility, but shall be reviewed by the Advisory Council with regard to content. While numeric scoring will be used for any competitive award process, the Department reserves the right to award funds to agencies based upon criteria other than highest ranking numerical score.

(b) Award Amounts & Formulae. As part of the application review process, the Advisory Council may consider factors including: total amount of funds available overall, or in a specific category; the number of applications submitted by an applicant; geographic distribution; and feasibility of awarding one or more applicants an amount less than that requested. Such factors may be considered only to the extent that they are in keeping with the allocation plan.

(c) Record of Process. A complete record of the review process, including any numerical scoring, shall be kept during the process and shall be retained by the Department during the term of the grant awards. This information shall be available to grantees, upon request, excluding the identity of individual scorers.

(d) Conflict of Interest. A conflict of interest policy shall be part of the Advisory Council bylaws, and conflicts of interest that arise during the

ADMINISTRATIVE RULES

review process shall be declared and become part of the review process record.

(e) Final Decision. The Advisory Council shall make recommendations of grant awards to the Attorney General or his designee, who will have the final decision as to awards.

(5) Transfer of Funds. Upon approval of an application, the Department will enter into a contractual grant agreement with the applicant. The Department will disburse funds in accordance with this agreement.

(6) Completion of Required Grant Award Documents. Funds are not considered obligated and will not be transferred until all required grant award documents have been signed by an applicant and by the Department designee. If grant award documents are not completed by an applicant within three months of the notice to the applicant of the intended award, the Department has the authority to reallocate the funds awarded, pursuant to paragraph 11 of this section on Reallocation of Funds Not Applied For or Used, below.

(7) Conditional Awards:

(a) The Advisory Council may recommend and Attorney General or his designee may approve an award subject to specific conditions if an applicant:

(A) Is not current in reporting for any previous Fund grant award;

(B) Has fewer than two full years of operational history in providing services to victims of domestic violence and sexual assault;

(C) Has not fully demonstrated the ability to successfully manage any previous Fund awards;

(D) Has not demonstrated at least two prior years of program stability as described in section 2, above; or

(E) When other circumstances exist that require a further showing of applicant's ability to successfully manage a Fund award.

(b) The Department shall notify the applicant that a conditional award has been approved, and shall specify the conditions to be satisfied by the applicant and the date by which the conditions must be satisfied. Applicants who do not satisfy conditions of funding by the date specified shall be notified in writing by the Department that the conditions have not been satisfied and the conditional award has been withdrawn. When a conditional award is withdrawn any unexpended dollars already distributed to the applicant are to be returned to the Department and any contractual obligations undertaken by the Department to the applicant are thereupon terminated.

(8) Grievance Procedure:

(a) An applicant has a right to a review of the award decision with regard to its application.

(b) Each applicant will be informed of this review procedure at the time a decision is made regarding its application.

(c) No applicant will be subject to reprisal for seeking a review of an award decision.

(d) An applicant may request a review by making a written request to the Fund Coordinator within 30 days after receiving notification of the award decision.

(e) When the Department is notified that an applicant has requested a review, a meeting will be scheduled for the applicant to meet with the Fund Coordinator and with as many as five members of the Advisory Council. Every effort will be made to have this meeting occur within 30 days of the receipt of the request. The Fund Coordinator will notify applicant of the result of the meeting within 5 days after the meeting has been held.

(f) If the matter is not resolved through the above-described procedure, the applicant can request a review of the issue by the Attorney General or his designee. The applicant should make a written request for such a review to the Director of the Crime Victims' Assistance Section within 30 days following notification of the results of the meeting described in the preceding paragraph.

(g) The decision of the Attorney General is final.

(h) This grievance procedure shall be included in the grant application packet described above.

(9) Grantee Reporting. No less frequently than once during each year of the grant term each grantee shall submit a report to the Department. The form and content report shall be specified by the Department. The report must document how the funds were used and the extent to which the grantee was able to meet anticipated outcomes, as well as such other information with regard to fund requirements as is requested by the Department. This information may be used to determine eligibility for future funding. Failure of a grantee to report the required information in an accurate and timely manner may also be used to determine eligibility for future funding.

(10) Department of Justice Reporting. No less frequently than once during each biennium, the Department shall prepare a report describing the

funds awarded for the grant period and summarizing the outcomes and other information reported by grantees.

(11) Reallocation of Funds Not Applied for or Used.

(a) Funds Remaining After Award Process. When a portion of the grant funds available are not initially awarded, either fully or conditionally, the Department, after duly considering the advice of the Advisory Council, may make a subsequent award that is in keeping with the goals of the allocation plan approved for the current biennium.

(b) Funds Awarded but not Expended. Applicants who do not anticipate using the entirety of their awarded funding by the grant term end date shall notify the Department prior to the grant term end date that the funds will not be used. The Department, at its discretion, shall either request that the unused funds be returned in accordance with the contract agreement, or shall execute an amendment to the contractual grant agreement to extend the grant term end date. When unused funds are returned, the Department, after duly considering the advice of the Advisory Council, shall consider using the returned funds to make up any involuntary award reductions resulting from interim reductions to the Fund, described in paragraph 12 of this section, below. If no interim reductions have occurred, the Department shall consider distributing the funds among other applicants, depending upon the amount of the funds returned and the time of their return. When possible, returned funds shall be distributed in the same geographical area in which the original award was made and within the same service category of the allocation plan under which they were granted.

(c) Funds Conditionally Awarded When Conditions Are Not Satisfied. Any funds remaining after a conditional award has been withdrawn, pursuant to section 7, above, shall be treated in the same manner as funds awarded but not expended, described in paragraph b of this section, above.

(12) Interim Reductions to the Fund. When funds appropriated to the Fund are reduced or otherwise not available for expenditure during a grant award period, so that some or all current awards cannot be fully funded, the Department, after duly considering input from the Advisory Council, shall formulate a plan for how the interim reduction shall affect current awards. In this process every effort will be made to minimize the impact of such reduction on services to victims supported by grant funds. Considerations in the formulation of such a plan will include: the intent of the allocation plan under which the awards were made, requirements of ORS 147.462, progress towards desired outcomes, and other relevant issues of equity, such as geography and populations served.

(13) Issuing Applications Jointly with Other Agencies. 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 eligible programs of domestic and sexual violence services. The joint application process shall satisfy all the requirements of ORS 147.450 et seq. and this division of administrative rules.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)

Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)

Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

137-086-0050

Other Fund Activities

ORS 147.468 authorizes the Department to pursue a range of activities in support of Fund goals, to the extent that funds are available. In formulating the allocation plan, the Advisory Council shall consider whether funds should be allocated to these purposes. If the Advisory Council recommends that funds should be allocated, with the Attorney General's approval, such funds shall be set aside and shall not be included in the granting program described in 137-086-0040, above. In addition, the Department at its discretion may direct the Fund Coordinator to pursue any of these activities as part of the administrative duties of the Fund Coordinator.

Stat. Auth.: ORS 147.465(3), 2001 OL Ch. 870 (HB 2918)

Stats. Implemented: ORS 147.450- 147.471, 2001 OL Ch. 870 (HB 2918)

Hist.: DOJ 15-2004, f. & cert. ef. 11-22-04

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

Adm. Order No.: OSFM 6-2004(Temp)

Filed with Sec. of State: 11-17-2004

Certified to be Effective: 11-17-04 thru 5-15-05

Notice Publication Date:

Rules Amended: 837-012-0515, 837-012-0530

ADMINISTRATIVE RULES

Subject: Amend OAR 837-012-0515 by deleting subsections (3) and (4), and renumbering, as the current subsections duplicate the current verbiage in ORS 480.156.

Amend OAR 837-012-0530 by deleting subsection (4), to allow the State Fire Marshal to refund application fees as necessary.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0515

General

(1) Wholesalers desiring to engage in other types of Fireworks activities, including retail sales, agricultural use, or public displays must meet all applicable requirements in ORS 480.110 through 480.165 and OAR 837, division 12, including those pertaining to obtaining permits for such activities from local, federal, and state authorities.

(2) A Wholesale Permit holder shall not Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for shipment or transport in or into the State of Oregon, to any Person who does not possess and present to the Wholesaler for inspection at the time of sale, a valid permit issued by the Office of State Fire Marshal authorizing the holder of the permit to purchase, obtain, possess, use, discharge, transport, store, distribute, or Sell Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(3) Wholesale Permit holders shall comply with all applicable federal, state, and local laws, rules and regulations pertaining to Fireworks, including:

- (a) ORS 480.110 through 480.165 and
- (b) OAR 837, division 12

(4) Wholesale Permit holders shall notify the Office of State Fire Marshal, in writing, within two weeks of the date of change of:

- (a) Identity of the Manager;
- (b) The Wholesale Permit holder's mailing address or telephone number;
- (c) Ownership of the Wholesale Site;
- (d) Ownership of the Wholesale Operation; or
- (e) The addition, or subtraction, of a Sales Representative for the Wholesale Permit holder.

(5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR 837, division 12. Exempt Fireworks may be sold and purchased without either the seller or purchaser having first obtained a permit issued by the Office of State Fire Marshal.

(6) Wholesale Permit holders, who provide 1.3g Fireworks, shall provide, at a minimum, one general operator certification training course annually as required by OAR 837-12-780.

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0125; 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 8-2002, f. & cert. ef. 10-4-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05

837-012-0530

Permit Fees

(1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.

(3) The permit fee shall be \$2,500.

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 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05

Adm. Order No.: OSFM 7-2004(Temp)

Filed with Sec. of State: 12-13-2004

Certified to be Effective: 12-13-04 thru 6-10-05

Notice Publication Date:

Rules Amended: 837-012-0510, 837-012-0520, 837-012-0525, 837-012-0540, 837-012-0545

Subject: Amend 837-012-0510 section (2) from BATF, Bureau of Alcohol, Tobacco and Firearms to BATFE, Bureau of Alcohol, Tobacco, Firearms and Explosives and section (13) subsection (b) correcting the NFPA 1124 edition from 1998 to 2004

Amend 837-012-0520 section (9) from BATF to BATFE and section (13) changing November 1 to December 15 in 3 places.

Amend 837-012-0525 section (1) change 60 days to 15 days

Amend 837-012-0540 to delete section (2) renumbering the rest of the rule accordingly. 837-012-0540 section (2) is being deleted as it could possibly restrict trade. Deleting the new section (2) subsections (e) and (f). 837-012-0540 section (2) subsections (e) and (f) are being deleted as they are requirements of the Oregon Structural Specialty Code as already referenced in OAR 837-012-0540 (2) (c). Also update NFPA 1124 from 1998 edition to the 2004 edition. Change new section (2) (b) NFPA 68 from 1998 edition to 2002 edition.

Amend 837-012-0545 section (5) from BATF to BATFE

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0510

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-12-500 through 837-12-570, the following definitions apply:

(1) "Agricultural Fireworks" shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATFE" shall mean the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(3) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and/or storage. The term does not include:

(a) The wrapping and/or packaging used to hold or contain a single or small number of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(4) "Domicile" shall mean a Person's legal home; the particular place that a Person intends to make the Person's fixed and permanent home and abode.

(5) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(6) "Fireworks" shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks and Agricultural Fireworks. The term does not include Exempt Fireworks.

(7) "Individual" shall mean a single human being.

(8) "Individual Member of the General Public" shall mean:

(a) For Persons in Oregon, any Person who has not been issued a Wholesale Permit, a general, limited or special effects public display permit, a retail permit, or an agricultural permit by the Office of State Fire Marshal.

(b) For Persons outside of Oregon, any Person who has not been issued a license and/or permit when such a license and/or permit is required, authorizing the Person to Sell, purchase, obtain, transport, possess, use or discharge Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(9) "In-state Wholesaler" shall mean a Wholesaler who owns, possesses, or occupies a Wholesale Site located in Oregon.

(10) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Wholesale Site and Wholesale Operations.

(11) "Manager" shall mean the Individual identified on the Permit Application who is responsible for, and directs the operations at, the Wholesale Site.

(12) "NFPA" shall mean the National Fire Protection Association.

(13) "Novelties and Trick Noisemakers" shall mean those items described in ORS 480.110(1)(a) and (b) and NFPA 1124, Section 1.4, 2004 Edition. It also means Exempt Fireworks.

(14) "Out-of-State Wholesaler" shall mean a Wholesaler who owns, occupies, or possesses a Wholesale Site located outside of Oregon.

(15) "Permit Application" shall mean the application form(s) and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Wholesale Permit.

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(16) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(17) "Residence" shall mean the particular dwelling place where a Person lives and has a present intent to remain for a period of time.

(18) "Resident" shall mean any Person who occupies a dwelling in a state and has a present intent to remain in the state for a period of time.

(19) "Retail Fireworks" shall mean those items described in ORS 480.127(4).

(20) "Retailer" shall mean any Person who, Sells, transfers, or provides by any other means, or intends to Sell, transfer or provide by any other means, Retail Fireworks to Individual Members of the General Public.

(21) "Sales Representative" shall mean an Individual who is an employee of the Wholesale Permit holder and is authorized to conduct sales for the Wholesale Permit holder.

(22) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(23) "Wholesale Operations" shall mean the sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks and related activities, including the purchase, possession, storage and transportation of such Fireworks.

(24) "Wholesale Permit" shall mean the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks when otherwise in compliance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations.

(25) "Wholesale Site" shall mean the location where a Wholesaler's sales and storage facilities are operated and maintained.

(26) "Wholesaler" shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

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

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 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05

837-012-0520

Wholesale Permit Applications

(1) Any In-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within Oregon, or from Oregon for delivery into another state, shall first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(2) Any Out-of-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, in or into Oregon shall first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(3) A separate Wholesale Permit shall be applied for and obtained for each Wholesale Site that may conduct Wholesale Operations within, from, or into Oregon.

(4) The application for a Wholesale Permit shall be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the Permit Application shall be true and correct to the applicant's knowledge.

(6) In addition to completion of the Wholesale Permit application forms, applicants shall submit:

(a) A copy of a current photographic identification card of the applicant(s). The Office of State Fire Marshal shall accept only photo identification issued by the Department of Motor Vehicles in the applicant's state of residency. For purposes of this rule, if the applicant is a corporation, the applicant shall submit copies of photographic identification of all the corporate officers. If the applicant is a partnership, the applicant shall submit copies of the photographic identification of all partners.

(b) A description of the types, pursuant to United States Department of Transportation classification, and the maximum quantities, by total gross weight, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be stored at the Wholesale Site for which a Wholesale Permit has been applied;

(7) As part of the Permit Application process, the applicant shall obtain the approval of the Local Fire Authority and the local building official prior to submitting their application to the Office of State Fire Marshal.

(8) Exception to 837-12-520(7) If the applicant's Wholesale Site address was continuous during the year preceding the year for which the Wholesale Permit renewal is sought, the applicant is required only to re-submit to the Office of State Fire Marshal, as part of the Wholesale Permit renewal application, the approval of the Local Fire Authority.

(9) As part of the Permit Application, Wholesale Permit applicants who intend to Sell or provide 1.3G Fireworks shall submit to the Office of State Fire Marshal a copy of their appropriate license issued by BATFE.

(10) Applicants shall submit the completed Permit Application to the Local Fire Authority for review and signature approving the Wholesale Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(11) Permit Applications shall be signed by the applicant(s).

(a) If the applicant is a partnership, the application shall be signed by every partner.

(b) If the applicant is a corporation, the application shall be signed by an officer of the corporation.

(c) If the applicant is an Out-of-State Wholesaler, the application shall be signed by the applicant and the Manager.

(12) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to October 1 of the year preceding the year for which the Wholesale Permit is sought.

(13) Permit Applications shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than December 15 of the year preceding the year for which the Wholesale Permit is sought. If December 15 falls on a day when a postmark cannot be obtained, applications shall be postmarked on the preceding business day when a postmark can be obtained. If December 15 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it shall be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day.

(14) Relocation of the Wholesale Site shall require submission of a new Permit Application and Wholesale Permit fee.

(15) Only one Wholesale Permit shall be applied for or issued for each Wholesale Site.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0120; 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 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05

837-012-0525

Wholesale Permits

(1) Within 15 days of receipt of a properly completed and timely submitted Permit Application and Wholesale Permit fee, the Office of State Fire Marshal shall either issue or propose to deny the Wholesale Permit.

(2) The Office of State Fire Marshal shall not approve a Permit Application or issue a Wholesale Permit without the prior approval of the Local Fire Authority.

(3) The Office of State Fire Marshal shall assign a unique number to each Wholesale Permit issued.

(4) The Office of State Fire Marshal shall mail the original Wholesale Permit to the applicant at the mailing address listed on the Permit Application.

(5) Wholesale Permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen or destroyed. Written requests shall be signed and dated by the applicant pursuant to OAR 837-12-520(12).

(6) The issuance of a Wholesale Permit does not in any way constitute approval by the Office of State Fire Marshal of any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks purchased, sold or provided by any other means pursuant to the permit.

(7) A Wholesale Permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, when those activities are otherwise in conformance with applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to Fireworks.

(8) A Wholesale Permit authorizes the holder of the permit to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display

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Fireworks, or Agricultural Fireworks, within or into Oregon, only to holders of:

- (a) General, limited, or special effects public display permits;
- (b) Retail permits;
- (c) Wholesale Permits; or
- (d) Agricultural use permits.

(9) A Wholesale Permit does not authorize the sale or provision by any other means, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to Individual Members of the General Public.

(10) The Wholesale Permit and permit number issued by the Office of State Fire Marshal are valid from January 1 to December 31 of the year for which they are issued. All Wholesale Permits and permit numbers expire on December 31 of the year in which they are valid. A Wholesale Permit holder may be issued the same permit number every year if the permit holder applies for and obtains a Wholesale Permit in consecutive years.

(11) The Wholesale Permit is not transferable to another Person nor can another Person perform any activities authorized by the Wholesale Permit unless that Person is listed in the Permit Application.

(12) Only the Wholesale Permit holder and the employees of the Wholesale Permit holder may engage in Wholesale Operations authorized by the Wholesale Permit.

(13) The Wholesale Permit holder's name, mailing address and Wholesale Permit number shall be imprinted and/or affixed by the Wholesale Permit holder to:

(a) All sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder in conducting its Wholesale Operations; and

(b) The outside of all Cartons, Containers, or Cases of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks being shipped, transported, or otherwise provided by the Wholesale Permit holder.

(14) All shipments by a Wholesale Permit holder of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks must show on the outside of each Carton, Container or Case, sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder the full name and permit number of the permit holder to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided.

(a) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided in or into Oregon, the shipment must show an Office of State Fire Marshal-issued permit number.

(b) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided from Oregon for delivery into another state, the shipment must show the appropriate license or permit number, if the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided is required under the laws of the other state to possess a license or permit.

Stat. Auth.: ORS 476, 478 & 480

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-012-0120; OSFM 6-2000(Temp), f. & 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 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05

837-012-0540

Wholesale Sites Located in Oregon

(1) The location of a Wholesale Site shall not present a significant risk to surrounding life and property or to the ability of local emergency response agencies to respond.

(2) The Wholesale Site shall be designed, constructed, operated, maintained and separated in conformance with the applicable requirements of:

(a) NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks, 2004 Edition (The separation distances shall be met as required by NFPA 1124, 2004 Edition. All Fireworks stored at the Wholesale Site shall be considered in calculating the separation distances);

(b) NFPA 68, Guide for Explosion Venting, 2002 Edition;

(c) Oregon Structural Specialty Code, 2004 Edition;

(d) Oregon Fire Code, 2004 Edition;

NOTE: Wholesale Sites that are currently approved may not be required to be altered or updated to comply with these standards.

(3) Temporary structures, including tents, vehicles and/or trailers of less than 10,000 pound gross carrying capacity, and buildings, structures,

vehicles, or trailers not approved by the Local Fire Authority and the Office of State Fire Marshal shall not be used as Wholesale Sites.

(4) Security for storage facilities shall be provided by construction and maintenance of a solid or chain-link fence, at least six feet high with locking gates, that surrounds the facility. Security may be provided by an alternative means only if first approved by the Local Fire Authority.

(5) Smoking, other ignition sources, or the use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks shall not be allowed within 100 feet of the storage or sales facilities.

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

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. & 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 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05

837-012-0545

Sales and Records — General

(1) All Individuals involved in Wholesale Operations shall be at least 18 years of age. See OAR 837-012-0555(5) and (6).

(2) The Manager and Sales Representatives of the Wholesale Operations, while not required to be present at all times the site is open for business shall be located at the Wholesale Site.

(3) A copy of the Wholesale Permit shall be posted in an area readily visible to all Individuals entering the sales facility.

(4) Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks may be displayed in the sales facility in accordance with the following requirements:

(a) 1.3G Fireworks shall not be displayed;

(b) 1.4G Fireworks may be displayed. Only one of each type of Firework shall be displayed unless multiples of one type of Firework are contained in a single package. In that case, only the smallest available package shall be displayed and in accordance with Local Fire Authority and Office of State Fire Marshal requirements.

(5) All sales or provision of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, including donation, by Wholesale Permit holders shall be recorded on a form provided by the Office of State Fire Marshal or, for sales of 1.3G Fireworks, the BATFE form P5400.4. Sales or provision of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks may be recorded on an alternative form if approved, in writing, by the Office of State Fire Marshal or the BATFE

(6) The records described in subsection (5) of this rule shall include, at a minimum:

(a) The name, address, and license and/or permit number, if required, of the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being sold or otherwise provided, including the state that issued the license and/or permit, the date of issuance and the expiration date of the license and/or permit;

(b) The address, including street number, city and state, and telephone number of the destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(c) The permit number of the Wholesale Permit holder, including the date of issuance and expiration date; and

(d) A list of the types, trade names and quantity of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks sold or otherwise provided.

(7) The record form described under subsection (5) of this rule shall be completed in full by the Wholesale Permit holder and signed by the Person purchasing or obtaining the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(8) All records described under subsection (5) of this rule, whether originals or copies, shall be clear, legible and accurate.

(9) Records described under subsection (5) of this rule shall be maintained at the Wholesale Site. Records shall be retained for five years from the date of sale or provision. Upon request, records shall be immediately provided to the Local Fire Authority, law enforcement authority or representative of the Office of State Fire Marshal.

(10) Wholesale Permit holders shall maintain at the Wholesale Site at all times a list of all employees involved in the Wholesale Operations, including their names, addresses, phone numbers (including home), driver's license numbers, and birth dates. Upon request a legible copy of the list shall be provided immediately to the Office of State Fire Marshal.

(11) Wholesale Permit holders shall maintain at the Wholesale Site at all times a list of all vehicles used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, including year, make,

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model, license number and lease agreement, if applicable. A legible copy of the list shall be provided immediately to the Office of State Fire Marshal, upon request.

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 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05

Department of Transportation Chapter 731

Adm. Order No.: DOT 7-2004

Filed with Sec. of State: 11-17-2004

Certified to be Effective: 11-17-04

Notice Publication Date: 10-1-04

Rules Amended: 731-030-0010, 731-030-0020, 731-030-0030, 731-030-0040, 731-030-0050, 731-030-0080, 731-030-0090, 731-030-0100, 731-030-0110, 731-030-0120, 731-030-0130, 731-030-0150, 731-030-0160

Rules Repealed: 731-030-0060, 731-030-0070, 731-030-0140

Subject: These administrative rules establish standards and operating procedures for the Oregon Transportation Infrastructure Fund (OTIF) and the Oregon Transportation Infrastructure Bank (OTIB). Funds held in the OTIF are held solely for the use of the OTIB, which makes transportation-related loans in Oregon. The OTIB has been operating for approximately nine years under its original administrative rules. As a fully operating bank, the rules need to be updated to eliminate references to startup processes, to ensure adequate protections for both the OTIF and potential borrowers by clarifying and improving rules relating to standard lending practices, to enhance flexibility and responsiveness within the law, and to update the rules as a result of changes in the law from House Bill 2213.

Chapter 201, Oregon Laws 2003 (House Bill 2213) updated portions of the authorization for the Oregon Transportation Investment Infrastructure Fund. In addition to updating some definitions, the law clarified and added to the OTIF's funding uses.

Other updates to the rules include addition of a process for protest if an application for assistance is not funded. The amendments to the rules are generally included to protect the OTIF's financial solvency, to clarify and provide additional detail about processes for application to the OTIB for assistance and for staff evaluation of applications, and to provide the OTIB with greater flexibility in making timely response to applications for assistance. The addition of standard evaluation procedures will ensure fairness to applicants and conservation of the OTIF's capital.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-030-0010

Purpose of the Rules

OAR 731-030-0010 to 731-030-0160 establish the procedures and requirements for the administration of the Oregon Transportation Infrastructure Fund and for the creation and operation of the Oregon Transportation Infrastructure Bank.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0020

Statutory Authority

Oregon Revised Statutes (ORS) 367.010 to 367.060 provide authority for the Department to operate the Oregon Transportation Infrastructure Fund.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0030

Definitions

For the purposes of OAR 731-030-0010 through 731-030-0160, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Applicant" means an Agency, a Municipality or any other entity authorized by law to obtain an Infrastructure Loan or Infrastructure Assistance.

(2) "Application" means the form, prescribed by the Department, and all supplemental attachments, exhibits or other supporting papers that the Applicant completes and provides to the Oregon Transportation Infrastructure Bank.

(3) "Agency", as defined in ORS 367.010(1), means any department, agency or commission of the State of Oregon.

(4) "Agreement" means a legally binding contract between the Department and a Recipient that sets out the terms and conditions under which the Department is providing an Infrastructure Loan or Infrastructure Assistance.

(5) "Bond", as defined in ORS 367.010(2), means an evidence of indebtedness including, but not limited to, a bond, a note, an obligation, a loan agreement, a financing lease, a financing agreement or other similar instrument or agreement.

(6) "Bond Counsel" means a law firm having knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.

(7) "Bond Debt Service", as defined in ORS 367.010(3), means payment of:

(a) Principal, interest, premium, if any, or purchase price of a Bond;

(b) Amounts due to a Credit Enhancement provider authorized by ORS Chapter 367;

(c) Amounts necessary to fund bond debt service reserves; and

(d) Amounts due under an Agreement for exchange of interest rates if designated by the State Treasurer or the Department.

(8) "Chief Financial Officer" means the fiscal officer designated under ORS 184.637 who is also the Manager of ODOT Financial Services or designated staff.

(9) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1).

(10) "Commission" means the Oregon Transportation Commission.

(11) "Credit Enhancement", as defined in ORS 367.010(4), means a letter of credit, line of credit, bond insurance policy, standby purchase agreement, surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of a Bond.

(12) "Debt Service Reserve" means any moneys reserved for debt service for, or used to secure payment of, Infrastructure Bonds. A Debt Service Reserve may be held in a segregated account in the Infrastructure Fund or by a trustee.

(13) "Department" or "ODOT" means the Oregon Department of Transportation.

(14) "Director" means the director of the Department.

(15) "Financial Advisor" means a consultant providing the Department with information and advice relative to the structure, timing, marketing, pricing, terms and bond ratings for the sale of Infrastructure Bonds.

(16) "Infrastructure Assistance", as defined in ORS 367.010(6), means any use of moneys in the Oregon Transportation Infrastructure Fund, other than an Infrastructure Loan, to provide financial assistance for Transportation Projects. The term includes, but is not limited to, use of moneys in the Infrastructure Fund to finance leases, fund reserves, make grants, pay issuance costs or provide Credit Enhancement or other security for Bonds issued by a public entity to finance Transportation Projects.

(17) "Infrastructure" means any construction project, facility, property or program that provides the foundation or basic framework by which an entity provides transportation services to the public.

(18) "Infrastructure Bonds", as defined in ORS 367.010(7), means bonds authorized by ORS 367.030, 367.555 to 367.600 or 367.605 to 367.670 that are issued to fund Infrastructure Loans and the proceeds of which are deposited in the Infrastructure Fund.

(19) "Infrastructure Fund", as defined in ORS 367.010(8), means the Oregon Transportation Infrastructure Fund.

(20) "Infrastructure Loan", as defined in ORS 367.010(9), means a loan of moneys in the Infrastructure Fund to finance a Transportation Project.

(21) "Municipality", as defined in ORS 367.010(10), means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland, or an intergovernmental entity organized under ORS 190.010.

(22) "Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the U.S. Department of Transportation and the Department dated August 26, 1996.

ADMINISTRATIVE RULES

(23) "Oregon Transportation Infrastructure Fund" means the fund established in ORS 367.015.

(24) "Recipient" means an Applicant that has received an Infrastructure Loan or Infrastructure Assistance or a combination thereof.

(25) "Region" means one of the geographic areas established by the Department to administer transportation programs.

(26) "Region Manager" means the administrative head of a Region or designated staff.

(27) "Staff" means Department staff assigned by the Chief Financial Officer to manage the day-to-day operations of the OTIB and the Infrastructure Fund.

(28) "Statewide Transportation Improvement Program" or "STIP" means the State's transportation preservation and capital improvement program and includes any project scheduling and funding documents related thereto.

(29) "Transportation Project", as defined in ORS 367.010(11), means any project or undertaking that facilitates any mode of transportation within this State. Transportation Projects include, but are not limited to, projects for highway, transit, rail and aviation capital infrastructure, bicycle and pedestrian paths, bridges and ways, and other projects that facilitate the transportation of materials, animals or people.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0040

Purpose of the Oregon Transportation Infrastructure Fund

(1) The purpose of the Oregon Transportation Infrastructure Fund is to fund transportation solutions, leverage additional funds into transportation Infrastructure, and encourage innovative financing techniques in order to further Oregon's livability and economic competitiveness. In accomplishing this purpose, all Transportation Projects funded by the Infrastructure Fund will be required to satisfy all appropriate federal, state and local planning and programming requirements.

(2) To achieve the objectives of the Oregon Transportation Infrastructure Fund, the Department has established the Oregon Transportation Infrastructure Bank.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0050

Administration of Funds

(1) Authority for the day-to-day operations and management of the OTIB and the management of the Infrastructure Fund is delegated to the Chief Financial Officer.

(2) The Department may expend funds from the Infrastructure Fund to make Infrastructure Loans.

(3) The Department may expend funds from the Infrastructure Fund to provide Infrastructure Assistance.

(4) The Department may expend funds from the Infrastructure Fund to pay the Department's or another public entity's costs for Transportation Projects.

(5) The Department may expend funds from the Infrastructure Fund to establish a Debt Service Reserve to support the credit extensions to a Recipient or otherwise to ensure repayment of loan guarantees, and to reduce the interest rate paid on loans and Bonds.

(6) The Department may expend moneys from the Fund to pay the Bond Debt Service for Infrastructure Bonds and pay the costs of issuance and other costs related to Infrastructure Bonds. Such expenditures may include the payment of all costs associated with the issuance of Infrastructure Bonds including but not limited to Bond Counsel and Financial Advisor fees, underwriter fees and discounts, trustee or paying agent fees, credit enhancement fees, and printing and publishing, and other costs.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010 - 367.060 & United States Code, Public Law 104-59, Section 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0080

Applicant's Handbook

(1) The Department will make available guidelines that address application procedures, Applicant eligibility, Application evaluation criteria as set forth in OAR 731-030-0100(1), types of Infrastructure Loans and Infrastructure Assistance available, financing rates, terms and limits and other applicable information.

(2) The Department may revise the guidelines as needed.

(3) The guidelines may be made available to Applicants in electronic or printed formats.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0090

Application Procedures

An Applicant may submit an Application for an Infrastructure Loan or Infrastructure Assistance at any time subject to deadlines, if any, established by the Department.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0100

Application Evaluation Procedures

(1) The Department will establish specific information and uniform evaluation criteria that will be used to qualify and evaluate the Application and to ascertain the credit strength of the Applicant. The evaluation will include an examination of Application information to determine the extent that an Applicant and the proposed Transportation Project comply with these requirements or standards:

(a) The Transportation Project must conform to the local transportation plan and to state land use laws and satisfy all appropriate federal, state and local planning and programming requirements.

(b) The Transportation Project must meet any appropriate design standards.

(c) The Transportation Project will be constructed on a faster time schedule than conventional funding would allow. Or OTIB funding will complete the required project financing and allow the Transportation Project to proceed to construction.

(d) The Transportation Project will further the goal of safety in transportation.

(e) The Transportation Project will help manage traffic growth and improve livability.

(f) The Application must identify a revenue stream adequate to repay an Infrastructure Loan or meet the terms of any Infrastructure Assistance to be provided.

(g) The Transportation Project will attract new or less conventional capital to transportation infrastructure funding.

(h) The Infrastructure Loan, if any, has a term acceptable to the Department. A Transportation Project financed with a shorter term Infrastructure Loan will score higher than one financed with a longer term Infrastructure Loan.

(i) The Transportation Project will support the community's economic development.

(j) The Transportation Project will enhance the quality of life in the community.

(2) The Department will assign the Application to a Region, the Department's Public Transit Division or others as appropriate for evaluation of technical, engineering and planning criteria. The designated assignee will:

(a) Evaluate each project or proposal according to the Application evaluation criteria established by the Department in OAR 731-030-0100(1); and

(b) Recommend approval or disapproval of each project or proposal.

(3) The Region Manager, the Public Transit Division Administrator or other designated party will notify the Staff of the results of the evaluations.

(4) Staff will evaluate the economic and financial criteria and seek assistance from other subject matter experts where appropriate.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0110

Approval Procedures

(1) Staff will combine the results of the evaluations completed under OAR 731-030-0100 into a combined score.

(2) Upon completion of its scoring, Staff will forward the Application and related evaluations to the Chief Financial Officer with a recommendation for action on the request based on an analysis of such factors as the combined score, statewide equity, the availability of funds, and OTIB cash flow. Staff may request additional information from an Applicant or others to assist in making a recommendation. A recommendation, or any related approval, may include proposed modifications to an Applicant's request for financial assistance.

(3) To make a recommendation for approval, the Staff must find that:

ADMINISTRATIVE RULES

(a) The Applicant and the Transportation Project qualify for assistance from the Infrastructure Fund according to the criteria established under OAR 731-030-0100(1).

(b) The proposed Transportation Project is feasible and a reasonable risk from practical and economic standpoints and any Infrastructure Loan has a reasonable prospect of repayment according to its terms.

(c) The Applicant's financial resources and management capability appear to be adequate to assure the successful completion and operation of the Transportation Project.

(d) The Applicant can provide good and sufficient Collateral when appropriate to mitigate risk to the Infrastructure Fund.

(4) After review and consideration of the Staff recommendation, and subject to the availability of moneys in the Infrastructure Fund, the Chief Financial Officer may:

(a) For Infrastructure Loan or Infrastructure Assistance requests for less than \$1 million that will finance projects that have been included in the STIP:

- (A) Approve the request;
 - (B) Deny the request; or
 - (C) Forward a recommendation for action to the Commission.
- (b) For all other requests:
- (A) Deny the request; or
 - (B) Forward a recommendation for action to the Commission.
- (c) For each request approved or denied, the Chief Financial Officer will forward a summary of the request to the Commission.

(5) The Commission will consider the recommendation by the Chief Financial Officer on any request forwarded to it for action and may:

- (a) Approve the request; or
- (b) Deny the request.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0120

Project Agreements, Interest Rates and Charges

(1) For all requests approved under OAR 731-030-0110, the Department will make Infrastructure Loans or provide Infrastructure Assistance from the Infrastructure Fund by entering into an Agreement with the Recipient.

(2) Notwithstanding any provisions of a Staff recommendation under OAR 731-030-0110(2), the Chief Financial Officer will make the final determination of the amount, type, interest rate, amounts and types of Collateral, schedule of payments, and other terms and conditions of financing awarded to an Applicant and such further provisions necessary or appropriate to insure expenditure of the funds for the purposes set forth in the approved Application. Such determination shall not be contrary to any provisions of an approval under OAR 731-030-0110(5)(a). In most cases for Agencies and Municipalities, interest rates will approximate tax exempt rates for similar obligations. In determining the interest rate for an Infrastructure Loan, the Chief Financial Officer may set the rate to reflect the evaluation of the Transportation Project and the effect of the rate upon the Applicant's ability to finance the Transportation Project.

(3) The Chief Financial Officer will set forth in each Agreement any fees or charges.

(4) The Chief Financial Officer will consider the financial status of the Infrastructure Fund and may delay final award of funds to any Recipient until sufficient funds are available. The Department reserves the right to investigate and recommend other sources of funds for all or part of a proposed Transportation Project.

(5) Eligible uses of moneys obtained from or through the assistance of the Infrastructure Fund include, but are not limited to, the cost of acquiring, designing, contracting, building and installing any Transportation Project.

(6) A Recipient may request a modification or amendment to an executed Agreement. The request must be made in writing to the Chief Financial Officer for consideration by the Department. The Recipient will be responsible for all costs related to any modification or amendment of the Agreement.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0130

Accounting, Reporting and Auditing Requirements

(1) The Department will maintain an accounting system for the Infrastructure Fund that complies with generally accepted accounting principles and practices.

(2) Recipients must separately account for all moneys received from the Infrastructure Fund in project accounts in accordance with generally accepted accounting standards. The Department reserves the right to audit, monitor or otherwise review all project records.

(3) The Department will compile an annual report on the OTIB and make it available to Recipients no later than 90 days after the end of the Federal fiscal year. The report will identify that year's Recipients, the amounts, terms and conditions of Infrastructure Loans and Infrastructure Assistance and project categories.

(4) The Department, in cooperation with the Secretary of State, will conduct or cause to be conducted an annual independent financial and compliance audit of the OTIB's operations. This audit may be conducted in accordance with the Single Audit Act of 1984. This audit must be completed within one year of the end of the state fiscal year.

(5) Recipients must observe the requirements of state law for retaining and disposing of records.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0150

Waivers

The Chief Financial Officer may waive non-statutory requirements of OAR 731-030-0010 to 731-030-0160 if such a waiver would serve to further the goals and objectives of the OTIB or the Infrastructure Fund.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

731-030-0160

Protests

(1) If the Chief Financial Officer denies an Application for an Infrastructure Loan or Infrastructure Assistance, the Applicant may protest the decision to the Director. The protest must be in writing and must be filed within 30 calendar days of notification of the denial. The Director will notify the Applicant of the Director's decision within 30 days of the receipt of the protest.

(2) If the Director affirms the denial of the Application, the Applicant may protest the Director's decision to the Commission. The protest to the Commission must be in writing and must be filed within 30 calendar days of notification of the Director's decision. The Commission will consider the protest at the earliest practical regular meeting of the Commission. The Applicant may appear before the Commission to present additional factual information in support of the Application. The Commission's decision will not be subject to any further administrative review.

(3) A Commission decision to decline an Application as described in OAR 731-030-0110(5) will not be subject to further administrative review.

Stat. Auth.: ORS 184.616, 184.619, 367.015, 367.020
Stats. Implemented: ORS 367.010-367.060 & US Code, PL 104-59, Sect. 350
Hist.: DOT 1-1997, f. & cert. ef. 1-17-97; DOT 7-2004, f. & cert. ef. 11-17-04

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

Adm. Order No.: DMV 22-2004
Filed with Sec. of State: 11-17-2004
Certified to be Effective: 1-1-05
Notice Publication Date: 10-1-04
Rules Amended: 735-070-0030

Subject: ORS 809.400(2) gives DMV the authority to suspend or revoke the driving privileges of an Oregon resident upon notification from another jurisdiction that the person's driving privileges have been suspended or revoked by that jurisdiction. DMV has not used this authority in the past. The amendments are necessary to implement changes to federal requirements for commercial driving privileges. DMV intends to now use the authority granted by ORS 809.400(2). The changes to OAR 735-070-0030 require DMV to suspend the driving privileges under circumstances that would be grounds for suspension under ORS 813.410(1) if the conduct had occurred in Oregon. The changes also specify acceptable evidence the person must submit to DMV in order to be eligible for reinstatement of driving privileges.

Rules Coordinator: Brenda Trump—(503) 945-5278

ADMINISTRATIVE RULES

735-070-0030

Suspension/Revocation for Out-of-State Conviction, Suspension or Revocation

(1) For purposes of ORS 809.400(1):

(a) The date a notice of conviction is received by the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) is:

(A) The date the notice of conviction is date stamped by the Driver Records Unit; or

(B) The date the notice of conviction is electronically transmitted to Oregon DMV from the reporting jurisdiction.

(b) "Initiated" means the date the conviction is entered on the person's Oregon driving record.

(c) A conviction is entered on the person's Oregon driving record when it is manually placed on the record by DMV or when it is transmitted from the reporting jurisdiction if received electronically.

(2) Except as provided in ORS 809.400(1), DMV will suspend or revoke the driving privileges of any resident of this state upon receiving notice of the conviction of the person in another jurisdiction for an offense which, if committed in this state, would be grounds for suspending or revoking of the person's driving privileges.

(3) DMV will suspend the driving privileges of a resident of this state, upon receiving notice from another state, territory, federal possession or district, or province of Canada that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances which would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.

(4) DMV will suspend the commercial driving privileges of a resident of this state upon receiving notice that the person's commercial driving privileges have been suspended or revoked in another jurisdiction under circumstances that would require DMV to suspend driving privileges under ORS 813.410(2) if the conduct had occurred in Oregon.

(5) A suspension under section (3) of this rule will continue until the person provides acceptable evidence to DMV that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or the revocation or suspension in the other jurisdiction was not imposed under circumstances that would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon. Acceptable evidence is:

(a) A letter on letterhead from the reporting jurisdiction showing the person has complied with the jurisdiction's law or that driving privileges have been restored.

(b) A certified copy of the driving record from the reporting jurisdiction showing the restoration of driving privileges; or

(c) A copy of the reporting jurisdiction's law and any relevant documents showing the suspension or revocation was not imposed under circumstances that would require DMV to suspend if the conduct had occurred in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.400

Stats. Implemented: ORS 802.540 & 809.400

Hist.: MV 10-1986, f. & ef. 6-20-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0053; MV 16-1990, f. & cert. ef. 9-25-90; MV 1-1992, f. & cert. ef. 2-18-92; DMV 6-1995, f. & cert. ef. 3-9-95; DMV 22-2004, f. 11-17-04, cert. ef. 1-1-05

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Adm. Order No.: DMV 23-2004

Filed with Sec. of State: 11-17-2004

Certified to be Effective: 11-17-04

Notice Publication Date: 10-1-04

Rules Adopted: 735-090-0051, 735-090-0101, 735-090-0130

Rules Amended: 735-001-0020, 735-001-0050, 735-070-0054, 735-070-0060, 735-070-0110, 735-070-0190, 735-074-0220, 735-090-0000, 735-090-0020, 735-090-0040, 735-152-0020, 735-152-0050

Rules Repealed: 735-090-0130(T)

Subject: HB 2526 (Ch. 75, Oregon Laws 2003) changes the term hearing officer to administrative law judge (ALJ) and the Hearings Officer Panel to the Office of Administrative Hearings. The amendments reflect the current statutory language. Also, references to session laws that are now codified are amended to include the correct

statutory reference and some language is being changed for clarity. In addition:

- The amendments to OAR 735-001-0020 specify the authority of an ALJ to issue a final order on behalf of DMV and the time frames and response for exceptions when a proposed order is issued.

- The amendments to OAR 735-001-0050 describe when DMV is authorized by law to offer an administrative review other than those actions specified in ORS 809.140. Section (2), referred to a program that no longer exists and is being repealed.

- OAR 735-090-0000(6) is amended to include a definition for the term "offense" which is necessary due to the adoption of proposed rule 735-090-0101. OAR 735-090-0020 is amended to require a petitioner to request an interpreter in the hearing request. Under OAR 735-090-0051 the Department will not compel a witness to attend and testify at a hearing unless the witness is served with a subpoena at least 72 hours prior to the time of a hearing. OAR 735-090-0101 clarifies the location of an implied consent hearing and that an implied consent hearing may be conducted by telephone. OAR 735-090-0130 requires the continuance of an implied consent contested case hearing to secure the personal appearance of a necessary witness when hearsay evidence is challenged by the petitioner. This rule is the result of an Oregon Supreme Court opinion, *Cole v. DMV* and *Dinsmore v. DMV*, holding that hearsay evidence from a necessary witness constitutes substantial evidence in an administrative hearing, except when the petitioning party introduces countervailing evidence.

- The amendments to OAR 735-152-0050(9) correctly identify who is authorized to request a contested case hearing.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-001-0020

Issuance of Final Orders in Contested Cases

(1) An administrative law judge (ALJ) is authorized to issue a final order without first issuing a proposed order in a contested case hearing conducted for the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) except under the following circumstances:

(a) DMV provides written notice to the Chief Administrative Law Judge of the Office of Administrative Hearings that the ALJs conducting hearings for DMV must issue proposed orders as set forth in OAR 137-003-0645 for the types of actions specified in the notice; or

(b) Prior to the commencement of a contested case hearing DMV provides written notice to the ALJ conducting the hearing and to the party(s) that the ALJ must issue a proposed order as set forth in OAR 137-003-0645.

(2) Exceptions to a proposed order issued under section (1) of this rule shall be filed with the ALJ within 20 days of the issuance and mailing date of the proposed order. The administrative law judge will review the exceptions and issue a written response or revised proposed order to the party and to DMV as set forth in OAR 137-003-0650, unless DMV requests the ALJ to conduct a further hearing under OAR 137-003-0655.

(3) If no exceptions are filed, a proposed order issued by an ALJ becomes the final order 30 days from the issuance and mailing date of the proposed order, unless DMV provides notice in writing to the party(s) and the ALJ that DMV will issue the final order. If exceptions to the proposed order are filed, the proposed order or revised order becomes the final order 30 days after the issuance and mailing date of the written response to exceptions or the issuance and mailing date of the revised proposed order, unless DMV gives notice to the party(s) and the ALJ that DMV will issue the final order. If DMV issues the final order, it will follow the procedures set forth in OAR 137-003-0655.

Stat. Auth.: ORS 802.010 & 813.410

Stats. Implemented ORS 183.470

Hist.: MV 11-1984, f. & ef. 8-31-84; March 1988, Renumbered from 735-001-0010; DMV 23-2004, f. & cert. ef. 11-17-04

735-001-0050

Administrative Review

In addition to those circumstances specified in ORS 809.140, Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will provide an administrative review of a suspension, revocation, or cancellation action for:

(1) Failure to install an ignition interlock device under ORS 813.602;

ADMINISTRATIVE RULES

- (2) A cancellation of a driver license, instruction driver permit or limited vision condition learner's permit under ORS 807.162;
 - (3) Notice of violating of an out-of-service order ORS 809.413;
 - (4) Failure to pay a judgment under ORS 809.415(1);
 - (5) Incompetence to drive a motor vehicle because of a physical or mental condition that makes it unsafe for the person to drive on the highways and the person has been denied a certificate of eligibility under ORS 807.090;
 - (6) Notification from the superintendent of a hospital under ORS 807.400;
 - (7) A request by a school superintendent or a school district board under ORS 339.254; and
 - (8) Notice that a person under 18 years of age has withdrawn from school under ORS 339.257.
- Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.440
Stats. Implemented: ORS 809.440
Hist.: MV 27-1991, f. & cert. ef. 12-16-91; DMV 23-2004, f. & cert. ef. 11-17-04

735-070-0054

Police Reports for Implied Consent Suspension Under ORS 813.100, 813.120, 813.410

(1) A police report required by ORS 813.100 must be submitted to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) on forms approved and distributed by the department.

(2) For the Driver Suspensions Unit to suspend a person's base driving privileges and/or commercial driver license or right to apply for a commercial driver license under ORS 813.410 for failure of a breath test or for refusal of a breath, blood or urine test, the implied consent form(s) must:

(a) Be received by DMV on or before the 30th day after the date of arrest; and

(b) Contain the following information:

(A) Specify all of the following that apply:

- (i) The person failed a breath test;
- (ii) The person refused a breath test;
- (iii) The person refused a blood test;
- (iv) The person refused a urine test;
- (v) The person was operating a commercial motor vehicle.

(B) A date of arrest;

(C) A suspension period that conforms to the type of suspension in accordance with ORS 813.404 or 813.420; and

(D) The reporting officer's signature below the statement, "I affirm by my signature that the foregoing events occurred." The officer's signature will be considered acceptable if located anywhere on the line of the form directly below the statement.

(3) For the Driver Suspensions Unit to suspend a person's base driving privileges and/or commercial driver license or right to apply for a commercial driver license under ORS 813.410 for failure of a blood test, the police report form must be received by DMV on or before the 45th day after the date of arrest and must indicate that the person failed a blood test and whether the person was operating a commercial motor vehicle, as well as the information required in paragraphs (2)(b)(B) and (D) of this rule.

(4) If an implied consent suspension has been posted pursuant to this rule and a timely hearing request has not been submitted as provided for in ORS 813.410(3), the driver may have the implied consent suspension withdrawn only by:

(a) Having the police agency or district attorney's office follow procedures outlined in OAR 735-070-0055;

(b) Obtaining and prevailing at a hearing under ORS 813.440; or

(c) The Driver Suspension Unit, when it withdraws the suspension pursuant to ORS

Stat. Auth.: ORS 184.616, 813.100 & 813.120.
Stats. Implemented: ORS 813.100, 813.120, 813.130 & 813.404 - 813.460
Hist.: DMV 7-1995, f. & cert. ef. 3-9-95; DMV 12-1995, f. & cert. ef. 12-14-95; DMV 9-1996, f. & cert. ef. 10-10-96; DMV 23-2004, f. & cert. ef. 11-17-04

735-070-0060

Procedure for Rescinding Implied Consent Suspensions of Wrong Person Under ORS 813.460

(1) When the Department of Transportation, Driver and Motor Vehicle Services Division (DMV) must verify to its satisfaction that it has suspended the driving privilege of the wrong person under ORS 813.410, the Driver Suspensions Unit of DMV must receive written notice from the original reporting police agency or, if the police agency no longer exists, from the District Attorney's office in the jurisdiction of the originating police agency. The notice:

(a) Must be signed by the reporting officer or a superior officer, or the district attorney if the police agency no longer exists;

(b) Must state the name of the person whose name was falsely used;

(c) Should include the name, address and date of birth of the person actually arrested for driving under the influence of intoxicants, if known; and

(d) Should include the date of arrest.

(2) When the Driver Suspensions Unit receives this notice, it will rescind the suspension that was entered on the driving record of the person whose name was falsely used.

(3) If the notice includes the correct name of the person actually arrested for driving under the influence of intoxicants, the Driver Suspensions Unit will issue a notice of suspension to the person's address as shown by DMV records. A suspension order under this section is subject to the following:

(a) The suspension begins 35 days from the mailing date of the suspension notice unless a hearing is requested;

(b) The suspension is subject to an increase in the length of the suspension period under ORS 813.430;

(c) DMV must receive a hearing request within 15 days of the mailing date of the suspension notice or the hearing is waived; and

(d) The Office of Administrative Hearings will conduct the hearing pursuant to ORS 813.410 and issue a final order. The suspension will not go into effect pending the outcome of the hearing.

(e) Notwithstanding subsection (d), the time limitations in ORS 813.410(1), (2), (3) and (4) do not apply to a suspension order issued under this section.

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 813.410 & 813.460
Hist.: MV 25-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0070; MV 4-1993, f. & cert. ef. 7-16-93; DMV 12-1995, f. & cert. ef. 12-14-95; DMV 23-2004, f. & cert. ef. 11-17-04

735-070-0110

Hearing Requests Under the Administrative Procedures Act

(1) This rule establishes the hearing request requirements for DMV suspension, revocation and cancellation hearings conducted pursuant to the Administrative Procedures Act, ORS 183.413 to 183.500. This rule does not apply to a hearing request for:

(a) An implied consent hearing under ORS 813.132, 813.410 or 813.460;

(b) An administrative review under ORS 809.440(2); and

(c) A post-imposition hearing under ORS 809.440(4).

(2) A hearing request must be in writing and must:

(a) Include the person's full name;

(b) Separately identify each action being contested if a hearing is being requested for more than one suspension, revocation or cancellation action;

(c) Be postmarked within 20 days of the date of the notice. If the hearing request is not postmarked or a postmark date cannot be determined, it must be received by the Driver and Motor Vehicle Services Division of ODOT (DMV) within 20 days of the date of the notice; and

(d) Be mailed or personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314 or if sent by facsimile machine (FAX), received by DMV at FAX number (503)945-5521.

(3) A Hearing request should also include the person's: address, driver license, permit, identification or customer number; date of birth; and telephone number with area code.

(4) Except as provided in OAR 137-003-0528, the person's right to a hearing is waived if a hearing is not requested within the time period specified in section (2) of this rule and the notice becomes the final order by default. The time period for requesting a hearing will be computed as set forth in OAR 137-003-0520(10).

Stat. Auth.: ORS 183.415, 184.616, 184.619, 802.010 & 809.440
Stats. Implemented: ORS 809.440
Hist.: MV 29-1988, f. & cert. ef. 12-16-88; MV 13-1990, f. & cert. ef. 7-16-90; MV 5-1992, f. & cert. ef. 4-16-92; DMV 12-1995, f. & cert. ef. 12-14-95; DMV 23-2004, f. & cert. ef. 11-17-04

735-070-0190

Hearing Request for Entry of Positive Drug Test Result on Employment Driving Record

When the Department of Transportation (ODOT) receives a report described in OAR 735-070-0185, ODOT will notify the person who is the subject of the report that the person has a right to request a hearing to determine whether a positive drug test result will be placed on the person's employment driving record.

(1) A hearing request must be in writing and must:

ADMINISTRATIVE RULES

- (a) Include the person's full name;
- (b) Include the person's complete mailing address;
- (c) Include the person's Oregon driver license number;
- (d) Include a brief statement of the issues the person proposes to raise at the hearing. The issues are limited to those set forth in ORS 825.412(3);
- (e) Be postmarked within 30 days of the date of the notice. If the hearing request is not postmarked or a postmark date cannot be determined, it must be received by the Driver and Motor Vehicle Services Division of ODOT (DMV) within 30 days of the date of the notice; and

(f) Be mailed or personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314, or if sent by facsimile machine (FAX), received by DMV at FAX number (503) 945-5521.

(2) A hearing request should also include:

- (a) The person's date of birth;
- (b) The telephone number where the person can be reached between 8 a.m. and 5 p.m.; and
- (c) The dates and times the person or the person's attorney cannot appear at a hearing.

(3) Except for good cause shown:

(a) Any factual or legal defense not set forth in the hearing request is considered waived; and

(b) No evidence offered by a person who requests a hearing will be admitted into the hearing record on any factual or legal defense that is waived.

(4) If good cause is shown under section (3) of this rule, the hearing officer must give ODOT sufficient opportunity to obtain and present in the contested case hearing any testimony or documents deemed necessary by the agency to respond to evidence offered by the person on any factual or legal defense.

(5) Except as provided in OAR 137-003-0528, the person's right to a hearing is waived if a hearing is not requested within the time period specified in section (1) of this rule and the notice becomes the final order by default. The test results will be posted to the person's employment driving record. The time period for requesting a hearing will be computed as set forth in OAR 137-003-0520(10).

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 825.412

Stats. Implemented: ORS 825.410 & 825.412

Hist.: DMV 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; DMV 8-2001, f. & cert. ef. 3-7-01; DMV 23-2004, f. & cert. ef. 11-17-04

735-074-0220

Hearing Request for Suspension or Cancellation of Driving Privileges Under Division 74 and Division 76 Rules

A person issued a notice of suspension or cancellation under these rules has the right to request a contested case hearing. The following apply to a hearing request:

(1) Except as provided in section (2) of this rule, a person issued a notice of suspension or cancellation under these rules must request a hearing within 20 days from the date on the notice. Except as provided in section (2) of this rule, the suspension or cancellation will not go into effect pending the outcome of the hearing.

(2) A person issued a notice of an immediate suspension or an immediate cancellation must request a hearing within 90 days from the date on the notice. The suspension or cancellation will remain in effect and will not be rescinded or stayed by DMV pending the outcome of the hearing.

(3) A hearing request must be in writing and must include:

- (a) The person's full name;
- (b) The person's complete mailing address;
- (c) The person's Oregon driver license number; and
- (d) A brief statement of the issues the person proposes to raise at the hearing.

(4) A hearing request should also include:

- (a) The person's date of birth;
- (b) The telephone number where the person can be reached between 8 a.m. and 5 p.m.; and
- (c) The dates and times the person or the person's attorney cannot appear at a hearing.

(5) The administrative law judge must give DMV sufficient opportunity to obtain and present in the contested case hearing any testimony or documents deemed necessary by the agency to respond to evidence offered by the person on any factual or legal defense.

(6) In order for a request for hearing to be timely, the request must be postmarked or received by DMV within the time periods established in sections (1) and (2) of this rule. If the request for hearing is not timely received, the person waives his or her right to a hearing, except as provided

in OAR 137-003-0528. The time periods will be computed as set forth in OAR 137-003-0520(8).

(7) To be received by DMV, the hearing request must be:

(a) Personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR;

(b) Delivered by mail to DMV Headquarters, 1905 Lana Avenue NE, Salem OR 97314; or

(c) Received by facsimile machine at FAX number (503) 945-5521.

Stat. Auth.: ORS 184.616, 184.619, 809.440

Stat. Implemented: ORS 809.440

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0000

Definitions

As used in OAR 735-090-0000 through 735-090-0120, unless the context requires otherwise:

(1) "Agency" means Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation.

(2) "Hearings Program" means and is a section of the Office of Administrative Hearings that performs services under contract for DMV and includes the Hearings Case Management Unit.

(3) "Error of the Department," as used in ORS 813.440(1)(c), means:

(a) An act or omission of the agency, which by its occurrence, prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(b) An act or omission of the agency in issuing a subpoena to a witness, including a police officer, to a recorded or reported hearing that determines the validity of a suspension of driving privileges and where the witness' presence at the reported or recorded hearing is required in order for the agency to establish the required elements under ORS 813.410(5); or

(c) An act or omission of the agency in issuing a subpoena to a necessary witness where:

(A) The agency receives the petitioning party's request to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; and

(B) The act or omission, by its occurrence, prevented the necessary witness from being present at the hearing; or

(d) An act or omission of the agency that prevents a recorded or reported hearing that determines the validity of a suspension of driving privileges from being conducted.

(4) "Other just cause" as used in ORS 813.440(1)(f) means:

(a) Circumstances beyond the reasonable control of the petitioning party and beyond the ability of a reasonable person to foresee, which:

(A) Prevented the petitioning party from filing of a timely request for a hearing as set forth in ORS 813.410(3); or

(B) Prevented the petitioning party from requesting the agency to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; or

(C) Prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(b) Circumstances where a petitioning party moves for a continuance of a hearing or a request that a necessary witness be subpoenaed to a hearing and, due to circumstances beyond the control of the petitioning party:

(A) The necessary witness does not appear at the hearing because the necessary witness was unknown to the petitioning party prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(B) The necessary witness does not appear at the hearing and could not be served with a subpoena at least 72 hours prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(c) Circumstances beyond the control of the agency that prevented a hearing officer from conducting a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(5) "Necessary witness" means a witness whose testimony is essential to support a material fact or position of the petitioning party. The fact or position to be supported by the necessary witness must be within the scope of an implied consent hearing as set forth in ORS 813.410(5).

(6) "Offense" means the alleged Driving While Under the Influence of Intoxicants incident.

(7) "Petitioner" means the person whose driving privileges may be suspended.

ADMINISTRATIVE RULES

(8) "Petitioning Party" means the petitioner or the petitioner's attorney.

(9) "Received by DMV" means:

(a) Personally delivered to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR;

(b) Delivered by mail to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR 97314; or

(c) Received by facsimile machine at telephone number (503) 945-5521.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0100; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0020

Hearings Requests

(1) Hearings requests shall be in writing. Request should include:

(a) Petitioner's full name;

(b) Petitioner's complete mailing address;

(c) Date of arrest;

(d) Petitioner's Oregon driver license number;

(e) Petitioner's date of birth;

(f) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(g) Brief statement of the issues the petitioner proposes to raise at the hearing;

(h) Dates and times the petitioner or attorney cannot appear at a hearing;

(i) A request to have the hearing held by telephone, if desired.

(j) A request for an interpreter for a non-English speaking petitioner must be made at the time of the hearing request.

(2) To be considered timely, a hearing request submitted pursuant to ORS 813.132 or 813.410(3), for failure of a breath test or refusal of a breath, blood or urine test, must be received by DMV by the tenth day following the arrest of the petitioner. Oregon Rules of Civil Procedure 10A (ORCP 10A) shall be used to determine the computation of time.

(3) To be considered timely, a hearing request submitted pursuant to ORS 813.410(3), for failure of a blood test, must be received by DMV by the tenth day from the date the department sends notice of suspension. ORCP 10A shall be used to determine the computation of time.

(4) The Office of Administrative Hearings shall issue a final order denying an untimely hearing request unless the petitioning party demonstrates that the request should be granted under ORS 813.440.

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

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410, 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0110; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0040

Document Submission Requirements

(1) The following documents, sent by police agencies, shall be received by DMV by the tenth day following arrest. These documents are:

(a) Original and a copy of the Implied Consent Combined Report, Form 735-0075, and if applicable, the CDL Implied Consent Addendum, Form 735-0075A; and

(b) The Oregon driver license or permit if confiscated.

(2) An Implied Consent Combined Report, Form 735-0075, and if applicable, a CDL Implied Consent Addendum, Form 735-0075A, not received within ten days following the arrest and failure of the breath test or refusal of a breath, blood or urine test, are inadmissible at any hearing conducted within 30 days following the arrest pursuant to ORS 813.132 or 813.410, but are admissible in a hearing authorized under ORS 813.440.

(3) The original and a copy of the Implied Consent Blood Test Failure Report, Form 735-0055, sent by police agencies, shall be received by DMV by the 45th day following arrest. If form 735-0055 is not received within 45 days following the date of arrest, no license suspension action will be taken by DMV.

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

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.131, 813.132, 813.410, 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0120; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0051

Subpoena of Witness

The department will not in any circumstance compel a witness to attend and testify at a hearing that determines the validity of a suspension of driving privileges unless the witness is served with a subpoena at least 72 hours prior to the time of the hearing.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410, 813.440

Hist.: DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0101

Hearing Location

(1) The hearing must be held either in the county where the alleged offense occurred or at any place within 100 air miles of the place where the offense is alleged to have occurred, as assigned by the agency.

(2) If a petitioning party requests that a hearing be conducted by telephone, the hearing may be conducted by telephone, including video teleconferencing, and the Administrative Law Judge, petitioning party, and witnesses may appear from multiple locations and the requirements of section (1) of this rule and ORS 813.410(4)(b) shall not apply.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410, 813.440

Hist.: DMV 23-2004, f. & cert. ef. 11-17-04

735-090-0130

Error of the Department

In accordance with the definition of "Error of the Department" specified in OAR 735-090-0000(3), in a hearing that determines the validity of a suspension of driving privileges under ORS 813.410, if the department presents hearsay evidence to establish the required elements under ORS 813.410(5) and a petitioning party presents substantial evidence that contradicts the hearsay evidence, the department shall rescind the suspension and continue the hearing pursuant to ORS 813.440(1)(c) in order for the department to subpoena the hearsay witness to the continued hearing.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Implemented: ORS 813.410 & 813.440

Hist.: DMV 11-2004(Temp), f. & cert. ef. 5-24-04 thru 11-19-04; DMV 23-2004, f. & cert. ef. 11-17-04

735-152-0020

Refusal to Issue and Probationary Status of Wrecker Certificate

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall not issue an original or renewal wrecker certificate to any applicant when it determines the application is incomplete or information contained in the application is false.

(2) DMV shall not issue an original or renewal wrecker certificate to any applicant when it determines a principal of the applicant is financially or operationally involved with any vehicle business whose certificate or right to apply for a certificate is currently suspended, canceled or revoked.

(3) DMV shall issue an original or renewal wrecker certificate on a probationary basis when it determines a principal of the applicant is financially or operationally involved with any other vehicle business whose certificate or right to apply for a certificate is currently on probation. The probationary status of the new certificate shall expire and attain regular status on the same date the probation period ends for the other vehicle business.

(4) DMV shall not issue an original or renewal wrecker certificate to any applicant when it determines a principal of the applicant:

(a) Has been convicted of a violation of any provision of ORS Chapter 822 within the five years preceding the date of the application;

(b) Has been convicted in any jurisdiction outside of the state of Oregon of any violation of that jurisdiction's statutes relating to vehicle businesses, vehicle registration, title transfers or stolen vehicles within the five years preceding the date of the application; or

(c) Is currently affected by any type of administrative sanction or penalty that prohibits the principal from conducting a vehicle business and relates to vehicle businesses, vehicle registration, title transfers or stolen vehicles in a jurisdiction outside of the state of Oregon.

(5) DMV shall not issue an original or renewal wrecker certificate until such time as it is satisfied the applicant meets all requirements for issuance of a certificate found in ORS Chapter 822 and OAR 735, division 152.

(6) DMV shall retain the fees paid with an application to cover processing costs when it refuses to issue a certificate.

(7) An applicant who has been refused issuance of a wrecker certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(8) The refused applicant's request for a hearing shall be submitted in writing to and received by DMV, within 60 days of the date of the refusal.

ADMINISTRATIVE RULES

A hearing request received in a timely manner shall not result in issuance of a certificate, pending the outcome of the hearing. In case of a refusal to renew, the wrecker may continue to operate under the old certificate in accordance with ORS 183.430(1), pending the outcome of the hearing, except when DMV finds that such continued operation would constitute a serious danger to the public health or safety and extends the hearing request period to 90 days in accordance with ORS 183.430(2).

(9) When the wrecker or principal of the wrecker business fails to file a timely request for hearing, the charges shall be considered to have been admitted, the wrecker or principal shall be deemed in default as to those charges, DMV's file shall constitute the record of the case, and the order of refusal shall become final.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130
Stats. Implemented: ORS 822.125
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04

735-152-0050

Penalties for Wrecker Offenses

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall impose penalties when it determines a wrecker has violated provisions of the Motor Vehicle Code or rules promulgated by DMV relating to:

- (a) The operation of a wrecker business;
 - (b) Destroyed vehicles;
 - (c) Totaled vehicles (effective September 29, 1991);
 - (d) Vehicle title and registration; or
 - (e) Stolen vehicles.
- (2) Penalties imposed may be against either or both of the following:
- (a) The wrecker's business certificate;
 - (b) An owner, partner, corporate officer or other principal of the wrecker business.

(3) Factors DMV shall consider in determining the penalty or penalties to impose shall include, but are not limited to:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional; and
- (d) The history of penalties imposed by DMV against the wrecker or principals of the wrecker business.

(4) DMV shall determine the steps to take or penalties to impose when it determines violations have occurred or are occurring. These may include one or more of the following:

- (a) Verbal or written warnings, including correction notices;
- (b) Probation under conditions set by DMV, of privileges granted by the wrecker's business certificate for one year;
- (c) Suspension of the wrecker's business certificate and the right to apply for a certificate for up to three years;
- (d) Permanent revocation of the wrecker's business certificate;
- (e) Cancellation of the wrecker's business certificate;
- (f) Suspension of the right of a principal of a wrecker business to apply for a certificate for a different wrecker business or in a different business name for up to three years;
- (g) Permanent revocation of the right of a principal of a wrecker business to apply for a certificate for a different wrecker business or in a different business name;

(h) Immediate suspension as provided in OAR 735-152-0030.

(5) A wrecker or principal whose business certificate or privileges have been placed on probation, suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) Except as provided in sections (7) and (8) of this rule, a wrecker's request for a hearing shall be submitted in writing to and received by DMV within 20 days of the date of the notice of penalty. A hearing request received in a timely manner shall result in a withdrawal of the penalty, pending the outcome of the hearing.

(7) In the instance of an immediate suspension as provided by OAR 735-152-0030, a wrecker's request for a hearing shall be submitted in writing to and received by DMV within 90 days of the date of notice of penalty. A hearing request received in a timely manner shall not result in a withdrawal of the penalty, pending the outcome of the hearing.

(8) In the instance of an immediate suspension or cancellation as provided by ORS 822.145(2) for failure to satisfy the bond requirements established by ORS 822.120, a wrecker's request for a hearing shall be submitted in writing and received by DMV within 90 days of the date of notice of cancellation. A hearing request received in a timely manner shall not result in a withdrawal of cancellation, pending the outcome of the hearing.

(9) When the applicant fails to file a timely request for a hearing, the charges shall be deemed admitted, the applicant shall be deemed in default as to those charges, DMV's file shall constitute the record of the case, and the order of DMV shall become final.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130
Stats. Implemented: ORS 822.125
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04

**Employment Department,
Child Care Division
Chapter 414**

Adm. Order No.: CCD 5-2004

Filed with Sec. of State: 11-16-2004

Certified to be Effective: 11-16-04

Notice Publication Date: 10-1-04

Rules Amended: 414-061-0100, 414-061-0110, 414-205-0170

Subject: The Employment Department, Child Care Division, is amending:

OAR 414-061-0100 & 414-061-0110 to clarify that an individual enrolled in the Criminal History Registry may be removed or suspended from the Registry in certain circumstances, and to reflect the role of law enforcement agencies' role in child protective services investigations; and

OAR 414-205-0170 to clarify that the registration of an individual suspended from the Criminal History Registry will be denied, suspended or revoked.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-061-0100

CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Criminal History Registry if the individual:

- (a) Has been determined not suitable;
- (b) Has failed to submit requested information or documentation;
- (c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;
- (d) Has an open child protective services or law enforcement case with final disposition not yet reached; or
- (e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal CCD's determination not to enroll the subject individual in the Criminal History Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Criminal History Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

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 5-2004, f. & cert. ef. 11-16-04

414-061-0110

Removal and Suspension Procedures

(1) An individual enrolled in the Criminal History Registry shall be removed or suspended from the Registry by CCD if, during the period of enrollment, the individual:

- (a) Has been determined not suitable for enrollment in the Registry;
- (b) Has failed to submit requested information or documentation;
- (c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;
- (d) Has a founded child protective services case or an open child protective services or law enforcement case with final disposition not yet reached; or
- (e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) CCD may immediately, and without prior hearing, remove or suspend a subject individual from the Criminal History Registry when, in the opinion of CCD, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) CCD may reinstate a subject individual in the Criminal History Registry if the condition(s) that resulted in the suspension is corrected.

ADMINISTRATIVE RULES

(4) When a subject individual is removed or suspended from the Criminal History Registry, CCD will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Criminal History Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

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 5-2004, f. & cert. ef. 11-16-04

414-205-0170

Grievance Review and Sanctions

(1) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants/providers for family child care registration.

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide CCD with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by CCD to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Adult and Family Services Division, and the State Office of Services to Children and Families.

(4) A registration may be suspended immediately when CCD believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the Criminal History Registry.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which CCD has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the Criminal History Registry.

(8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has an open or founded case of child abuse or neglect that would disqualify the individual from the Criminal History Registry.

(9) Persons may be subject to a fine of up to \$100 per occurrence if:

(a) They provide child care without a registration when required by law to be registered; or

(b) They violate any of the terms or conditions of registration or these rules.

(10) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a fine, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04

Landscaping Contractors Board Chapter 808

Adm. Order No.: LCB 6-2004(Temp)

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 12-15-04 thru 6-10-05

Notice Publication Date:

Rules Adopted: 808-004-0211, 808-008-0051, 808-008-0291, 808-008-0511, 808-008-0521

Rules Amended: 808-002-0540, 808-008-0020, 808-008-0030, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0280, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500

Rules Suspended: 808-008-0240

Subject: The above listed rules are adopted, amended or suspended to implement HB 2279 (chapter 598, Oregon Laws 2003).

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-002-0540

Last-Known Address of Record

(1) "Last-known address of record" for a landscape contractor, a landscaping business or for a claimant, as used in ORS 671.603(2), means the most recent of:

(a) The mailing address provided by the landscape contractor, landscaping business or claimant in writing to the agency, designated by the landscape contractor, landscaping business or claimant as the landscape contractor's, landscaping business' or claimant's mailing address; or

(b) The forwarding address for the landscape contractor, landscaping business or claimant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310, 671.670
Stats. Implemented: ORS 671.603
Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-004-0211

Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented ORS 671.603
Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0020

Applicability of Rules; Application of chapter 598, Oregon Laws 2003

(1) The rules in this division shall apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 808-004-0590;

(b) The parties to the arbitration agree that the Landscape Contractors Board may arbitrate a landscape dispute and the agency accepts the dispute for arbitration under ORS 671.703;

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Landscape Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 671.703; or

(d) Arbitration by the Landscape Contractors Board is ordered by a court in accordance with section 6 or 7, chapter 598, Oregon Laws 2003.

(2) The amendments to the rules in division 8 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for arbitration:

(a) On or after January 1, 2004; and

(b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

(3) Except as otherwise provided in the rules in division 8 of this chapter, an agreement to arbitrate shall be governed by sections 1 to 30, chapter 598, Oregon laws 2003, subject to:

(a) Section 3, chapter 598, Oregon Laws 2003, which relates to the effect of the date of an agreement to arbitrate on the application of sections 1 to 30, chapter 598, Oregon Laws 2003 to the agreement;

(b) Section 29, chapter 598, Oregon Laws 2003, which relates to consideration of the need to promote uniformity of law in construing an arbitration agreement;

(c) Section 31, chapter 598, Oregon Laws 2003, which relates to a proceeding commenced or a right accrued before January 1 2004.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

ADMINISTRATIVE RULES

808-008-0030

Incorporation of Office of Administrative Hearings Rules

(1) The following rules related to the contested case hearings conducted by administrative law judges assigned to the Office of Administrative Hearings are incorporated into these rules by this reference and apply to arbitrations conducted under the rules in this division:

- (a) OAR 137-003-0590 (Qualified interpreters); and
- (b) OAR 137-003-0605 (Telephone testimony).

(2) In interpreting rules incorporated under section (1) of this rule:

- (a) "Hearing" in the incorporated rule shall be given the same meaning as "arbitration" in these rules; and
- (b) "Administrative law judges" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

Stat. Auth.: ORS 670.310, & 671.670

Stats. Implemented: ORS 183, 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0051

Application for Judicial Relief

An application to the court for judicial relief under the rules in division 8 of this chapter or under section 1 to 30, chapter 598, Oregon Laws 2003 shall be subject to section 5, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 670.310, & 671.670

Stats. Implemented: Ch. 598, OL 2003

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0060

Appointment of Arbitrator

Appointment of arbitrator shall be as provided in ORS 671.703 and shall be subject to a request for a different administrative law judge to act as arbitrator under section 11, chapter 849, Oregon Laws 1999, as amended by section 8, chapter 294, Oregon Laws 2001 and section 10, chapter 75, Oregon Laws 2003 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules shall be filed as follows:

(a) With the agency before a claim or dispute is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers a claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document such as a correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or dispute or their counsel if the parties are represented. Service under this section shall be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 808-004-0210, after the agency refers the claim or dispute to the Office of Administrative hearings and before the arbitrator issues an award a party must notify the Office of Administrative Hearings or arbitrator, and other parties to the claim or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0140

Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 23 (1)(b), chapter 598, Oregon Laws 2003 for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under section 23 (1)(b), chapter 598, Oregon Laws 2003 may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under section 23 (1)(b), chapter 598, Oregon Laws 2003.

(7) Substantial compliance with the procedures in this division 8 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under section 23 (1)(b), chapter 598, Oregon Laws 2003.

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0280

Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

Stat. Auth.: ORS 183.310-183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0291

Summary Disposition

An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

Stat. Auth.: ORS 183.310-183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0400

Services of Notices and Other Communications

(1) Communication, including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative

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Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearings, the notice of hearings shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0420

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

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

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

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

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

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

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 808-004-0540, 808-004-0550 or 808-008-0110; or

(b) The Statement of Claim filed by the party under OAR 808-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 671.690 and the parties to an arbitration have not agreed that the arbitrator may award damages against the claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

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

(8) Except as provided in OAR 808-008-0440 and 808-008-0460, an arbitration award is effective as an order to pay under OAR 808-004-0600 or an award that may be filed with the court with a petition to confirm the award under section 22, chapter 598, Oregon Laws 2003;

(a) Only after the 21st day after service on the parties; and

(b) Only if no party files a timely petition to modify or correct the award under OAR 808-008-0425.

(9)(a) Except as provided in section (4) of this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond required under ORS 671.690 and other amounts that are not payable from the bond under OAR 808-004-0250 or any other law, the award shall segregate these amounts.

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

(10) If a limitation on damages under section (4) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

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

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0425

Petition to Modify or Correct an Award

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

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

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

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

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

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

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

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

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

(d) To clarify the award.

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

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

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

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

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

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183, 671.670

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0430

Form of Petition to Modify or Correct an Award

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

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

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

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbi-

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trator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

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

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

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

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

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

(d) To clarify the award.

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

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

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

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

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

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.673

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0440

Payments from Licensee's Bond

(1) As used in this rule, award means an award that becomes effective;

(a) Under OAR 808-008-0420(8); or

(b) After an amended award is issued under OAR 808-008-0425(9).

(2) If an award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond or deposit of the business to the extent payment is authorized under ORS 671.710. Payments from the bond or deposit shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS chapter 671 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 808-004-0600 if no party files a petition to modify or correct the award with the court under section 22, chapter 598, Oregon Laws 2003 and delivers a copy of the petition to the agency within 30 days of the date the award becomes effective.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.703, 671.707 & 671.710

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0460

Filing with Court; Exceptions

(1) If a timely petition to modify or correct an award is filed with the arbitrator, a party may not file the award with the court under section 22, chapter 598, Oregon Laws 2003 until the arbitrator issues an amended award under OAR 808-008-0425(9).

(2) After an award becomes effective under OAR 808-008-0420(7), a denial of a petition to modify or correction an award is issued under OAR 808-004-0425(8) or an amended award is issued under OAR 808-008-0425(9), a party to an arbitration may file the award or amended award with the court with a petition to confirm the award under section 22, chapter 598, Oregon Laws 2003.

(3) By proceeding with arbitration under these rules, parties shall be deemed to have consented that a judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(4) A party against whom an award is made may file a petition to modify or correct the award with the court under section 22, chapter 598,

Oregon Laws 2003. The party filing the petition must deliver a copy of the petition to the agency within 30 calendar days from the date of the award. Failure to file a timely petition under this section is a waiver of the right to file a petition.

(5) If an award is made on a claim and the claimant does not file the award with the the court under section 22, chapter 598, Oregon Laws 2003, the respondent must file the award with the court prior to respondent filing a petition of the award under section 22, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0500

Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to section 14 (1) to (3), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0511

Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to section 14 (4), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

808-008-0521

Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings, arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 808-008-0-510, the court may award attorney fees and costs as provided in section 14 (5), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05

Oregon Board of Dentistry Chapter 818

Adm. Order No.: OBD 3-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 10-1-04

Rules Amended: 818-021-0011, 818-021-0025

Subject: OAR 818-021-0011 and 818-021-0025 are permanently amended to remove the requirement that applicants for licensure by this pathway have passed the written National Board examinations. This is the permanent adoption of temporary rules that were effective in July 2002.

A Certificate and Order for Filing Permanent Administrative Rules to amend these rules was filed with the Secretary of State on April 18, 2003, with an effective date of April 18, 2003. This Certificate and Order for Filing Permanent Administrative Rules is being re-filed because the amended rule was not filed with the Legislative Counsel Committee within the ten-day period required by ORS 183.715.
Rules Coordinator: Sharon Ingram—(503) 229-5520

818-021-0011

Application for License to Practice Dentistry Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dentist who holds a license to practice dentistry in another state or states if the dentist meets the requirements set forth in ORS 679.060 and 679.065 and submits to the Board satisfactory evidence of:

ADMINISTRATIVE RULES

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or completion of a postdoctoral General Dentistry Residency program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Having passed the dental clinical examination conducted by a regional testing agency or by a state dental licensing authority; and

(d) Holding an active license to practice dentistry, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dentistry, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 40 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A background check will be conducted by the Board or its designee.

(4) A dental license granted under this rule will be the same as the license held in another state; i.e., if the dentist holds a general dentistry license, the Oregon Board will issue a general (unlimited) dentistry license. If the dentist holds a license limited to the practice of a specialty, the Oregon Board will issue a license limited to the practice of that specialty. If the dentist holds more than one license, the Oregon Board will issue a dental license which is least restrictive.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.060, 679.065, 679.070, 679.080 & 679.090

Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04

818-021-0025

Application for License to Practice Dental Hygiene Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dental hygienist who holds a license to practice dental hygiene in another state or states if the dental hygienist meets the requirements set forth in ORS 680.040 and 680.050 and submits to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Evidence of having passed the dental hygiene examination conducted by a regional testing agency or by a state dental or dental hygiene licensing authority; and

(d) Holding an active license to practice dental hygiene, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dental hygiene, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 24 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A background check will be conducted by the Board or its designee.

Stat. Auth.: ORS 680

Stats. Implemented: ORS 680.040, 680.050, 680.060, 680.070 & 680.072

Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04

Adm. Order No.: OBD 4-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 10-1-04

Rules Amended: 818-042-0050, 818-042-0060, 818-042-0120, 818-042-0130

Subject: OAR 818-042-0050, 818-042-0060, 818-042-0120, and 818-042-0130 are amended to conform the Board of Dentistry's rules with the rules promulgated by the Department of Human Services, Radiation Protection Services, under the authority of ORS 453.775 regarding x-ray machine operator training.

A Certificate and Order for Filing Permanent Administrative Rules to amend these rules was filed with the Secretary of State on July 14, 2003, with an effective date of July 18, 2003. It was necessary to refile this Certificate and Order for Filing Permanent Administrative Rules because the amended rule was not filed with the Legislative Counsel Committee within the ten-day period required by ORS 183.715.

Rules Coordinator: Sharon Ingram—(503) 229-5520

818-042-0050

Taking of X-Rays — Exposing of Radiographs

(1) A dentist may authorize the following persons to place films, adjust equipment preparatory to exposing films, and expose the films under general supervision:

(a) A dental assistant certified by the Board in radiologic proficiency;

(b) A radiologic technologist licensed by the Oregon Board of Radiologic Technology and certified by the Oregon Board of Dentistry (OBD) who has completed ten (10) clock hours in a Board approved dental radiology course and submitted a satisfactory full mouth series of radiographs to the OBD.

(2) A dentist may authorize students in approved instructional programs to take dental x-rays under the conditions established by the Department of Human Services, Health Services, in OAR 333 division 106.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025 & ORS 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04

818-042-0060

Certification — Radiologic Proficiency

(1) The Board may certify a dental assistant in radiologic proficiency by credential in accordance with OAR 818-042-0120, or if the assistant:

(2) Submits an application on a form approved by the Board, pays the application fee and:

(a) Completes a course of instruction in a program approved by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS), in accordance with OAR 333-106-0055 or submits evidence that RPS recognizes that the equivalent training has been successfully completed;

(b) Passes a clinical examination approved by the Board and graded by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board, consisting of exposing, developing and mounting a full mouth series of radiographs (14 to 18 periapical and 4 bitewing radiographs) within one hour and under the supervision of a person permitted to take radiographs in Oregon. No portion of the clinical examination may be completed in advance; a maximum of three retakes is permitted; only the applicant may determine the necessity of retakes. The radiographs should be taken on an adult patient with at least 24 fully erupted teeth. The radiographs must be submitted for grading within six months after they are taken; and

(c) Passes the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, Inc. (DANB), or comparable exam administered by any other testing entity authorized by the Board.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025 & 679.250

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Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04

Stats. Implemented: ORS 284.367 & 284.368
Hist: FVO 4-2004, f. & cert. ef. 11-26-04

818-042-0120

Certification by Credential

(1) Dental Assistants who wish to be certified by the Board in Radiologic Proficiency or as Expanded Function Dental Assistants, or as Expanded Function Orthodontic Dental Assistants shall:

(a) Be certified by another state in the functions for which application is made. The training and certification requirements of the state in which the dental assistant is certified must be substantially similar to Oregon's requirements;

(b) Have worked for at least 1,000 hours in the past two years in a dental office where such employment involved to a significant extent the functions for which certification is sought; and

(c) Shall be evaluated by a licensed dentist, using a Board approved checklist, to assure that the assistant is competent in the expanded functions.

(2) Applicants applying for certification by credential in Radiologic Proficiency must obtain certification from the Department of Human Services, Health Services, Radiation Protection Services Section, of having successfully completed training equivalent to that required by OAR 333-106-0055.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025 & ORS 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04

818-042-0130

Application for Certification by Credential

An applicant for certification by credential shall submit to the Board:

(1) An application form approved by the Board, with the appropriate fee;

(2) Proof of certification by another state and any other recognized certifications (such as CDA or COA certification);

(3) A description of the examination and training required by the state in which the assistant is certified submitted by the state directly to the Board;

(4) Certification that the assistant has been employed for at least 1,000 hours in the past two years as a dental assistant performing the functions for which certification is being sought;

(5) If applying for certification by credential as an EFDA or EFODA, certification by a licensed dentist that the applicant is competent to perform the functions for which certification is sought; and

(6) If applying for certification by credential in Radiologic Proficiency, certification from the Department of Human Services, Health Services, Radiation Protection Services Section, that the applicant has met that agency's training requirements for x-ray machine operators.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025 & ORS 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04

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Oregon Film and Video Office
Chapter 951

Adm. Order No.: FVO 4-2004

Filed with Sec. of State: 11-26-2004

Certified to be Effective: 11-26-04

Notice Publication Date: 11-1-04

Rules Adopted: 951-002-0000, 951-002-0001, 951-002-0005, 951-002-0010, 951-002-0020, 951-003-0000, 951-003-0001, 951-003-0005

Subject: Procedures for administration of the Oregon Production Incentive Fund.

Rules Coordinator: Susan Kaye Tong—(503) 229-5832

951-002-0000

Purpose

The purpose of these rules is to provide guidance for the administration of the Oregon Production Investment Fund film and television production rebates as authorized by ORS 284.367 to 284.368. The Oregon Production Investment Fund was authorized by the 2003 legislature to encourage film and video production in Oregon, thereby increasing job opportunities for Oregonians in the film and video industry and bringing additional production spending into the state.

Stat. Auth: ORS 284.335 & 284.368

951-002-0001

Definitions

(1) "Qualifying film or television production" means a movie produced for release to theaters, video or the internet or a television movie or one or more episodes of a single television series, the production of which will result in the spending of at least \$1 million directly to Oregon resident vendors or for work done in Oregon. "Qualifying film or television production" does not include the production of a commercial or one or more segments of a newscast or sporting event.

(2) "OPIF" means Oregon Production Investment Fund created by ORS 284.367.

(3) "OFVO" means the Oregon Film & Video Office created by ORS 284.305.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-002-0005

Program Application

A person proposing to produce a qualifying film or television production and wishing to receive a production spending rebate from the OPIF with respect to the production shall submit an application to the Oregon Film and Video Office for an eligibility determination. Unless otherwise permitted by the OFVO, the application must be submitted prior to the commencement of production.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-002-0010

Eligibility Determination

(1) Except as set forth in sections (2) and (3), the OFVO will approve the applications for eligibility for productions that satisfy the following requirements:

(a) The production satisfies the non-monetary portions of the "qualifying film or television production" definition.

(b) Projected spending in Oregon on the production is reasonably anticipated to equal or exceed US \$1,000,000.

(c) The producer includes, with its application, a letter to the OFVO stating the producer's intent to film the production in Oregon and its willingness and ability to enter into a contract with the OFVO setting forth the terms and conditions of the rebate.

(2) The following productions are not eligible:

(a) Productions of a producer that has, or whose principals have, a verifiable history of previous production problems that create significant doubt, as determined by the OFVO, regarding the producer's ability to complete a production in Oregon successfully. The production problems may include, but are but not limited to:

(i) Unpaid financial obligations;

(ii) Crew mistreatment; or

(iii) Damage to locations that the producer did not repair upon completion of the production.

(b) Productions with respect to which the producer withdraws its application for eligibility determination.

(c) Productions whose applications for eligibility are filed at times when there are not sufficient funds available in the Oregon Production Investment Fund to pay the anticipated rebates.

(d) Productions that the OFVO determines are unlikely to further the purposes of the Oregon Production Investment Fund.

(3) If the OFVO receives multiple relatively concurrent applications for eligibility determinations and there are not sufficient funds available in the Oregon Production Investment Fund to pay anticipated rebates with respect to all of the productions, the OFVO will determine which applications to approve and which to deny based on the following factors:

(a) Satisfaction of requirements of section (1)

(b) Chronological order of receipt of application

(c) Amount of production spending anticipated in Oregon

(d) Number of film workers expected to be hired

(e) Experience level of producer

(f) Reputation of the producer and its principals

(g) Estimated production start date

(h) Other benefits to Oregon, including but not limited to promotional value, long-term financial benefits, contribution to development of Oregon's crew and talent base or production industry infrastructure.

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(i) Whether the production company has contributed to the Oregon Production Investment Fund.

(4) Upon approval of an application for eligibility with respect to a production, the producer must enter into a contract with OFVO stipulating the producer's intent to film the production in Oregon and setting forth the terms and conditions of the rebate. If the producer and the OFVO have not entered into the contract within 30 days of the production's eligibility approval, the production's eligibility will be automatically revoked unless the OFVO, in its discretion, extends the deadline for contract execution.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-002-0020

Payment of rebates

(1) Regardless of whether the production is otherwise a qualifying film or television production or whether the OFVO determined the production eligible, rebates from the Oregon Production Investment Fund will only be paid pursuant to and upon the terms and conditions of a contract entered into between the OFVO and producer pursuant to OAR 951-002-0010(4). If no contract is entered into, no rebates will be paid.

(2) In addition to any other terms and conditions that the OFVO considers necessary or desirable, contracts for Oregon Production Investment Fund rebates will usually include the following:

(a) A requirement that the producer submit to the OFVO, after completion of the production work in Oregon, financial and other records sufficient to verify that the production satisfied the minimum expenditure requirement for a rebate.

(b) Authorization for the OFVO to deduct from the rebate the costs reasonably incurred by the OFVO in verifying the production expenditures in Oregon, including but not limited to, the costs incurred by OFVO in obtaining an outside accounting review, audit, or both, of the financial and other records evidencing the expenditures. The OFVO will usually submit the expenditure documentation to an outside accounting firm for a review after the OFVO has completed its review. Based on the advice of the outside accounting firm, the OFVO may require an audit of the production's financial records.

(c) Provisions conditioning OFVO's obligation to pay the rebate on the producer's compliance with the terms of the contract and satisfactory verification of production spending in Oregon of at least US \$1 million.

(d) Provisions conditioning OFVO's obligation to pay the rebate on the production spending in Oregon after the date that OFVO approves the production's eligibility, of at least US \$1 million.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-003-0000

Purpose

(1) These rules specify the procedures for Oregon Film and Video Office certification of tax credits arising from contributions to the Oregon Production Investment Fund, as authorized by ORS 315.514.

(2) The Oregon Production Investment Fund tax credits were authorized by the 2003 legislature to:

(a) Encourage taxpayers to make contributions to the Oregon Production Investment Fund by providing a financial return for qualified contributions.

(b) Encourage film and television production in Oregon by providing incentives in the form of production spending rebates, from the Oregon Production Investment Fund, to qualifying productions.

(c) Strengthen Oregon's film and video industry infrastructure by bringing in more production spending to this sector of the economy.

Stat. Auth: ORS 284.335 & 315.514

Stats. Implemented: ORS 315.514

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-003-0001

Definitions

(1) "Tax credit" means certification of an amount for credit by the Oregon Film and Video Office under ORS 315.514 and these administrative rules and arising from a qualifying contribution.

(2) "Oregon Production Investment Fund" means the fund created by ORS 284.367.

(3) "Qualifying contribution" means a contribution made by a taxpayer to the Oregon Production Investment Fund and for which an applica-

tion, in the form designated by the Oregon Film and Video Office, is submitted for a tax credit.

(4) "Tax credit certificate" means a certificate issued by the Oregon Film and Video Office to a taxpayer evidencing a tax credit.

Stat. Auth: ORS 284.335 & 315.514

Stats. Implemented: ORS 315.514

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-003-0005

Allocation of Certificates

(1) Taxpayers making a contribution to the Oregon Production Investment Fund and wishing to receive a tax credit must submit the contribution, together with an application for tax credit, to the Oregon Film and Video Office, in care of the Oregon Economic and Community Development Department. The contribution need not accompany the application to the extent the taxpayer is only requesting a reservation of tax credits for future issuance with respect to future committed contributions, as provided in these administrative rules..

(2) The Oregon Film and Video Office shall make tax credit application forms available to taxpayers in hard copy and electronic formats and taxpayers may submit applications and contributions either in hard copy format or electronically through the Oregon Film and Video Office website.

(3) The Oregon Film and Video Office will begin accepting contributions and applications for tax credits on January 1, 2005. The Oregon Film and Video Office shall consider applications for tax credits in the chronological order in which the applications are received.

(4) After approval of a taxpayer's application for a tax credit, the Film and Video Office shall issue to the tax payer a tax credit certificate for the tax year during which the qualifying contribution was received.

(a) The Oregon Film and Video Office shall not issue a tax credit certificate to the contributing taxpayer until the Oregon Economic and Community Development Department has verified the amount of contribution.

(b) Tax credit certificates for qualifying contributions made between January 1, 2005 and June 30, 2005, shall be issued after July 1, 2005.

(c) Tax credit certificates for qualifying contributions made on or after July 1, 2005 shall be issued within 45 days of the Oregon Film and Video Office's receipt of verification of the qualifying contribution from the Oregon Economic and Community Development Department.

(5) The amount of a qualifying contribution shall be 90% of the amount of tax credit issued with respect to that contribution.

(6) The tax credit certificates issued during a single State of Oregon fiscal year may not evidence more than \$1 million of tax credits, in aggregate.

(7) If at the time an application for tax credit is considered, the Oregon Film and Video Office has already issued or reserved tax credits totaling \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office will deny the application. If at the time an application for tax credit is considered, the Oregon Film and Video office has already issued or reserved tax credits that, when added to the tax credits that would be issued if the application were approved, would total more than \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office may either deny the application in full or approve the application in an amount necessary to bring the total tax credits issued or reserved to \$1 million for the fiscal year in which the contribution is received and deny the remainder of the application.

(8) If the Film and Video Office denies an application for a tax credit in full or in part, it shall notify the taxpayer applicant of the denial in writing within 45 days of the denial.

(9) A taxpayer who receives notice of denial of an application for tax credit may request, in writing and within 90 days after its receipt of the notice of denial, a refund of that portion of its contribution, actually received by the Film and Video Office, with respect to which the Film and Video Office did not issue a tax credit certificate. The Film and Video Office shall issue the refund within 60 days after its receipt of the refund request.

(10) In its application, a taxpayer may, in addition to or in lieu of applying for immediate issuance of a tax credit, request that the Oregon Film and Video Office reserve tax credits for future issuance based on future contributions committed by the taxpayer. The Oregon Film and Video office may approve, approve in part and deny in part, or deny tax credit reservation requests in its discretion. In determining whether to approve, approve in part and deny in part, or deny a tax credit reservation request, the Film and Video Office will consider the following factors:

ADMINISTRATIVE RULES

(a) The current uncommitted balance in the Oregon Production Investment Fund;

(b) The amount of tax credits then available for issuance for the fiscal year with respect to which the reservation is requested;

(c) The number of pending applications for tax credits;

(d) The anticipated future demand for tax credits for the fiscal year with respect to which the reservation is requested.

(e) The number of tax credits the taxpayer is requesting the Film and Video Office to reserve.

(f) The length of time between the approval of the reservation and the anticipated receipt of the contributions with respect to the reserved tax credits;

(g) Such other factors as the Film and Video office considers appropriate in the particular circumstance in order to further the purposes of the Oregon Production Investment Fund tax credits.

(11) The Film and Video Office shall notify a taxpayer requesting a tax credit reservation of the approval, approval in part and denial in part, or denial of the request within 45 days after the Film and Video Office's receipt of the request. If the reservation request is approved in whole or in part, the Film and Video Office shall reserve tax credits for future issuance consistent with that approval.

(12) A taxpayer with reserved tax credits must submit to the Film and Video Office sufficient contributions to support tax credits reserved for issuance during a particular fiscal year, no later than the date set forth in the Film and Video Office's notice of reservation approval. Contributions must be submitted to the Film and Video Office in care of the Oregon Economic and Community Development Department. If the contributions necessary to support issuance of reserved tax credits are not received by the applicable deadline, the reservation of those tax credits and the reservations of all other tax credits for that taxpayer shall automatically expire and those tax credits shall no longer be considered reserved tax credits and shall become immediately available for issuance to or reservation by other taxpayers in accordance with these administrative rules.

(11) No tax credits or tax credit certificates shall be issued with respect to reserved tax credits until the Film and Video Office receives sufficient contributions to support issuance of tax credits and tax credit certificates with respect to the reserved tax credits. The Film and Video Office shall issue tax credit certificates to the taxpayer with respect to reserved tax credits within 45 days after the Film and Video Office's receipt of verification from the Oregon Economic and Community Development Department of receipt of sufficient contributions to support issuance of the reserved tax credits.

Stat. Auth.: ORS 284.335 & 315.514
Stats. Implemented: ORS 315.514
Hist.: FVO 4-2004, f. & cert. ef. 11-26-04

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 4-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 11-23-04

Notice Publication Date: 11-1-04

Rules Adopted: 813-003-0001, 813-003-0006, 813-003-0011, 813-003-0015, 813-003-0021, 813-003-0025, 813-003-0031, 813-003-0035

Subject: These rules carry out the provisions of ORS 291.005 and 456.562 which relates to the Department's authority to License, share or otherwise provide for the use by a Person of Intellectual Property acquired or developed by the Department.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-003-0001

Purpose and Objectives

OAR chapter 813, division 003, is promulgated to carry out the provisions of ORS 291.055(c) and 456.562, which relate generally to the Department's authority to license, share or otherwise provide for the use by a Person of intellectual property acquired or developed by the Department.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0006

Definitions

(1) "Intellectual Property" as defined in ORS 456.562, means computer programs, software, software tools and data.

(2) "Person" means a person as defined in ORS 174.100, including individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. "Person" also means a federal, state or local government body, a Native American tribe or an agent or representative of a tribe.

(3) "Licensing Agreement" means the binding contractual instrument between the Department and a Person identifying the terms and conditions by which such Person may use Department Intellectual Property.

(4) "Copyright" means a comprehensive privilege to exclusively print, reprint, publish, copy, translate, dramatize, convert, arrange, adapt, complete, execute, finish, deliver in public, perform and transcribe an original work pursuant to federal law, i.e., 17 USC §§ 1-215; 61 Stat., as amended.

(5) "Department" means the State of Oregon, acting by and through the Housing and Community Services Department established pursuant to ORS 456.555.

(6) "Patent" means an instrument from the federal government granting to original inventors, the exclusive right for a period of time to manufacture, sell and use the invention described therein.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0011

Authority to Acquire, Develop, Use, and Share Intellectual Property

The Department may take actions that it deems necessary and appropriate to acquire, develop, use, and allow other Persons to use Intellectual Property. Such actions may include, but are not limited to applying for Patents or Copyright registrations to perfect or preserve its rights with respect to Intellectual Property, employing Intellectual Property for its own use, and requiring other Persons to execute Licensing Agreements and/or other documents satisfactory to the Department as a condition for licensing, sharing or otherwise obtaining use of Intellectual Property from the Department.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0015

Guidelines Concerning Acquisition and Use of Intellectual Property

(1) Subject to any superior Patent or Copyright limitations, the Department may, at its reasonable discretion, license, share with, or otherwise provide for the use by a Person of Intellectual Property acquired or developed by the Department. In determining whether or not to allow use of its Intellectual Property, the Department may consider factors including, but not limited to the public interest served in allowing its use, the cost and administrative burden of allowing its use, the furtherance of Department purposes through allowing its use, the potential liability from allowing its use, the Department's experience with the Person, the reputation in the community of the Person, the ability of the Person to pay an appropriate fee for the use of the Intellectual Property, the Person's execution of a Licensing Agreement and/or other documents satisfactory to the Department, and the impact of allowing its use on the ability of the Department to acquire or develop additional Intellectual Property.

(2) Unless specified otherwise in these rules, the Department may charge reasonable fees for the licensing, sharing or other use of its Intellectual Property. Payment of fees may be required on any schedule established by the Department.

(3) When the Department determines to license, share with or otherwise allow the use of any Intellectual Property by a federal, state, or local government body, it will do so without charging a fee.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0021

Guidelines for Training and Technical Assistance

(1) The Department may provide training and other technical assistance to Persons who license, share or otherwise use Department Intellectual Property. In determining whether or not to provide training and other technical assistance, the Department may consider factors including, but not limited to its own staffing needs and capabilities, the public interest to be served, the advancement of Department programs, the needs of the Person for whom training and other technical assistance would be provided, the ability of the Person to apply such training and assistance, the ability of the Person to pay for such training and assistance, the Department's experience with the Person, the reputation in the community of the Person,

ADMINISTRATIVE RULES

and the Person's execution of a Licensing Agreement and/or other documents satisfactory to the Department.

(2) The Department may charge reasonable fees for providing training and technical assistance with respect to the use of its Intellectual Property. Payment of fees may be required on any schedule established by the Department.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0025

Fees

(1) As permitted by ORS 456.562 and these rules, the Department may charge reasonable fees for the licensing, sharing or other use of Intellectual Property. The Department also may charge reasonable fees for providing training and other technical support with respect to the use of Intellectual Property.

(2) In establishing reasonable fees, the Department may consider factors including, but not limited to its costs in acquiring, developing, protecting, maintaining, marketing, licensing (or otherwise allowing the use), and monitoring the use of Intellectual Property generally and of the particular Intellectual Property specifically, the demand for Intellectual Property, market rates for similar or comparable products, Department program needs, the nature and resources of the Person to use the Intellectual Property, the purposes for which the Intellectual Property will be used, and the public interest in its use. Considered costs may include, but are not limited to the relevant time, personnel and materials employed, the allocable portion of indirect costs, and reserves for updating, acquiring, developing, and administering the use of Intellectual Property, as well as for contingencies.

(3) Payment of fees shall be made in the amount and at such time, place and manner as the Department may require.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0031

Warranties; Limitation of Liability

(1) The Department shall make no warranty of any kind, express or implied, with respect to any Intellectual Property — including, but not limited to any warranties of merchantability and fitness for a particular purpose. Any provision in a Licensing Agreement or any other document, or in any statement by an employee or other agent of the Department, purporting to convey any such warranties from the Department is, and shall be deemed, void as an ultra vires act, being made without authority and in contravention of these rules.

(2) The Department's liability arising out of or based upon the licensing, sharing or otherwise provided use of Intellectual Property, regardless of the form in which any legal or equitable action may be brought, including without limitation any action in tort, contract, or pursuant to statute, shall not exceed any fee paid to the Department for the licensing, sharing or use of the Intellectual Property.

(3) The department shall have no liability for indirect, incidental, consequential, special or punitive damages, lost profits, or loss of goodwill (even if it has been advised of the possibility of such damages), arising out of or relating to the licensing, sharing, other use of its intellectual property, including without limitation such matters as interruptions, delays, loss of data, loss of profit, interruption of service, loss of business or anticipatory profits. The foregoing warranty and limitations are in lieu of all other warranties, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose. Any provision in any licensing agreement or other document, or any statement by an employee or other agent of the department purporting to establish any such liability is, and shall be deemed, void as an ultra vires act, being made without authority and in contravention of these rules.

(4) Any Person who licenses, shares or otherwise uses Intellectual Property from the Department, in doing so, agrees to defend, indemnify and hold harmless the Department (consistent with ORS chapter 180) from and against any and all claims, demands, causes of action and liabilities with respect to such license, sharing or other use of the Intellectual Property and/OR any related training or other assistance from the Department with respect to the Intellectual Property.

(5) Any Licensing Agreement or other document providing for the licensing, sharing or other use by a Person of Department Intellectual Property or for training and/or other technical assistance relating to such Intellectual Property, in order to be valid and enforceable against the Department, shall contain language substantially similar to that contained in subparagraphs (1) through (4) of this Section.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

813-003-0035

Waiver

The Department may waive or modify any requirements of OAR chapter 813, division 003, unless such waiver or modification would violate applicable federal or state statutes.

Stat. Auth.: ORS 183, 456.555
Stats. Implemented: ORS 291.055, 456.562
Hist.: OHCS 4-2004, f. & cert. ef. 11-23-04

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 13-2004

Filed with Sec. of State: 11-18-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 8-1-04

Rules Amended: 845-004-0101

Subject: This rule regulates the industrial use of alcohol in Oregon. In response to a petition, the agency amended the rule to clarify and streamline application and processing requirements, reduce reporting requirements, and change the fee structure.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-004-0101

Purchase of Grain and Ethyl Alcohol for Scientific, Pharmaceutical, Manufacturing, Mechanical and Industrial Purposes

(1) ORS 471.730(8) and 471.404 allow the Commission to license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(2) To meet the needs of those who use grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes, the Commission requires these users to secure Importation Permit/s. For purposes of this rule, the Commission considers agricultural use of this product to be an industrial use. Importation Permits may be issued for alcohol importation to a person who is not a Brewery, Winery, Distillery, or wholesale licensee.

(3) Importation Permit:

(a) The Commission may issue a permit that allows a person to import 190 or 200 proof alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes to a person who:

(A) Is at least 21 years old;

(B) Completes the Importation Permit application; and

(C) Sends the application to the Commission at any time. The application must be received at least 30 days prior to the first purchase or use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(b) If the person is eligible for a permit, the Commission will send the person the permit. The person may then order the alcohol from an alcohol vendor and must include a copy of the permit with the order;

(c) The Commission may deny the permit if the person does not complete the application, proposes an unacceptable use for the alcohol or makes a false statement on the application. If the person makes a false statement on the application or uses the alcohol other than described in the application, the Commission may refuse to issue another permit; and

(d) Before the end of each calendar year, Importation Permit holders must send the Commission a listing of the 190 or 200 proof alcohol which the Permit holder used during that calendar year.

(4) The Commission retains the right to audit the records of alcohol vendors and Importation Permit holders at any time to determine compliance with this rule and other regulations of the Oregon Liquor Control Commission.

Stat. Auth.: ORS 471 & 472, including 471.030, 471.730(1)&(5), 472.030 & 472.060(1)&(2)(d)

Stats. Implemented: ORS 471.335 & 471.730(8)

Hist.: OLCC 25-1990, f. 12-19-90, cert. ef. 2-1-91; OLCC 16-1999, f. 11-2-99, cert. ef. 12-31-99; OLCC 13-2004, f. 11-18-04, cert. ef. 1-1-05

Adm. Order No.: OLCC 14-2004

Filed with Sec. of State: 11-18-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 6-1-04

Rules Amended: 845-010-0905, 845-010-0915

ADMINISTRATIVE RULES

Subject: These two rules regulate the information which can appear on Oregon wine labels. The Commission was petitioned by a Rogue Valley winery to amend these two rules so that the term “claret” can appear on Oregon wine labels. The rules have been amended to remove prohibition of use of the term “claret.” OAR 845-010-0915 has been amended to add a definition of the approved grape varieties that can be blended to create claret.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-010-0905

Definitions

As used in OAR 845-010-0905 through 845-010-0940:

- (1) “Wine” means grape wine.
- (2) “Vitis Vinifera” is a species of grapes from which most European wines and a majority of Oregon wines are produced. Some examples of this species are “Pinot noir,” “Chardonnay” and “White Riesling.”
- (3) “Must” is the juice of crushed grapes, with or without grape skins, seeds and pulp, before or during fermentation.
- (4) “Wine Label” means all information-bearing material attached to or part of a package in which a wine is sold. Some examples of wine labels are printed paper glued to a wine bottle or bag-in-box carton, screen-printing or etching on a wine bottle, information molded into a bottle, and a printed bottle closure or cork.
- (5) “Brand Label” means a label carrying the brand name of a wine, its class or type designation and its appellation of origin.
- (6) “Class Designation” is a standard of identity of a wine. Some examples are “grape wine,” “table wine,” “dessert wine,” “sparkling wine” and “carbonated grape.”
- (7) “Type Designation” is an alternative standard of identity used in place of a class designation. Examples are a “grape variety name” or “varietal name” and a “semi-generic designation of geographic significance.” These rules prohibit the use of all “semi-generic designation of geographic significance.”
- (8) “Semi-Generic Designation of Geographic Significance” is a name that identifies both the traditional source of wine produced in a certain region and the name Federal regulations permit to designate a type of wine produced anywhere unless the rules of the Commission provide that such name does not have geographic significance. Some examples specified in Federal regulations are “Anjelica,” “Burgundy,” “Chablis,” “Champagne,” “Chianti,” “Madeira,” “Malaga,” “Marsala,” “Moselle,” “Port,” “Rhine Wine” or “Hock,” “Sauterne,” “Haut Sauterne,” “Sherry” and “Tokay.”
- (9) “Appellation of Origin” is the name of the geographic area in which the grapes used to make a wine were grown. Appellation of origins are limited to the names of a country, state or county or of a viticultural area. Some examples are “American,” “Oregon,” “Yamhill County,” and “Umpqua Valley.”
- (10) “Viticultural Area” is a delimited grape-growing region that is distinguishable by geographic features and whose boundaries the Alcohol and Tobacco Tax and Trade Bureau (TTB) has defined.

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

Stats. Implemented: ORS 471.340, 471.345 & 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88, Renumbered from 845-010-0292; OLCC 14-2004, f. 11-18-04 cert. ef. 12-1-04

845-010-0915

Grape Variety Names

(1) A person may use a single grape variety name as a type designation on a wine brand label only if the wine derives at least 90 percent of its volume from that grape variety.

(2) A person may use the names of two or three grape varieties as the type designation on a wine brand label if:

(a) The wine is made from only the grape varieties named;

(b) The brand label shows the percentage of wine derived from each variety from each county or state if a wine has a multi-county or multi-state appellation of origin.

(3) As an exception to section (1) of this rule, a person may use any of the following type designations for a wine that derives from 75 to 90 percent of its volume from grapes of the named variety, if:

(a) The only other grapes used in its production are those listed in the same section; that is, listed either in section (3)(a)(A) or in section (3)(a)(B):

(A) Cabernet franc, Merlot, Cabernet Sauvignon, Petite Verdot, or Malbec; or

(B) Semillon or Sauvignon blanc; and

(b) The brand label lists all grape varieties used. The listing must be less prominent than the type designation, and arranged in descending order of predominance.

(4) If a grape variety is not used as the type designation but grape variety names appear anywhere on the wine label, the brand label must list all grape varieties used in the wine, arranged in descending order of predominance. This listing must use the same lettering size and style and be less prominent than the class or type designation.

(5) All uses of grape variety names on wine labels other than in type designation must be less prominent than the wine’s class or type designation. Only those grape variety names appearing on the brand label of a wine may be mentioned elsewhere on the label.

(6) A person may use only the grape variety names listed in this section on wine labels. The parentheses list acceptable synonyms for the primary name for that grape variety:

- (a) Albarino
- (b) Aligote;
- (c) Arneis;
- (d) Aurora;
- (e) Auxerrois;
- (f) Bacchus;
- (g) Barbera;
- (h) Baco noir;
- (i) Cabernet franc;
- (j) Cabernet Sauvignon;
- (k) Carigan Carmenerre;
- (l) Carmenerre;
- (m) Carmine;
- (n) Carnelan;
- (o) Cascade;
- (p) Chancellor;
- (q) Chardonnay;
- (r) Chasselas blanc;
- (s) Chasselas dore;
- (t) Chasselas rouge;
- (u) Chelois;
- (v) Chenin blanc;
- (w) Colombard;
- (x) Dolcetto;
- (y) Durif;
- (z) Early Muscat;
- (aa) Ehrenfelser;
- (bb) Flora;
- (cc) Folle blanche;
- (dd) Furmint;
- (ee) Gamay noir;
- (ff) Gewurztraminer;
- (gg) Grand noir;
- (hh) Grenache;
- (ii) Grignolino;
- (jj) Kerner;
- (kk) Lemberger (Limberger);
- (ll) Madeleine Angevine;
- (mm) Malbec;
- (nn) Malvasia bianca;
- (oo) Marechal Foch;
- (pp) Melon;
- (qq) Merlot;
- (rr) Morio-Muskat;
- (ss) Muller-Thurgau;
- (tt) Muscat blanc;
- (u) Muscat of Alexandria;
- (vv) Muscat Ottonel;
- (ww) Muscadelle;
- (xx) Nebbiolo;
- (yy) Petit Verdot;
- (zz) Pinot blanc;
- (aaa) Pinot gris;
- (bbb) Pinot Meunier;
- (ccc) Pinot noir;
- (ddd) Royalty;
- (eee) Sangiovese;
- (fff) Sauvignon blanc (Fume blanc);
- (ggg) Scheurebe;
- (hhh) Semillon;

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- (iii) Seyval;
- (jjj) Siegerrebe;
- (kkk) Sylvaner (Silvaner);
- (lll) Symphony;
- (mmm) Syrah;
- (nnn) Tempranillo;
- (ooo) Trebbiano;
- (ppp) Trousseau gris;
- (qqq) Valdiguie
- (rrr) Viognier;
- (sss) White Riesling (Riesling);
- (ttt) Zinfandel.

(7) The Commission may revise the list in section (6) of this rule.

(8) A person may not use in any manner on a wine label a name that might be mistaken for a grape variety name listed in section (6) of this rule.

(9) The following limitations apply to the use of certain approved names in section (6) of this rule:

(a) A person may not use the approved name "Gamay noir" for the variety Pinot noir (such as the so-called "Gamay Beaujolais" clones) or for the variety Valdiguie (called "Napa Gamay" in California);

(b) A person may not use the approved name "Pinot blanc" for the variety Melon or "Syrah" for the variety Durif (called "Petit Sirah" in California);

(c) A person may not use the term "Riesling":

(A) As a type designation for a wine unless the wine derives at least 90 percent of its volume from the grape variety, White Riesling; or

(B) In conjunction with any word except "White" to designate a grape variety name. Some examples of prohibited names are: "Emerald Riesling," "Franken Riesling," "Grey or (Gray) Riesling," "Johannisberg Riesling," "Kleinberger Riesling," "Missouri Riesling," "Okanagan Riesling" and "Walshriesling" ("Welshriesling").

(10) As an exception to section (6) and subsection (9)(c) of this rule, a winery may use the term "Johannisberg Riesling" as the type designation of a wine that derives at least 90 percent of its volume from White Riesling grapes, if the winery has used that term on its approved labels since prior to January 1, 1977.

(11) A person may not use the following federally permitted grape variety names: "Early Burgundy," "French Columbard," "Muscadelle de Bordelais," "Pineau (or Pinot) de la Loire," "Pinot Chardonnay," "Pinot Saint George," "White Pinot" "Gamay," "Gamay Beaujolais" and "Napa Gamay."

(12) A person may use the type designation "Claret" on a wine brand label only if the wine derives 100% of its volume from a blend of two or more of the following grape varieties: Cabernet franc, Merlot, Cabernet Sauvignon, Petit Verdot, or Malbec.

Stat. Auth.: ORS 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.340, 471.345 & 471.445
Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-10-292; OLCC 2-1995, f. & cert. ef. 4-4-95; OLCC 8-1995, f. 11-24-95, cert. ef. 12-1-95; OLCC 5-1999, f. 3-18-99, cert. ef. 4-1-99; OLCC 8-2003, f. 5-20-03, cert. ef. 6-1-03; OLCC 14-2004, f. 11-18-04 cert. ef. 12-1-04

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 25-2004
Filed with Sec. of State: 11-23-2004
Certified to be Effective: 12-1-04
Notice Publication Date: 10-1-04
Rules Amended: 459-001-0005

Subject: OAR 459-001-0005 adopts the Attorney General's Model Rules of Procedure (updated on January 1, 2004) as the PERS Board rules of procedure.

Rules Coordinator: David K. Martin—(503) 603-7713

459-001-0005 Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, as adopted and effective January 1, 2004, are adopted as rules of procedure of the Public Employees Retirement Board, except as modified by other rules of the Board, to be effective on December 1, 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 the agency.]
Stat. Auth.: ORS 183.341 & 238.650
Stats. Implemented: ORS 238.005 - 238.715 & 237.410 - 237.620

Hist.: PER 11, f. 4-18-72, ef. 5-1-72; PER 12, f. 3-14-74, ef. 4-11-74; PER 13, f. & ef. 10-26-72; Renumbered from 459-030-0005; PER 2-1978, f. & ef. 11-2-78; PER 1-1980, f. & ef. 2-15-80; PER 1-1986, f. & ef. 7-7-86; PERS 2-1990, f. & cert. ef. 1-8-90; PERS 1-1992, f. & cert. ef. 1-14-92; PERS 4-1994, f. & cert. ef. 5-10-94; PERS 3-1995, f. 11-14-95, cert. ef. 11-15-95; PERS 1-1998, f. & cert. ef. 3-16-98; PERS 4-2000, f. & cert. ef. 7-14-00; PERS 11-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 25-2004, f. 11-23-04, cert. ef. 12-1-04

Adm. Order No.: PERS 26-2004
Filed with Sec. of State: 11-23-2004
Certified to be Effective: 3-15-05
Notice Publication Date: 9-1-04

Rules Amended: 459-007-0220, 459-007-0230, 459-007-0240, 459-007-0250, 459-007-0260, 459-007-0270, 459-007-0290

Rules Repealed: 459-007-0280

Subject: The 2003 Oregon Legislature enacted several changes that affected earnings crediting for Tier One members. The PERS Board adopted new earnings crediting rules for Tier One members to comply with legislative changes. These rule modifications will conform the Tier Two rules to parallel policy decisions reached by the Board in amending the Tier One rules.

OAR 459-007-0220 modifications update and clarify processes and adopt the average annualized rate for distributions interest.

OAR 459-007-0230 modifications clarify the sequence of establishing a death benefit amount and the rules for crediting interest and also adopt the average annualized rate for distribution interest.

OAR 459-007-0240 modifications parallel Tier One changes by moving the death benefit to the member's account for crediting.

OAR 459-007-0250 modifications clarify processes to parallel Tier One rule structure.

OAR 459-007-0260 modifications clarify processes and adopt the average annualized rate for distribution interest.

459-007-0270 modifications clarify processes and adopt the average annualized rate for distribution interest.

459-007-0280 is repealed.

OAR 459-007-0290 modifications clarify processes and remove extra language about the substantive effect of Loss of Membership that was superfluous to earnings crediting.

Rules Coordinator: David K. Martin—(503) 603-7713

459-007-0220

Distribution of Earnings for Withdrawal of Member's Account — Tier Two

When a Tier Two member withdraws his or her member account under ORS 238.265, earnings or losses from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings or losses on the member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not been credited, earnings or losses for that year shall be credited to the member's regular account based on the latest year-to-date calculation for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective date of withdrawal

(2) If the member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not been credited, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's variable account based on the latest year-to-date calculation as of the effective date of withdrawal.

(3) After earnings and losses have been credited in accordance with sections (1) and (2) of this rule, the value of the variable account shall be added to the value of the regular account and the sum shall constitute the withdrawal amount.

(4) Earnings on the withdrawal amount from the effective date of withdrawal to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.265, 238.430 & 238.435
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0230

Crediting Earnings for a Deceased Tier Two Active or Inactive Member

Upon the death of an active or inactive Tier Two member, earnings or losses date of death to the date of distribution shall be credited as specified in this rule.

(1) Definitions. For purposes of this rule:

(a) "Death benefit amount" means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) "Effective date of request" means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For members whose date of death is on or after January 1, 2000, earnings or losses shall be credited to the member's regular account as follows:

(a) If earnings or losses for the calendar year prior to the date of the member's death have not yet been credited, earnings or losses shall be applied for that year based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the [Tier Two] member's death shall be credited based on the latest year-to-date calculation for that year as of the first of the month of the member's death.

(3) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the member's death have not been credited, earnings or losses for that year shall be based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of the member's death shall be applied based on the latest year-to-date calculation for that year as of the first of the month of the member's death

(4) After earnings have been credited in accordance with sections (2) and (3) of this rule, the value of the member's variable account shall be added to the value of the member's regular account and the sum shall constitute the death benefit amount as of the first of the month of the member's death.

(5) Earnings on the death benefit amount from the first of the month of the member's death to the end of that calendar year shall be credited based on the Tier Two annual rate less the Tier Two latest year-to-date calculation as of the first of the month of the member's death.

(6) Earnings on the death benefit amount for calendar years following the year of the member's death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(7) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the Tier Two latest year-to-date calculation.

(8) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate prorated for that period.

(9) If the member's date of death is prior to January 1, 2000, earnings shall be credited in accordance with the rules applicable to Tier Two members in effect up to January 1, 2000. As of January 1, 2000, the deceased member's account shall be converted to a death benefit amount. Earnings on the death benefit amount from January 1, 2000 to the date of distribution shall be credited in accordance with sections (5) through (8) of this rule.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.390, 238.430 & 238.435
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0240

Crediting Earnings to the Tier Two Employer Death Benefit

(1) Upon the death of a Tier Two member who is entitled to an employer death benefit under ORS 238.395, the amount of the employer benefit shall be added to the death benefit amount, as defined in OAR 459-007-0230(1), as of the first of the month of the member's death.

(2) Earnings shall thereafter be credited to the death benefit amount in accordance with OAR 459-007-0230(5) through (8).

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.395, 238.430 & 238.435
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0250

Crediting Earnings at Tier Two Service or Disability Retirement

Upon the service or disability retirement of a Tier Two member, earnings from the effective date of the last annual rate to the effective retirement date shall be credited to the member account in the manner specified in this rule.

(1) Earnings or losses credited to the member's regular account as follows:

(a) If earnings or losses for the prior calendar year have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation for that year.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0260

Crediting Earnings at Tier Two Service Retirement, Single Payment

Notwithstanding OAR 459-007-0250, when a Tier Two member retires and elects to receive a single payment under provisions of ORS 238.305(2) or (3), earnings or losses from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings or losses on the member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses shall be credited to the member's regular account based on the latest year-to-date calculation for that year.

(b) Earnings or losses credited for the calendar year of the effective retirement date shall be applied based on the latest year-to-date calculation as of the effective retirement date for that year.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not been applied to the member's variable account as of December 31 of that year, earnings or losses for that year shall be applied based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of the effective date of retirement shall be applied based on the latest year-to-date calculation as of the effective date of retirement for that year.

(3) Upon applying the earnings or losses as provided in section (2) of this rule, the balance of the member's variable account shall be transferred to the member's regular account as of the effective date of retirement.

(4) Earnings from the effective date of retirement to the date of distribution shall be credited based on the average annualized rate prorated for that period.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0270

Crediting Earnings upon Tier Two Service Retirement, Two or More Installment Payments

Notwithstanding 459-007-0250, when a Tier Two member retires and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) Regular account. Earnings shall be credited to the member's regular account as follows:

(a) Prior year earnings. If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be cred-

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ited for that year based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) Variable account. If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) Prior year earnings. If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) Initial installment. Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) Annual earnings — initial year. Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) Annual earnings — subsequent years. Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31 multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) Final installment. The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

Stat. Auth.: ORS 238.305(3)(c) & 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

459-007-0290

Crediting Earnings at Tier Two Loss of Membership

When a Tier Two member's membership terminates under ORS 238.095(2), earnings from the effective date of the last annual rate through

the end of the month of loss of membership shall be credited to the member account in the manner specified in this rule.

(1) Earnings or losses on the former member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited based on the latest year-to-date calculation as of the end of the month of the date of loss of membership

(2) If the former member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the former member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited as of the end of the month of loss of membership based on the latest year-to-date calculation as of the first of the month following the date of loss of membership.

(3) No earnings or losses shall be credited for any period following the calendar month of loss of membership.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.095

Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05

Adm. Order No.: PERS 27-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 11-23-04

Notice Publication Date: 9-1-04

Rules Amended: 459-007-0530

Subject: The 2003 Oregon Legislature enacted HB 3020 and HB 3659 to amend ORS 238.225. These bills created special earnings crediting rules for "employer lump sum payments." These payments are made by employers outside of the ordinary course of making PERS contributions and are usually intended to reduce an employer's transitional or unfunded actuarial liability. By the provisions of ORS 238.225(10) as amended, the PERS Board can tap the earnings on these payments for only the specified portions of administrative expenses. Earnings are not available for any other purpose. It is necessary that the OAR 459-007-0530 be amend to accurately describe the new crediting practice.

In OAR 459-007-0530 as amended, terms are defined for "employer lump sum payment" and "Unfunded Actuarial Liability (UAL) Factor." The former establishes the scope of coverage for this rule by limiting the type of payments covered. The latter is needed because FSD will need to calculate a unique factor to credit earnings to these payments to take into account the limitations imposed.

Section (2) describes the process used for applying lump sum payments first against any transitional liability that an employer brought into their actuarial pool. Those amounts will receive the same crediting as employer contribution accounts.

Section (3) deals with lump sum payments used to establish a separate account of the Fund. That separate account is tapped periodically to reduce the employer's contribution rate. Those separate accounts are subject to the new limitations and are credited earnings based on the "UAL Factor."

Crediting is done on a calendar year basis and therefore this rule needs to apply to crediting for the 2004 calendar year. Section (4) was added to make the effective date of this rule January 1, 2004.

Rules Coordinator: David K. Martin—(503) 603-7713

459-007-0530

Crediting Earnings To Employer Lump Sum Payments

(1) Definitions.

(a) "Employer lump sum payment" means any employer payment that:

(A) Is not regularly scheduled;

(B) Is not paid as a statutorily fixed percentage of salary; and

(C) The contributor has control over whether to make the payment.

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(b) "UAL factor" represents actual earnings or losses from investments and is not subject to funding requirements of the Contingency or Capital Preservation Reserves.

(2) Subject to ORS 238.225(11), the employer lump sum payment shall first be applied to liabilities attributable to creditable service by employees of the employer before the participating public employer was grouped with other public employers. Earnings on these amounts shall be credited based on the following:

(a) For the month in which the employer lump-sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the final Tier Two annual earnings rate and the Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings or losses shall be credited to the employer lump sum payment in accordance with OAR 459-007-0005(14).

(3) Earnings on an employer lump sum payment held in a separate account subject to ORS 283.225(9) shall be credited based on the following:

(a) For the month in which the employer lump sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the annual UAL factor and the UAL factor in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings shall be credited to the employer lump sum payment on an annual basis in accordance with OAR 459-007-0005(4).

(4) The provisions of this rule are effective on January 1, 2004.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 27-2004, f. & cert. ef. 11-23-04

Adm. Order No.: PERS 28-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 11-23-04

Notice Publication Date: 10-1-04

Rules Adopted: 459-050-0072

Rules Amended: 459-050-0040, 459-050-0070, 459-050-0080, 459-050-0150

Subject: OAR 459-050-0040 modifications include substituting the term "unforeseeable emergency withdrawal" for "financial hardship" to conform to the IRS Code and industry standards. The amendments also improve the description of the withdrawal procedure and better explain the appeal process.

OAR 459-050-0070 modifications allow participants who have not been deferring the maximum amount to the plan in any given year to choose to participate in the 50-Plus Catch-Up Program.

OAR 459-050-0072 defines and establishes criteria and procedures under the Uniformed Services Employment and Reemployment Rights Act and IRS Code §457 for an eligible employee who has been absent from employment because of military service and who has elected to catch up contributions to the deferred compensation plan that would have been permitted had the eligible employee remained in employment with the participating employer.

OAR 459-050-0080 modifications allow an optional way to liquidate the funds when taking a distribution from the plan. This change gives participants the option of choosing to have distributions liquidated from the Stable Value Option rather than pro-rata across all funds. Participants would have to actively manage their account to ensure that they have adequate funds in Stable Value Option at time of distribution to exercise this option. If they do not, the distribution would default to the pro-rata option.

OAR 459-050-0150 further defines and explains the criteria and process for a distribution of deferred compensation funds prior to

separation from employment due to an unforeseeable emergency. Rule modifications clarify who may apply for emergency withdrawals, describe withdrawal eligibility in more detail, adopt parallel terminology with Internal Revenue Code §457, increase the number of days by which an "immediate need" for financial obligation can precede a withdrawal from 90 to 180 days and change the procedure for canceling future contributions.

Rules Coordinator: David K. Martin—(503) 603-7713

459-050-0040

Unforeseeable Emergency Withdrawal Appeals Committee

(1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the Committee) shall evaluate appeals denied by the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf for the distribution of deferred compensation on the basis of claims of unforeseeable emergency in compliance with the Internal Revenue Code, Section 457, 26 USC 457, and the provisions of OAR 459-050-0150. The Committee shall formally approve or deny each appeal based on the merits of the appeal and the standards set forth in applicable U.S. Treasury Regulations.

(2) Committee composition. The Committee shall consist of not fewer than three persons.

(a) One person shall be a PERS staff member from the Deferred Compensation Program.

(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.

(3) Committee meetings. The Committee shall meet upon the call of the Manager of the Deferred Compensation Program no sooner than 14 calendar days following receipt of an appeal. The Committee shall evaluate the participant's written request, emergency withdrawal application, financial information, and all related documentation submitted for compliance with 26 USC 457 and the provisions of OAR 459-050-0150.

(4) Appeal approval. If an appeal is approved, the Committee authorizes the Manager to release the funds within 30 calendar days of approval.

(5) Appeal denial. Within seven calendar days of the Committee's denial, the requestor may request an informal conference with the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf.

(6) Request for review. The requester may submit a request for review of the Committee's determination to the Director of PERS and shall do so within 30 calendar days of the Committee's denial. The request shall be in writing and include:

(a) A description of the staff action or determination for which review is requested;

(b) A short statement of the manner in which the action is alleged to be in error;

(c) A statement of facts that are basis of the request;

(d) Reference to applicable statutes, rules or court decisions upon which the person relies;

(e) A statement of the relief the request seeks; and

(f) A request for review.

(7) Director's determination. Within 30 calendar days of receiving a request for review, the Director shall issue a written determination either approving or denying the unforeseeable emergency withdrawal.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04

459-050-0070

Catch-Up Programs

The purpose of this rule is to establish the criteria and process to allow an eligible employee to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account in the Deferred Compensation Plan.

(1) Definitions. Subject to subsections (a) and (b) below, for purposes of this rule, "normal retirement age" means the normal retirement age defined in the plan sponsor's retirement plan.

(a) "Normal retirement age" for members of the Public Employees Retirement System shall have the same meaning as ORS 238.005(14), 238.280(2), and for judge members, ORS 238.535.

(b) If an eligible employee continues to work beyond normal retirement age, "normal retirement age" shall be that date or age designated by the eligible employee but not later than 70-1/2 years of age.

(2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible employees who are 50 years of age and older may elect to con-

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tribute an additional amount under section 414(v) of the Internal Revenue Code in excess of the maximum regular contribution allowed.

(a) Conditions for enrollment: An eligible employee must be 50 years of age or older on December 31 of the calendar year in which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) An eligible employee may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program in section (3) below, but may not participate in both during the same calendar year.

(B) An eligible employee may participate in the 50-Plus Catch-Up during the calendar year containing the employee's retirement date.

(b) Application for enrollment. Subject to the conditions in subsection (2)(a) above, an eligible employee may participate in the 50-Plus Catch-Up Program. An eligible employee choosing to participate must enroll, by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the amount of the additional annual deferral, that the additional deferral will be divided equally by the available months for the calendar year, and that the amount is in addition to the eligible employee's regular maximum deferral.

(A) Subject to the conditions and requirements of these rules and applicable law, an eligible employee may enter into a written agreement to participate in the 50-Plus Catch-Up Program on or before the first day of employment or anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 50-Plus Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program.

(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program conditions of enrollment in subsection (2)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment form is received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) 50-Plus Catch-Up Program deferral begin date. Salary reduction for the 50-Plus Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional deferral amounts. The additional deferral may be in an amount elected by an eligible employee, but shall not exceed the maximum additional deferral allowed in section 414(v) of the **Internal Revenue Code, 26 USC 414(v)**.

(A) An eligible employee may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible employee may cancel participation in the 50-Plus Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An eligible employee may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) 3-Year Catch-Up Program. Eligible employees may elect to contribute an additional amount under section 457 of the Internal Revenue Code, 26 USC 457, in excess of the maximum regular contribution allowed for one or more of the three consecutive calendar years of employment prior to attaining normal retirement age, if in previous years the full amount of the eligible employees' deferral allowance was not used.

(a) Conditions for enrollment. The earliest date to participate in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year an eligible employee reaches normal retirement age.

(A) The increase over the maximum allowable regular contribution limit is available only to the extent of unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable or did not choose to make contributions to the Deferred Compensation Program.

(B) Previous calendar years during which deferrals were made to the 50-Plus Catch-Up shall not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.

(C) An eligible employee may not participate in the 3-Year Catch-Up Program and the 50-Plus Catch-Up in section (2) above during the same calendar year.

(D) An eligible employee may not participate in the 3-Year Catch-Up during the calendar year containing the eligible employee's retirement date, unless the last day worked is the last working day of that calendar year.

(E) Pursuant to section 457(b) of the Internal Revenue Code, 26 USC 457(b), an eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

(F) An eligible employee may participate only once in the 3-Year Catch-Up Program, regardless of whether the 3-Year Catch-Up is used in less than three calendar years and the eligible employee or former eligible employee rejoins the plan or participates in another eligible plan after retirement.

(b) Application for enrollment. Subject to the conditions in subsection (3)(a) above, an eligible employee may enroll to participate in the 3-Year Catch-Up Program by entering into a written agreement as specified herein with the plan sponsor. The written agreement must specify the eligible employee's proposed retirement date and the month in which to begin the 3-Year Catch-Up deferrals.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at anytime while employed to defer an amount annually in addition to the eligible employee's regular maximum deferral amount.

(B) In order for an eligible employee to be enrolled, a properly completed 3-Year Catch-Up enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. In addition, wage or salary information must be submitted for the previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not use the full amount of deferral. An eligible employee must submit either:

(i) Legible copies of W-2 Wage and Tax Statement forms for each calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is not legible, or if application does not comply with the 3-Year Catch-Up Program conditions of enrollment in subsection (3)(a) above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(c) 3-Year Catch-Up Program deferral effective date. Salary reduction for the 3-Year Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional Deferral Amount. After receipt of the properly completed 3-Year Catch-Up Program enrollment form and required salary information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum contributions that may be deferred.

(A) The amount of the Catch-Up salary reduction may not be less than the minimum amount established by the plan sponsor that is over the maximum regular deferral and may not exceed the maximum allowable contribution to a Deferred Compensation Plan as defined in section 457(b)(3) of the **Internal Revenue Code, 26 USC 457(b)(3)**.

(B) An eligible employee may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible employee may cancel participation in the 3-Year Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An election to cancel participation is irrevocable.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 12-2002, f. & cert. ef.7-17-02; PERS 28-2004, f. & cert. ef. 11-23-04

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459-050-0072

Military Leave Catch-up

The purpose of this rule is to establish the criteria and procedures to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) as codified in 38 USC 4301-433, and with 23 USC 414(u) and 457 for an eligible employee who has been absent from employment because of military service and who has elected to catch up contributions to the Deferred Compensation Program that would have been permitted had the eligible employee remained in employment with the participating employer during the qualifying period of military service.

(1) Definitions. For purposes of this rule:

(a) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 USC 12503 or 32 USC 115.

(b) "Uniformed services," means the Army, Navy, Air force, Marine Corps, Coast Guard, Army National Guard, the Air National Guard, Commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(2) Eligibility for enrollment: An eligible employee shall be entitled make Military Catch-Up contributions if:

(a) The eligible employee leaves employment to perform military service and returns to employment with the same participating employer after other than dishonorable discharge from the uniformed services and within the time limits specified in USERRA.

(b) The eligible employee's cumulative length of absence from employment with the participating employer for military service does not exceed the limits set forth in USERRA.

(c) The eligible employee meets all other eligibility requirements under USERRA.

(d) Submits a timely and complete application.

(3) Application for enrollment: An eligible employee who meets the eligibility criteria for enrollment may apply to catch-up deferred compensation contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service as provided by USERRA.

(a) Upon reemployment following qualifying military service, an eligible employee may enter into a written agreement to participate in the Military Leave Catch-Up Program to defer an amount annually in addition to the eligible employee's maximum deferral amount.

(b) In order for an eligible employee to be enrolled, a properly completed Military Leave Catch-Up Contributions enrollment form provided by the Deferred Compensation Program must be filed with and accepted by the Deferred Compensation Program.

(c) If the application for enrollment is incomplete, if documentation is missing or information is not legible, or if the application does not comply with the Military Leave Catch-Up Program eligibility for enrollment in section 2 above, then staff will notify the eligible employee within 30 calendar days from the date the enrollment documents are received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

(d) After receipt of the properly completed enrollment form and required information, Deferred Compensation Program staff will notify an eligible employee of the amount of maximum additional contributions that may be deferred.

(4) Military Leave Catch-Up Contributions. The additional military leave catch-up contributions shall not exceed the 26 USC 457 maximum annual allowable contributions that would have been permitted had the eligible employee remained in employment with the participating employer during the period of military service. The military leave catch-up contributions are in addition to the maximum allowable contribution limit.

(a) The maximum allowable military leave catch-up contribution for any calendar year during military service is available only to the extent of unused portions of the maximum allowable contribution for the calendar

years during which the eligible employee contributed less than the maximum amount allowable.

(b) Salary for military leave catch-up purposes shall be based on the compensation the eligible employee would have received had the eligible employee remained actively employed during the period of military service, including any increases that would have been awarded the eligible employee based on longevity of employment or seniority of position.

(c) Military Leave Catch-Up Contributions are to be made through payroll deductions.

(d) Eligible employees may change the amount of additional contributions deferred not to exceed the maximum amounts allowable.

(e) Eligible employees may cancel Military Leave Catch-Up Contributions at any time.

(f) Military Leave Catch-up Contributions may be made for a period that begins on the date of reemployment and whose length is the lesser of:

- (A) Three times the period of qualified military service; or
- (B) Five years.

(5) IRC code limitations. Eligibility for and limitations to the maximum amount of Military Leave Catch-Up contributions shall be made in accordance with the requirements under USERRA, 38 USC 4301-4333 and 26 USC 414(u)(2) and 457.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 28-2004, f. & cert. ef. 11-23-04

459-050-0080

Distribution of Funds After a Severance of Employment

The purpose of this rule is to establish the criteria and process for obtaining a distribution of deferred compensation funds after a participant's severance of employment as defined herein. Distribution under the Deferred Compensation Program shall be made in accordance with any minimum distribution or other limitations required by **Internal Revenue Code (IRC) section 401(a)(9) (26 USC 401(a)(9))** and related regulations.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Severance of Employment" means a participant has ceased rendering services as an employee or an independent contractor of a plan sponsor for a minimum of 30 consecutive days, including services as a temporary employee, and has no intention to return to work for the plan sponsor.

(b) "Intention to return to work" means a written or oral, formal or informal agreement has been made with the plan sponsor to return to work on a full time, part time or temporary basis at the time the severance is effective. If a participant returns to work with the plan sponsor within 30 calendar days of severance, then a rebuttable presumption exists that the participant intended to return to work as of the date of severance.

(c) "Commencement date" means the month and year that a participant or an alternate payee will begin receiving a distribution(s) from the Deferred Compensation Program, whether by operation of the participant's or alternate payee's election or under the terms of the plan. The commencement date may be no earlier than the second calendar month following the month in which severance from employment became effective. The commencement date is not the date that the necessary funds are liquidated for distribution.

(d) "Liquidation of funds" means the conversion of the necessary funds from the investments in the Deferred Compensation Program into cash for payment under a specified manner of distribution.

(e) "Liquidation date" means the date the Deferred Compensation Program designates for liquidation of funds. Generally, the liquidation date will not be earlier than the 25th day of the calendar month preceding the commencement date. The Deferred Compensation Program may determine the liquidation date based on normal business practices. The Deferred Compensation Program is not liable to a participant for failure to liquidate an investment on a specified date.

(f) "Date of distribution" means the date funds are distributed to the participant, alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of the mechanism by which those funds are distributed.

(g) "Manner of distribution" means the manner elected by the participant, alternate payee, or beneficiary in accordance with the terms of the plan, in which a distribution is to be paid out of the Deferred Compensation Program.

(h) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

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(B) The calendar year in which the participant retires.

(2) Manner of distribution. Subject to the provisions of sections (3) through (5) set out below, a participant, surviving beneficiary, or alternate payee may elect a manner of distribution, designate one or more beneficiaries, and change beneficiaries at any time. The total amount distributed may not exceed the total account value. The following manners of distribution are available:

(a) Total distribution of the account value in a lump sum. A lump-sum distribution is not eligible for direct deposit;

(b) Single distribution of a portion of the account value in a lump sum. This form of lump-sum distribution is not eligible for direct deposit. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held;

(c) Systematic withdrawal distribution for a specific number of years, which may be paid annually, semiannually, quarterly or monthly. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The remaining number of periodic distributions shall not change. However, the amount of distributions shall be adjusted depending on the earnings or losses experienced;

(d) Periodic specified dollar amount distribution. This distribution may be paid annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts in \$5 increments. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The amount of each periodic distribution will remain the same throughout the withdrawal period. However, the withdrawal period may vary depending on the earnings or losses experienced;

(e) Required minimum distribution, which will provide an annual distribution of the minimum amount required in IRC section 401(a)(9) (26 USC 401(a)(9)). This manner of distribution is available only to those who defer distribution to age 70-1/2 years of age (no later than April of the year following the year reaching 70-1/2 years of age) or a participant who continues to work and severs employment after 70-1/2 years of age. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held; or

(f) Mandatory single lump-sum distribution of an account balance of less than \$1,000. This distribution shall be made to any participant or alternate payee with an account balance of less than \$1,000 within one year of the participant's severance of employment.

(3) Application Requirements. Application shall be made on forms provided by, or other methods approved by, the Deferred Compensation Program. No distribution may be paid unless a timely and complete application is filed with the Deferred Compensation Program as follows:

(a) An application for distribution or to change the manner of distribution will be considered filed in a timely manner if it is received in writing or other method approved by the Deferred Compensation Program at least 30 days prior to the requested commencement date. The commencement date may be no earlier than the second calendar month following the month of severance of employment.

(b) An application for distribution or to change the manner of distribution may be made by a participant, surviving beneficiary, or alternate payee or the authorized representative of a participant, surviving beneficiary or alternate payee. A valid document appointing an authorized representative such as a power of attorney, guardianship or conservatorship appointment, must be submitted to the Deferred Compensation Program. The Deferred Compensation Program retains the discretion to determine whether the document is valid for purposes of this rule.

(c) The participant, surviving beneficiary, or alternate payee must file a tax-withholding certificate with the Deferred Compensation Program at least 30 days prior to the requested commencement date. If the certificate is not filed, the Deferred Compensation Program shall withhold state income taxes based on a marital status of single and no dependents and federal income taxes based on a marital status of married and 3 dependents, or other federally mandated tax withholding requirements. A new certificate may be filed at any time, and will be applied to distributions paid on and after the first calendar month following the date received or as soon as reasonably possible.

(d) When direct deposit is permitted under the Deferred Compensation Plan, a request for periodic distributions to be transmitted to a financial institution for direct deposit must be made using a Deferred Compensation Program Automatic Deposit Agreement.

(e) Distribution of deferred compensation funds will occur no later than five days following the date funds necessary for a specified payment were liquidated. Liquidation of funds will be done on a pro-rata basis deter-

mined by the investment allocation of an account at the time the funds are liquidated or from the Stable Value account, at the participant's election. The election must be filed before the participant begins receiving distributions. If the participant elects distribution from the Stable Value account and there are insufficient funds in that account on the date of each distribution (whether monthly, quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis described above regardless of the participant's election.

(4) Denial of distribution election. The Deferred Compensation Program may deny any distribution election if that denial is required to maintain the status of the Deferred Compensation Program under the Internal Revenue Code and regulations adopted pursuant to the Internal Revenue Code and ORS Chapter 243.

(5) Changing the manner of distribution. A participant, surviving beneficiary or alternate payee may change or discontinue the manner of distribution only as follows and subject to the requirements of section (3) above:

(a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be changed at any time upon application as required under section (3) of this rule.

(b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued upon written notification or by other methods approved by the Deferred Compensation Program. The participant, surviving beneficiary, or alternate payee must submit an application, as required in section (3) of this rule, to restart distributions and elect a manner of distribution for the remaining account.

(c) Subject to the requirements of this rule, a participant, surviving beneficiary or alternate payee who has commenced receiving a required minimum distribution may apply under the requirements of section (3) of this rule:

(A) For one or more additional distributions in a lump sum not to exceed the total value of the account; and

(B) To change the manner of distribution so long as future distributions will be continuous and equal to or greater than the minimum distribution required.

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

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 28-2004, f. & cert. ef. 11-23-04

459-050-0150

Unforeseeable Emergency Withdrawal

The purpose of this rule is to establish the criteria and process for a participant to obtain a distribution of deferred compensation funds prior to separation from employment due to an unforeseeable emergency.

(1) Definitions.

(a) "Unforeseeable emergency" or "Unforeseen emergency" means a severe financial hardship to the participant, in a deferred compensation plan under ORS chapter 243, 26 USC 457(d)(1)(A)(iii) and 26 CFR 1.457-6(c)(2)(i) resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant as defined in 26 CFR 1.152-1, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the participant.

(b) "Immediate need" means the financial obligation of an unforeseeable emergency that accrues within the 180-day period preceding and the 90-day period following receipt of an application for emergency withdrawal.

(c) "Emergency withdrawal" means the amount directly related to and reasonably necessary to satisfy an immediate need of an unforeseeable emergency, but in no case shall the amount exceed the balance of the participant's account in the deferred compensation plan.

(2) Eligibility for emergency withdrawals. Only plan participants who established deferred compensation accounts as eligible employees and have not severed employment with their plan sponsor may apply to receive an unforeseeable emergency withdrawal from their account. Alternate payees of plan participants shall not be eligible to receive an emergency withdrawal.

(3) Circumstances that shall not constitute an unforeseeable emergency. Emergency withdrawals shall not be approved for reasons other than an unforeseeable emergency. Circumstances that shall not constitute an unforeseeable emergency include, but are not limited to:

(a) Participant and/or dependent school expenses;

(b) The purchase of a home or costs associated with a voluntary relocation of housing;

(c) The reduction of personal credit liabilities not associated with an unforeseeable emergency;

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(d) Expenses associated with a legal separation or the dissolution of a marriage;

(e) Expenses associated with medical procedures that are elective or not medically required;

(f) Expenses associated with the establishing of a personal business or managing a personal business;

(g) Recreational expense;

(h) Travel expenses not associated with an unforeseeable emergency; and

(i) Usual and customary tax obligations.

(4) Limitations on amount of emergency withdrawal. The maximum amount that may be approved for payment as an emergency withdrawal shall be limited to what is reasonably needed to satisfy the immediate financial obligation related to the unforeseeable emergency, including taxes anticipated on the distribution. Payment may not be made to the extent that such financial obligations can or may be satisfied:

(a) Through reimbursement or compensation by insurance or otherwise;

(b) By liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe unforeseeable emergency; or

(c) By cessation of deferrals under the plan.

(5) Application for an emergency withdrawal. The requestor must submit a completed application to apply for an emergency withdrawal. Financial information and related documentation are required to substantiate the withdrawal request. The emergency withdrawal request may be returned if the application is incomplete, requested financial information is not disclosed, or insufficient documentation is submitted.

(a) The application form required to apply for an emergency withdrawal may be obtained from the PERS Deferred Compensation Program or the third party administrator (TPA) retained to administer a portion of the PERS Deferred Compensation Program.

(b) The completed application and related documentation shall be transmitted by use of the United State Postal Service or by private carrier as defined in ORS 293.660(2) for initial review.

(6) Cancellation of future contributions. Employee contributions to the deferred compensation program shall immediately be cancelled upon receipt from a plan participant of an application for an emergency withdrawal.

(a) A plan participant who receives approval for an emergency withdrawal shall be prohibited from making elective deferrals and employee contributions to the deferred compensation program for the period of six consecutive months from the date of distribution.

(b) A plan participant who receives a denial for an emergency withdrawal may enroll to make elective deferrals and employee contributions to the deferred compensation program at any time.

(7) Approval or denial notification. The Deferred Compensation Manager or a designee authorized to take action on the manager's behalf shall approve or deny the request for an emergency withdrawal within three working days after receipt of the properly completed application and related documentation. The requestor will be notified by mail within ten days after a decision is made to approve or deny the emergency withdrawal application.

(8) Release of payment upon approval of an emergency withdrawal application. The Deferred Compensation Manager or a designee authorized to take action on the manager's behalf shall determine the method of payment, based on the immediate needs related to the nature of the unforeseeable emergency. The Deferred Compensation Manager or other authorized staff shall immediately notify the TPA to release the requested funds.

(9) Requester may appeal the denial of an emergency withdrawal application. If the request for an emergency withdrawal is denied, the requester may appeal the denial to the Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-0040. The request shall be in writing and include:

(a) A request for review by the Unforeseeable Emergency Withdrawal Appeals Committee;

(b) A short statement of the facts that are the basis of the appeal; and

(c) Any additional information or documentation to support the request for an emergency withdrawal.

(10) No restrictions on the number of emergency withdrawal requests. Regardless of whether a request for an unforeseeable emergency withdrawal is approved or denied, a plan participant may again submit a request for a withdrawal because of an unforeseeable emergency. The request may be for the same or different unforeseeable circumstances.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04

Adm. Order No.: PERS 29-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 11-23-04

Notice Publication Date: 10-1-04

Rules Amended: 459-070-0100, 459-070-0110

Subject: Statutory language incorporated from ORS Chapter 238 into the OPSRP programs imposes penalties on employers that fail to remit reports or contributions in a timely manner. OAR 459-070-0100 and -0110 direct employers to submit required information and contributions to PERS and specify penalties for incomplete or late reporting of data or contributions. The rules also give the PERS Executive Director discretion to grant a blanket waiver of penalties for the first six months of OPSRP implementation, and set the process for requesting individual waivers after that period. Amending these rules extend the blanket waiver period for penalties to avoid administrative complications in waiving penalties and unnecessarily burdening employers struggling to comply with new reporting standards.

Rules Coordinator: David K. Martin—(503) 603-7713

459-070-0100

Employer Reporting

(1) Definition. "Pay period" means the span of time covered by an employer's report to PERS.

(2) Unless otherwise agreed upon between the PERS Executive Director and the employer, the employer shall transmit to PERS an itemized report of all information required by PERS. Reports shall include wage, service, and demographic data related to that pay period.

(3) The report required under section (2) of this rule shall be acceptable to PERS and transmitted on forms furnished by the agency or in an equivalent format. The report shall be transmitted electronically, faxed, or postmarked, as applicable, no later than three business days following the end of each pay period listed in section (4) below.

(4) PERS shall assign the employer to one of the following pay periods which most closely matches the employer's pay cycle:

(a) Monthly: the pay period ends on the last day of the month;

(b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day of the month;

(c) Weekly: the pay period ends the Friday of every week, commencing January 2, 2004; or

(d) Biweekly: the pay period ends every other Friday, commencing January 9, 2004.

(5) If the report required under section (2) of this rule is accepted by PERS, PERS shall notify the employer of any exceptions and the employer will have 10 business days to reconcile its report. The corrected report must be transmitted electronically, faxed, or postmarked, as applicable, to PERS no later than 10 business days from the date of notification to avoid the penalty described under section (6) of this rule.

(6) Failure of an employer to transmit the report required under section (2) of this rule shall make the employer liable for a penalty equal to one percent of the total amount of the prior year's annual contributions or \$2000, whichever is less, for each month the employer is delinquent.

(7) The PERS Executive Director will have the discretion to waive the penalty described in section (6) of this rule for all reports due from January 1, 2004 through December 31, 2004. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.050, 238.705

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04

459-070-0110

Employer Remittance of Contributions

(1) Definition. "Statement date" means the date a statement of contributions or penalty due is generated by PERS.

(2) Once PERS receives the report described in OAR 459-070-0100(2) and (5), it shall issue a statement of contributions and any penalty due, if applicable.

(3) Unless otherwise agreed upon by the PERS Executive Director and the employer, an employer shall transmit the amount of employee con-

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tributions, employer paid employee contributions, and employer contributions for the Individual Account Program along with the corresponding contributions to fund the pension programs, for each pay period to the Board so that it shall be postmarked or electronically transferred no later than seven business days from the statement date.

(4) Failure of any employer to transmit contributions within the time limit specified in section (3) will make the employer liable for a penalty equal to one percent of the total amount of contributions due for that pay period for each month the employer is delinquent.

(5) If an employer transmits an amount less than the contributions required by section (3) of this rule, PERS shall allocate the contributions received in the following order:

- (a) To the Individual Account Program;
- (b) To the Pension Program;
- (c) To the PERS Fund.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (4) of this rule for all contributions due from January 1, 2004 through December 31, 2004. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(7) If PERS is required to invoice an employer for employee contributions and corresponding employer contributions on wages paid in previous reporting periods, an amount equal to the earnings that would have been credited to affected members and employers for those years, if any, may be added to the applicable account and charged to the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.050, 238.705

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04

Adm. Order No.: PERS 30-2004

Filed with Sec. of State: 11-23-2004

Certified to be Effective: 11-23-04

Notice Publication Date: 10-1-04

Rules Adopted: 459-080-0250

Rules Repealed: 459-080-0250(T)

Subject: Retired members can direct that their IAP account balance be paid in installments for a period of up to 20 years. OAR 459-080-0250 establishes some parameters on those payments, such as minimum installment amounts, and addresses other issues such as rollover eligibility.

Section (1) defines "Payout Period." Section (2) establishes a retired member's right to elect their defined contribution benefit from the IAP to be paid in installments over 5, 10, 15, or 20 years. The member may request monthly, quarterly or annual installments. Section (3) addresses how installment payments will be adjusted for intervening gains or losses while the account is in payout status. Section (4) sets the minimum payment at \$200 and extends the frequency of payments until that amount is reached, or provides benefit payments no less often than annually. Section (5) addresses federal required minimum distribution standards that the agency is compelled to follow, and the balance of the rule sets guidelines for whether payments can be rolled over to other eligible retirement plans like an IRA.

Rules Coordinator: David K. Martin—(503) 603-7713

459-080-0250

IAP Account Installments

(1) Definitions. "Payout Period" means the span of years over which the member elects to receive installment payments under section (2) of this rule.

(2) Upon retirement, a member of the individual account program who elects to receive the amounts in the member's employee and employer accounts in installments under ORS 238A.400(2) shall designate the number of years over which the installments are to be paid, selecting a period of 5, 10, 15, or 20 years. The member may also request that installments be made on a monthly, quarterly, or annual basis.

(3) Installments will be adjusted annually to reflect investment gains and losses on the unpaid balance. The member's balance, so adjusted, will be divided by the number of years left in the member's Payout Period to determine the amount to be paid to that member for the next year, which will then be paid over the monthly, quarterly, or annual basis selected by the member or as modified pursuant to sections (4) or (5) of this rule.

(4) If a member requests monthly or quarterly installments under section (2) of this rule, but the amount of the installment would be less than \$200 as determined at the time of the initial request, the frequency of the installment payment will be extended from monthly to quarterly, or quarterly to annually, until the amount of the installment is at least \$200. If monthly or quarterly installments would not exceed \$200, the member will be paid annually.

(5) Notwithstanding the Payout Period selected by the member under section (2) of this rule, any distribution will be adjusted to comply with the required minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect August 29, 2003.

(6) Members who elect a five year Payout Period or a lump sum payment may elect to directly roll over any portion of their IAP installment or lump sum payment to an eligible retirement plan, subject to the following limitations:

(a) Members will not be permitted to directly roll over any IAP installment payments if the total annual distribution from their IAP account is reasonably expected to total less than \$200.

(b) If members elect to have a portion of their IAP installment or lump sum payment paid directly to them and a portion directly rolled over, the portion to be rolled over cannot be less than \$500 or that portion will be paid directly to the member.

(7) Members who elect a 10, 15, or 20 year Payout Period cannot elect to have any portion of their installment payments rolled over.

(8) Members who are subject to the required minimum distribution requirements referenced in section (5) of this rule may only roll over that portion of their installment or lump sum payments that exceeds required minimum distribution requirements.

Stat. Auth.: ORS 238A.400

Stats. Implemented: ORS 238A.400

Hist.: PERS 23-2003(Temp), f. & cert. ef. 9-22-04 thru 3-15-05; PERS 30-2004, f. & cert. ef. 11-23-04

Adm. Order No.: PERS 31-2004(Temp)

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 12-15-04 thru 6-1-05

Notice Publication Date:

Rules Amended: 459-005-0506, 459-005-0525, 459-005-0535, 459-005-0545, 459-005-0560, 459-005-0590, 459-005-0591, 459-005-0595

Subject: The proposed rule modifications affect a series of rules in the OAR Chapter 459, Division 005, relating to the administration of the PERS Plan. Generally, the modifications are to apply the IRS limitations to the new OPSRP programs from ORS Chapter 238A and update provisions that have been affected by federal law and rule changes. The rules to be modified are summarized briefly below with explanations for the modifications to each rule affected:

OAR 459-005-0506: Updates statutory references to include the OPSRP programs and other changes. Adds clarifying language regarding federal tax treatment of the PERS Plan components as defined contribution or defined benefit plans.

OAR 459-005-0525: Updates statutory references to include OPSRP programs and terminology.

OAR 459-005-0535: Incorporates OPSRP statutory references and terminology. Changes the mortality table used for calculating benefit limitations to the table prescribed by the Internal Revenue Code.

OAR 459-005-0545: Refers to the Internal Revenue Code section method to adjust the annual limitation so it will increase consistently with the IRS' requirements. Otherwise, changes are to incorporate OPSRP references as needed.

OAR 459-005-0560: Updates references to IRS regulations that became final this past summer. Modifications specify limitations and choices dictated by IRS rules. IRS regulations used to prevent a member in RMD from "popping up" to Option 1; the new regulations allow that change, so the rule is changed accordingly.

OAR 459-005-0590: Incorporates OPSRP statutory references.

OAR 459-005-0591: Adds a provision that the rollover must be to a defined contribution plan that accepts the distribution.

OAR 459-005-0595: Adds language to clarify rollover eligibility for a PERS Plan distribution that is based in part on after-tax employee contributions includable in the member's gross income. pawm

Rules Coordinator: David K. Martin—(503) 603-7713

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459-005-0506

Plan Compliance with Federal Statutes and Regulations

(1) The purpose of administrative rules OAR 459-005-0500 to 459-005-0799 is to assure compliance with applicable federal statutes and regulations for governmental retirement plans qualified under the Internal Revenue Code (IRC) Section 401(a), and to implement ORS Chapters 238 and 238A by establishing limits on contributions and benefits under the Public Employees Retirement System (PERS).

(2) Definitions in general for OAR 459-005-0500 to 459-005-0799:

(a) "Member" shall have the same meaning as provided in ORS 238.005(12) with respect to members covered by ORS Chapter 238 and as provided in ORS 238A.005(10) with respect to members covered by ORS Chapter 238A.

(b) "Employment" means service as an employee as defined in OAR 459-005-0001(13).

(c) "Board" shall have the same meaning as provided in ORS 238.005(2).

(d) "PERS" shall have the same meaning as provided in OAR 459-005-0001(23).

(e) "Defined contribution plan (DC)" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account. For purposes of IRC Section 414(k), the individual account program under ORS Chapter 238A shall be treated as a DC plan for the purposes of IRC Sections 72(d) and 415.

(f) "Defined benefit plan (DB)" means a plan which is not a defined contribution plan. For purposes of IRC Section 414(k), the pension programs under ORS chapters 238A and 238 shall be treated as part of a defined benefit plan for purposes of IRC Sections 72(d) and 415.

Stat. Auth.: ORS 238.630(3)(h), ORS 238.305 & ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0525

Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS chapters 238 and 238A.

(2) Definitions:

(a) A "participant" shall mean an active or inactive member of PERS.

(b) An "eligible participant" shall mean a person who first becomes a member of PERS before January 1, 1996.

(c) A "noneligible participant" shall mean a person who first becomes a member of PERS after December 31, 1995.

(d) "Annual compensation" shall mean "salary," as defined in ORS 238.005(20) and 238.205 with respect to ORS Chapter 238 and in ORS 238A.005(16) with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

(e) For the purposes of this rule as it applies to ORS Chapter 238, an "employer" shall mean a "public employer" as defined in ORS 238.005(17). For the purposes of this rule as it applies to ORS Chapter 238A, an "employer" shall mean a "participating public employer" as defined in ORS 238A.005(11).

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$ 200,000 per calendar year beginning in 2002.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by

the employer combined for determining the allowable annual compensation under this rule.

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005(8) with respect to ORS Chapter 238 and under ORS 238A.130 with respect to ORS Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005(8) with respect to Chapter 238 and as defined in ORS 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in ORS 238.005(5), shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17). With respect to ORS Chapter 238A, retirement credit as determined in ORS 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

Stat. Auth.: ORS 238.630, 238.650 & 238A.005(16)(i)

Stats. Implemented: ORS 238

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0535

Annual Benefit Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(b) and the Treasury regulations and Internal Revenue Service rulings and other interpretation issued thereunder.

(2) Annual Benefit Limitation. The benefits payable to any member for a calendar year, when expressed as an annual benefit, shall not exceed the applicable dollar limitation for that year.

(3) Applicable Dollar Limitation. For purposes of this rule, the "applicable dollar limitation" for each calendar year is the limitation in effect under IRC Section 415(b)(1)(A), with the adjustment described as follows:

(a) Cost-of-Living Adjustments. The limitation under IRC Section 415(b)(1)(A) shall be adjusted for cost of living in accordance with IRC Section 415(d).

(b) Reduction for Retirement Before Age 62. Except as otherwise provided in the paragraphs (A), (B), and (C) of this subsection, if the member's benefit begins before the member reaches 62 years of age, the applicable dollar limitation shall be adjusted as provided for in IRC Section 415(b)(2)(C).

(A) This reduction shall not apply to any member who has at least 15 years of creditable service as a full-time employee of a police department or fire department which is organized and operated by the state or a political subdivision of the state to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision.

(B) This reduction shall not apply to disability retirement allowances or death benefits.

(C) This reduction shall not apply to any portion of a member's annual benefit that is derived from contributions to purchase service credit, as defined in OAR 459-005-0540, Permissive Service Credit.

(c) Reduction for Less than 10 Years of Membership. Except as provided in paragraphs (A) and (B) of this subsection, if the member has less than 10 years of active membership in PERS, the applicable dollar limitation shall be reduced as provided for under IRC Section 415(b)(5)(A).

(A) For the purposes of this section, a member with less than one year of active membership shall be treated as having one year of active membership.

(B) The reduction under this section shall not apply to disability retirement allowances or death benefits.

(d) Increase for Retirement After Age 65. If the member's benefit begins after the member reaches 65 years of age, the applicable dollar limitation shall be increased as provided for under IRC Section 415(b)(2)(D).

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(4) Annual Benefit. For purposes of this rule, the “annual benefit” is the benefit payable to a member under ORS Chapter 238 and the pension program under ORS Chapter 238A for a calendar year, excluding any benefit payable under ORS 238.485 through 238.492, and adjusted as described in this section.

(a) Excludable Benefits. The annual benefit shall not include the portion of the member’s benefit that is attributable to:

(A) After-tax member contributions, other than member payments to purchase permissive service credit as defined in OAR 459-005-0540, Permissive Service Credit;

(B) Rollover contributions, if such contributions are permitted;

(C) A transfer of assets from another qualified retirement plan; and

(D) Purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit, if all of the member’s payments to purchase permissive service credit are treated as annual additions for purposes of OAR 459-005-0545, Annual Addition Limitation, in the year purchased.

(b) Adjustment to Straight Life Annuity. The member’s benefit shall be adjusted to an actuarially equivalent straight life annuity beginning at the same age. For purposes of this adjustment, the following values are not taken into account:

(A) The value of a qualified spouse joint and survivor annuity to the extent that the value exceeds the sum of: the value of a straight life annuity beginning on the same day, and the value of any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint survivor annuity.

(B) The value of benefits that are not directly related to retirement benefits, such as pre-retirement disability benefits and post-retirement medical benefits.

(C) The value of post-retirement cost of living increases, to the extent they do not exceed the increase provided under IRC Section 415(d) and Treasury Regulation Section 1.415-5.

(5) Interest Rates. The following interest rates shall apply for purposes of adjusting the applicable dollar limitation under section (3) of this rule and the annual benefit under section (4) of this rule.

(a) For purposes of reducing the applicable dollar limitation for retirement before 62 years of age under subsection (3)(b) of this rule, the interest rate shall be the greater of five percent or PERS’ assumed earnings rate.

(b) For purposes of determining the portion of a member’s benefits attributable to after-tax member contributions under paragraph (4)(a)(A) of this rule, the interest rate shall be the greater of 5 percent or the PERS’ assumed earnings rate.

(c) For purposes of adjusting the member’s annual benefits under section (4) of this rule (other than the adjustment for after-tax member contributions), the interest rate shall be the greater of five percent or PERS’ assumed earnings rate.

(d) For purposes of increasing the applicable dollar limitation for retirement after 65 years of age under subsection (3)(d) of this rule, the interest rate shall be the lesser of five percent or PERS’ assumed earnings rate.

(6) Mortality Table. For purposes of adjusting the applicable dollar limitation and annual benefit under sections (3) and (4) of this rule, the mortality table used shall be the table prescribed pursuant to the Internal Revenue Code.

Stat. Auth.: ORS 238.630, 238.650 & 238A.125

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 3-2000, f. & cert. ef. 3-10-00; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0545

Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, no member’s annual additions to PERS for any calendar year (after 2001) shall exceed the lesser of the following amounts:

(a) \$40,000 (as adjusted under IRC Section 415(d)); or

(b) One hundred percent of the member’s compensation for the calendar year (as defined in IRC Section 415(c)(3)).

(3) Annual Additions. For purposes of this rule, the term “annual additions” has the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member’s after-tax contributions to purchase permissive service credit are included in the member’s annual additions under section (3) of this rule, the member shall not be treated as exceeding the 100 percent of compensation limitation under subsection (2)(b) of this rule solely because of the inclusion of such contributions.

(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1995. As used in this subsection, the term “eligible participant” includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to ORS 238.156(3)(c) or 238A.150, the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member’s average compensation from the participating employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the period of employment immediately preceding the period of service in the Armed Forces).

Stat. Auth.: ORS 238.630, 238.650 and 238A.370

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0560

Required Minimum Distributions, Generally

(1) Applicable Law. Distributions under the Public Employees Retirement System (PERS) shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), including IRC Section 401(a)(9)(G), and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder, including Treasury Regulation Sections 1.401(a)(9)-1 through (9)-9. The provisions of this administrative rule and any other statute or administrative rule reflecting the required minimum distribution requirements of IRC Section 401(a)(9) shall override any distribution options that are inconsistent with IRC Section 401(a)(9).

(2) Distributions to Members. Each member’s entire benefit under PERS shall be distributed to the member, beginning no later than the required beginning date, over the member’s lifetime (or the joint lives of the member and a designated beneficiary), or over a period not extending beyond the member’s life expectancy (or the joint life expectancies of the member and a designated beneficiary).

(a) Required Beginning Date. For purposes of this section, the “required beginning date” is April 1 of the calendar year after the later of the following:

(A) The calendar year in which the member reaches age 70 1/2; or

(B) The calendar year in which the member retires.

(b) Designated Beneficiary. For purposes of this section, a “designated beneficiary” means any individual designated as a beneficiary by the member. If the member designates a trust as a beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirement set forth in Treasury Regulation Section 1.401(a)(9)-4.

(c) Calculation of Life Expectancies. For purposes of this section and Chapter 238 benefits and the Pension Program, which are part of the DB component of PERS, life expectancies shall not be recalculated after the initial determination, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-4 and Q&A-5. For purposes of this section and the Individual Account Program, life expectancies shall be recalculated but no more frequently than annually, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-5.

(d) Limitations on Benefit Changes. A retired member who has had a required beginning date shall not change a beneficiary designation, benefit

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option election, or any other designation or election except as permitted under Treasury Regulation Sections 1.401(a)(9)-4 and 1.401(a)(9)-6.

(e) **Limitations on Conversion of Joint Annuity to Single Life Annuity Following Divorce.** A retired member who has had a required beginning date may elect to convert a joint and survivor annuity under Option 2A or 3A under Chapter 238 to a single life annuity by reason of the member's divorce from the joint annuitant, subject to the provisions of Treasury Regulation Section 1.401(a)(9)-6. This section applies to ORS Chapter 238 benefits notwithstanding ORS 238.305(5) and 238.325(3).

(f) **Limitations on Survivor Annuity Elections.** Except as otherwise required by a domestic relation order under ORS 238.465, if a member elects a 100 percent (100%) joint and survivor annuity (Option 2 or 2A under ORS 238.305(1) and under 238A.190(1)(a) and designates a non-spouse beneficiary who is more than ten years younger than the member as calculated under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity benefit to the extent necessary to comply with federal requirements for qualified retirement plans.

(g) **Limitation on Period-Certain Annuity Election (Chapter 238 only).** If a member elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 85 or older during the calendar year in which the benefits commence, the benefit shall be actuarially adjusted to provide for a shorter payout period to the extent necessary to comply with federal requirement for qualified retirement plans.

(h) **Limitation on Selection of IAP Benefit Options.** Benefit payment options selected under the Individual Account Program shall be considered as payment options under a DC plan and must comply with the requirements of Treasury Regulation Section 1.401(a)(9)-5.

(3) **Distributions to Beneficiaries of Retired Members.** If a retired member dies after annuity benefits payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) or this rule, any death benefits shall be distributed at least as rapidly as under the distribution method being used at the member's death.

(4) **Distributions to Beneficiaries of Active and Inactive Members.** If an active or inactive member dies before annuity payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) of this rule, any death benefits shall be distributed by December 31 of the calendar year that contains the fifth anniversary of the member's death, except as provided in the following:

(a) **Distributions to Designated Beneficiaries.** The five-year rule shall not apply to any death benefit that is payable to a member's designated beneficiary, if:

(A) The benefit is distributed over the designated beneficiary's lifetime or over a period not extending beyond the designate beneficiary's life expectancy; and

(B) The distributions begin no later than December 31 of the calendar year that contains the first anniversary of the member's death.

(b) **Distributions to Spouse Designated Beneficiaries.** Notwithstanding subsection (a) of this section, if the designated beneficiary is the member's surviving spouse as defined by the Internal Revenue Code:

(A) The commencement of distributions under subsection (a)(B) of this section may be delayed until December 31 of the calendar year in which the member would have reached age 70 1/2; and

(B) If the surviving spouse dies after the member's death but before the distributions to the spouse have begun, the rules of this section shall apply to any death benefit payable to any contingent beneficiary as if the spouse were the member. Notwithstanding the foregoing, however, this subsection shall not apply to any death benefit payable to a surviving spouse of the deceased member's surviving spouse.

Stat. Auth.: ORS 238.630, 238.650, 238A.130, 238A.170 & 238A.410

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0590

General Provisions and Applicability Date — Direct Rollovers

(1) OAR 459-005-0590 to 459-005-0599 apply to direct rollover distributions made on or after January 1, 1993.

(2) Notwithstanding any provision to the contrary in ORS Chapters 238 or 238A or any administrative rule of the Public Employees Retirement Board other than OAR 459-005-0590 to 459-005-0599, a distributee may elect, in accordance with OAR 459-005-0599, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) The direct rollover rule OAR 459-005-0590 to 459-005-0599 shall be interpreted and administered in accordance with Code Section 401(a)(31) and any applicable regulations and administrative rulings thereunder.

Stat. Auth.: ORS 238.650 & 238A.430

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0591

Definitions — Direct Rollovers

As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases shall have the following meanings:

(1) "Code" means the Internal Revenue Code of 1986, as amended.

(2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.

(3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.

(4) An "eligible retirement plan" means any one of the following:

(a) An individual retirement account or annuity described in Code Section 408(a) or (b), but shall not include a Roth IRA as described in Code Section 408A;

(b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;

(c) A qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution;

(d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts the distributee's eligible rollover distribution.

(e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.

(5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

(a) Any distribution that is one of a series of substantially equal periodic payment made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).

(6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 1-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 3-2002, f. & cert. ef. 3-26-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

459-005-0595

Limitations — Direct Rollovers

Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-005-0599, a distributee's right to elect a direct rollover is subject to the following limitations:

(1) A distributee may elect to have an eligible rollover distribution paid in a direct rollover to only one eligible retirement plan.

(2) A distributee may elect a direct rollover only when his or her eligible rollover distribution(s) during a calendar year is reasonably expected to total \$200 or more.

(3) A distributee may elect to have part of an eligible rollover distribution be paid directly to the distributee, and to have part of the distribution paid as a direct rollover only if the member elects to have at least \$500 transferred to the eligible retirement plan.

(4) The provisions of (1) apply to any portion of a distribution, including after-tax employee contributions that are not includible in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includible in gross income may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan that agrees to separately account for the amounts transferred, including separate accounting for the pre-tax and post-tax amounts. The amount transferred shall be treated as consisting first of the portion of the distribution that is includible in gross income, determined without regard to Code Section 402(c)(1).

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Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005-238.715
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05

Oregon State Lottery
Chapter 177

Adm. Order No.: LOTT 13-2004(Temp)
Filed with Sec. of State: 11-29-2004
Certified to be Effective: 11-29-04 thru 5-27-05
Notice Publication Date:
Rules Amended: 177-050-0027
Subject: This rule is being amended to clarify that a damaged Scratch-it ticket may still be paid by the Lottery if it can be reconstructed or there is enough of the ticket intact to validate that it is indeed a winning ticket.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-050-0027
Ticket Validation Requirements

(1) Besides meeting all of the other requirements in OAR 177 and as may be printed on the back of each ticket, the following validation requirements shall apply with regard to Scratch-it game tickets.

(2) Except as provided in section (3) of this rule and OAR 177-050-0025(4), to be a valid Scratch-it game ticket, all of the following requirements must be met:

(a) Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption.

(b) Each of the play symbols and captions must be present in its entirety and be legible.

(c) Each of the play symbols and its play symbol caption must be printed according to game specifications.

(d) The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information shall correspond with the Lottery's computer records.

(e) The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner.

(f) The ticket must have exactly one pack-ticket number.

(g) The VIRN number of an apparent high-tier winning ticket shall appear on the Lottery's official record of winning ticket VIRN numbers; and a ticket with that VIRN number shall not have been paid previously.

(h) Each of the following must correspond precisely to the artwork on file at the Lottery: play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code; and ticket VIRN number.

(3) Damaged Tickets: Notwithstanding OAR 177-046-0090 and section (2) of this rule, the Director may pay the prize on a winning Scratch-it ticket that is inadvertently or accidentally damaged so that it cannot be validated either through the Lottery's central computer system or because it is missing information required under section (2) of this rule, if the ticket is readable and is validated as a winning ticket by the Lottery's Security Section. For purposes of this rule, a Scratch-it ticket is unreadable if there is insufficient information remaining on the ticket for the Lottery's Security Section to reconstruct and validate the ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 13-2004(Temp), f. & cert. ef. 11-29-04 thru 5-27-05

Oregon State Marine Board
Chapter 250

Adm. Order No.: OSMB 8-2004(Temp)
Filed with Sec. of State: 12-7-2004
Certified to be Effective: 12-7-04 thru 2-28-05
Notice Publication Date:
Rules Amended: 250-025-0020
Rules Suspended: 250-025-0020(T)
Subject: A sediment cap is being constructed over contaminated submerged and submersible land in the Oregon Slough (North Portland

Harbor) in response to a Department of Environmental Quality Record of Decision (dated August 1999), the Rhodia Suttle Road Sediment Area Additional Measures Study (dated September 2002) and the Explanation of Significant Differences (dated December 17, 2002). The Division of State Lands requested the Marine Board to initiate rulemaking to close and/or restrict public use of the site during the construction phase in order to protect the remedial work and sediment cap from interference or damage. Until February 28, 2005, the area is closed to all vessels that are equipped with a propeller or motor of any kind for operation, anchoring or grounding. Prohibiting boats from entering the area will help protect the sediment cap, boaters, and construction workers. Failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-025-0020
Scope

This division contains temporary rules for boat operations in areas where a specific event such as waterway construction may necessitate special restrictions or may require established rules to be amended for a period of time. When the need is ongoing a permanent rule will be adopted and incorporated into the applicable division of OAR chapter 250.

(1) No person shall operate or anchor a boat in the following described zone in Oregon Slough (North Portland Harbor) during construction and placement of a sediment cap over contaminated submerged and submersible lands in Section 32, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, INC., recorded as Document No. 98028586, Multnomah County Deed Records;

Thence, along the northeasterly line of said tract, S 47°06' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim;

Thence, along the north line of said claim S 48°30' E, 621.63 feet to the POINT OF BEGINNING of the TEMPORARY WORK AREA being described herein;

Thence, N 29°58'25" E, 127.15 feet;

Thence, S 73°37'02" E, 161.61 feet;

Thence, S 62°44'22" W, 499.35 feet;

Thence, S 16°22'58" E, 180.51 feet;

Thence, S 29°58'25" W, 253.16 feet to the northeasterly line of said tract;

Thence, along said northeasterly line, N 56° W, 135.19 feet;

Thence, along said northeasterly line, N 61°15'00" E, 5.15 feet;

Thence, N 29°58'25" E, 227.76 feet;

Thence, N 62°44'22" W, 461.47 feet;

Thence, S 29°58'25" W, 133.84 feet to the northeasterly line of said tract;

Thence, along said northeasterly line, N 48°30' W, 142.88 feet to the POINT OF BEGINNING as marked.

(2) This area of land contains 3.18 acres (138,333 sq. ft.), more or less.

(3) The intent of this description is to describe a temporary work zone that surrounds the limits of the sediment cap location, as shown on Exhibit D, filed with the request for rulemaking from the Division of State Lands at the Marine Board office.

(4) Bearings based on Document No. 98028586, Multnomah County Deed Records.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: OSMB 6-2004, f. & cert. ef. 10-14-04; OSMB 7-2004(Temp), f. & cert. ef. 11-8-04 thru 2-28-05; OSMB 8-2004(Temp), f. & cert. ef. 12-7-04 thru 2-28-05

Oregon State Treasury
Chapter 170

Adm. Order No.: OST 7-2004
Filed with Sec. of State: 11-18-2004
Certified to be Effective: 11-18-04
Notice Publication Date: 8-1-04
Rules Amended: 170-060-1010
Subject: Sets terms, conditions, and reporting requirements for local government issuers of bonds when entering into agreements for exchange of interest rates.
Rules Coordinator: Sally Furze—(503) 378-4633

170-060-1010
Terms, Conditions, and Reporting Requirements for an Agreement for Exchange of Interest Rates

(1) Definitions:

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(a) "Issuer" means a public body as defined in ORS 288.605, (excluding the State of Oregon and its Agencies) and the Oregon Health and Science University.

(b) "Counterparty" shall mean the party to an agreement for the exchange of interest rates other than the Issuer and any guarantor of that party's obligations.

(c) "Swap Policy" means the written policy regarding the use of agreements for the exchange of interest rates adopted by the Issuer.

(d) "MDAC" or "Commission" means the Oregon Municipal Debt Advisory Commission.

(e) Terms not otherwise defined herein shall have the meanings ascribed to them in ORS 287.014 to 287.029 as amended by Chapter 195, Oregon Laws 2003.

(2) Issuers shall only enter into agreements for the exchange of interest rates as authorized by, and in compliance with, ORS 287.014 to 287.029, as amended by Chapter 195, Oregon Laws 2003.

(3) The notional amount of an agreement that relates to outstanding obligations may not exceed the principal amount of those obligations. The notional amount of an agreement that relates to obligations that the issuer expects to issue in the future may not exceed the principal amount of the obligations that the issuer reasonably expects to issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board as required by section 4 of this rule).

(4) With respect to an obligation or obligations that an Issuer has issued or will issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board), subject to Section 2, subsection 7, Chapter 195 Oregon Laws 2003, the Issuer may designate the particular obligation to which an agreement relates after execution of the agreement. Such a designation after execution of the agreement shall be considered an agreement modification, and the Issuer shall notify the MDAC of such modification in accordance with this rule.

(5) The Issuer shall have adopted a Swap Policy as part of its ongoing responsibility to manage its debt obligations. In adopting a Swap Policy, the Issuer should review and consider the current edition of the Government Finance Officers Association Recommended Practice: "Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy" and the "MDAC Sample Interest Rate Swap Policy". Included in the Swap Policy, the Issuer shall provide a general description of risks related to agreements for exchange of interest rates and the means by which the Issuer will address those risks. The Swap Policy shall also provide that an analysis of the risks and benefits of each agreement shall be presented to the governing body prior to executing such agreement.

(6) The Issuer shall notify the Commission of the execution of an agreement for the exchange of interest rates by delivering to the Debt Management Division of the Oregon State Treasury, 350 Winter Street NE, Suite 100, Salem, Oregon 97301 within 30-days of its execution, the following:

(a) An MDAC Form 3.

(b) An executed copy of the resolution, minutes of the board or other authorizing directive of the director or board, specifically authorizing the Issuer to engage and participate in an agreement for the exchange of interest rates. The authorization shall state the reason that the Issuer is authorizing the agreement, shall include a finding that the agreement is being executed for permitted purposes and complies with the authorizing act and this administrative rule.

(c) The Issuer's Swap Policy.

(d) The legal opinion, if any, addressing the validity of the Issuer's obligations under the agreement for the exchange of interest rates that is delivered in connection with the agreement.

(7) An agreement shall contain terms and conditions consistent with the Swap Policy adopted by the Issuer including, but not limited to:

(a) The notional amount of the agreement;

(b) Payment terms;

(c) The term of the agreement;

(d) Insurance, collateral or other assurances of payment provided in compliance with chapter 195, Oregon Laws 2003;

(e) Provisions for termination in advance of the scheduled term;

(f) Events of default and related remedies;

(g) Assurances that the counterparty will maintain a minimum rating by at least two nationally recognized rating agencies or that the counterparty's obligations will be collateralized;

(h) Modifications to standard ISDA swap documentation, as specified in the Schedule as may be required by the Issuer's policy or governing law;

(i) Limitations on allowable collateral and frequency of the valuation of such collateral; and

(j) Agreement valuation methodology.

(8) The Issuer shall notify, in writing, the MDAC of any material change in the Issuer's obligations or benefits under the agreement for the exchange of interest rates that results from a reduction in the ratings of the Issuer, a Counterparty or guarantor.

(9) Agreement Modification or Termination. If after executing an agreement for the exchange of interest rates, the agreement is modified or terminated for any reason prior to its stated end date, the Issuer shall notify the MDAC, in writing, within 30-days after completion of the modification and identify the reasons for such termination or modification and the anticipated change in obligation to the Issuer resulting from the termination or modification.

Stat. Auth.: ORS 287.014 - 287.029 & Ch. 195, OL 2003.

Stats. Implemented: ORS 287.014 - 287.029 & Ch. 195, OL 2003

Hist.: OST 6-2004(Temp), f. 7-12-04, cert. ef. 7-13-04 thru 12-30-04; OST 7-2004, f. & cert. ef. 11-18-04

Oregon University System Chapter 580

Adm. Order No.: OSSHE 9-2004(Temp)

Filed with Sec. of State: 12-15-2004

Certified to be Effective: 12-15-04 thru 6-8-05

Notice Publication Date:

Rules Adopted: 580-043-0100, 580-043-0105, 580-043-0110

Subject: To implement the requirement of ORS 351.683(4) that the Higher Education Technology Transfer Fund Board establish criteria by which it will determine whether a higher education institution is eligible to receive a share of monies disbursed from the Higher Education Technology Transfer Fund.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-043-0100

Purpose

To implement the requirement of ORS 351.683(4) that the Higher Education Technology Transfer Fund Board establish criteria by which it will determine whether a higher education institution is eligible to receive a share of monies disbursed from the Higher Education Technology Transfer Fund.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 240 & 351.070, 351.683(4)

Hist.: OSSHE 9-2004(Temp), f. & cert. ef. 12-15-04 thru 6-8-05

580-043-0105

Definitions

As used in OAR 580-043-0100 to 580-043-0110, the following terms have the following meaning:

(1) "Association of University Technology Managers" or "AUTM" means the nonprofit association of technology and intellectual property managers whose mission is to promote, support, and enhance the global academic technology transfer profession through internal and external education, training and communication.

(2) "Board" means the Higher Education Technology Transfer Fund Board established by ORS 351.680.

(3) "Fund" means the Higher Education Technology Transfer Fund established by ORS 351.691.

(4) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A private higher education institution;

(c) The Oregon Health and Science University;

(d) A state institution of higher education listed in ORS 352.002;

(e) The Department of Higher Education.

(5) "Eligible higher education institution" means a higher education institution that the Board determines meets the criteria set forth in OAR 580-043-0110.

(6) "Allowable patent activities" mean any activities performed in the pursuit of a U.S. or non-U.S. patent, including, but not limited to: preliminary coordination to file patent application, securing the preliminary opinion on patentability, attorney service to draft patent application, execution of confidentiality agreements, negotiation of license agreements, and invention evaluation.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 240 & 351.070, 351.683(4)

Hist.: OSSHE 9-2004(Temp), f. & cert. ef. 12-15-04 thru 6-8-05

ADMINISTRATIVE RULES

580-043-0110

Criteria for Determination of Eligible Higher Education Institution

(1) The Board will make the determination whether a higher education institution is an eligible higher education institution by application of the following criteria:

(a) The institution must actively promote technology transfer activities. An institution actively promotes technology transfer activities if it has a technology transfer office or an equivalent institutional process to administer invention disclosures, patent applications, and licensing or equity agreements; and

(b) The institution's total research expenditures must account for at least 2 percent of the total research expenditures of Oregon higher education institutions.

(2) For the purpose of this rule, a higher education institution's total research expenditures shall be the total research expenditures for the institution that are compiled and published annually by the AUTM. For a given year's Fund allocation, a higher education institution's total research expenditures shall be the average of the most recent three years of data published by the AUTM for that higher education institution.

(3) For the purpose of this rule, the total research expenditures of Oregon higher education institutions shall be the average of the most recent three years of research expenditure data compiled and published annually by the AUTM for all the higher education institutions in Oregon.

(4) Any higher education institution may ask the Board to adjust the three year moving average described in paragraph 2 or 3 of this rule if the institution believes the AUTM data is deficient and the deficiency impacts the institution's eligibility for a disbursement or the level of disbursement from the Fund. Any such challenge shall be made, in writing, not more than 10 calendar days after the Board determines and publishes the allocations to eligible higher education institutions as defined. Revised allocations and disbursements based on the challenged AUTM data must be ratified by unanimous consent of the Board.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 240 & 351.070, 351.683(4)

Hist.: OSSHE 9-2004(Temp), f. & cert. ef. 12-15-04 thru 6-8-05

Oregon University System, Oregon State University Chapter 576

Adm. Order No.: OSU 3-2004

Filed with Sec. of State: 11-16-2004

Certified to be Effective: 1-1-05

Notice Publication Date: 10-1-04

Rules Amended: 576-020-0010

Subject: The current rule lists status as a graduate teaching assistant or graduate research assistant as directory information. The change would add as directory information the hours of service for a graduate teaching assistant or graduate research assistant.

Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-020-0010

Definition of Terms

(1) "Student" — A person who is or has been enrolled at Oregon State University.

(2) "Educational Record" — Records directly related to a student which are maintained by Oregon State University or by a person acting for the University.

(3) "Directory Information" — Student's name, current mailing address and telephone number, current e-mail address, campus office address, class standing, month and day of birth, major field of study, full-time or part-time enrollment status, status as a graduate teaching assistant or graduate research assistant and hours of service, participation in officially recognized activities and sports, dates of attendance, degrees and awards received, date(s) of degree(s), and most recent previous educational institution attended by student.

(4) "Institutional Official" — 6-19-03 A person employed by the University in an administrative, supervisory, academic, research or support staff position (including health staff); a person, company or entity with whom the University has contracted (such as an attorney, auditor or collection agent); a person serving on the board of trustees; or a student serving on an official committee such as a disciplinary or grievance committee or assisting another school official in performing his or her tasks.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 3, f. & ef. 6-20-77; OSU 8-1996, f. & cert. ef. 8-23-96; OSU 10-2001, f. & cert. ef. 11-16-01; OSU 5-2002, f. & cert. ef. 5-8-02; OSU 2-2003, f. & cert. ef. 6-19-03; OSU 3-2004, f. 11-16-04, cert. ef. 1-1-05

Public Utility Commission Chapter 860

Adm. Order No.: PUC 16-2004

Filed with Sec. of State: 12-1-2004

Certified to be Effective: 12-1-04

Notice Publication Date: 11-1-04

Rules Adopted: 860-033-0006, 860-033-0007, 860-033-0008, 860-033-0009

Rules Amended: 860-012-0007, 860-021-0009, 860-021-0021, 860-021-0034, 860-021-0036, 860-021-0037, 860-021-0125, 860-021-0130, 860-021-0200, 860-021-0205, 860-021-0206, 860-021-0210, 860-021-0420, 860-032-0095, 860-032-0097, 860-033-0005, 860-033-0010, 860-033-0030, 860-033-0045, 860-033-0050, 860-033-0505, 860-033-0530, 860-033-0535, 860-033-0536, 860-033-0537, 860-033-0540, 860-033-0545, 860-034-0030, 860-034-0090, 860-034-0095, 860-034-0097, 860-034-0110, 860-034-0140, 860-034-0160, 860-036-0035, 860-036-0040, 860-036-0050, 860-036-0075, 860-036-0095, 860-036-0097, 860-036-0115, 860-036-0125, 860-037-0030, 860-037-0035, 860-037-0045, 860-037-0070, 860-037-0095, 860-037-0097, 860-037-0110

Subject: This rulemaking readopts rules previously adopted by the Commission in four prior rulemaking dockets (AR 440, AR 448, AR 452, and AR 463) but became void following the Commission's failure to file the rules with Legislative Counsel within 10 days period required by ORS 183.715.

Rules in AR 440 authorize Commission Staff to represent the Commission in cases involving recovery of telecommunications assistive devices, or the value of the devices, and the cost to repair the devices, and cases on the termination of Oregon Telephone Assistance Program (OTAP) and Telecommunications Devices Access Program (TDAP) benefits.

Rules in AR 448 amend rules governing Telephone Assistance Programs to: (1) update Residential Service Protection Fund (RSPF) terminology; (2) clarify the billing and report periods for providers to submit RSPF revenue and reports; (3) adopt new language on penalties for failing to submit billing and reports for the RSPF surcharge remittance; (4) clarify rules governing Oregon Telecommunications Assistance Program (OTAP) and Link Up America services to specify when information can be released to the Department of Human Services and legal guardians; (5) require Link Up America applications to be filed with the Commission; (6) stipulate the length of time Telecommunications Device Assistance Program (TDAP) recipients may receive equipment for trial purposes; (7) clarify when a TDAP recipient may be liable for damages to their equipment; and (8) clarify procedures for determining Oregon residency.

Rules on AR 452 amend and/or reorganize the requirements for establishing credit for residential utility service, interruption of utility service, meter testing, payment arrangements for deposits, and make other housekeeping changes.

Rules in AR 463 clarify that public utilities and telecommunications providers may be penalized for the failure to file completed annual fee statements.

Rules Coordinator: Diane Davis—(503) 378-4372

860-012-0007

Representation by Authorized Representative or Agency Officer or Employee

(1) For purposes of this rule, the words listed below shall have the following meanings:

(a) "Authorized representative" means a member of a partnership; an authorized officer or regular employee of a corporation, association, or organized group; or an authorized officer or employee of a governmental authority other than a state agency.

(b) "Commission" means the Public Utility Commission of Oregon.

ADMINISTRATIVE RULES

(c) "Contested case" means a proceeding before the Commission in which a person is provided the opportunity for a hearing which is substantially of the character described in ORS 183.310(2).

(d) "Legal argument" includes argument on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; or

(C) The application of court precedent to the facts of the particular contested case proceeding.

(e) "Legal argument" does not include presentation of evidence, examination, and cross-examination of witnesses, presentation of factual arguments, or argument on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency conducting the proceeding;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; or

(D) The admissibility of evidence or the correctness of procedures being followed.

(2) Except for the Commission's staff, a party or interested person participating in a contested case hearing before the Commission may be represented by an authorized representative, following a determination that the appearance by an authorized representative will not unreasonably broaden the issues, delay the proceeding, or otherwise hinder the orderly and timely development of the record:

(a) On or before the first appearance by an authorized representative, the Administrative Law Judge (ALJ) must be provided with a letter authorizing the named representative to appear on behalf of a party or interested person; and

(b) The ALJ shall have authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ shall not allow an authorized representative to present legal argument as defined in subsection (1)(d) of this rule.

(3) Public Utility Commission staff may represent the agency in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, or the value of devices which the recipients fail to return, or the cost of repairing the equipment which the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 2-1989, f. & cert. ef. 1-23-89 (Order No. 89-067); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-011-0007; 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 17-2002, f. & cert. ef. 9-13-02; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0009

Applications for Utility Service from an Energy or Large Telecommunications Utility

(1) An application for energy or telecommunications utility service must be made when:

(a) Service is requested by a person who has not previously been served by the energy or large telecommunications utility;

(b) Service has been involuntarily discontinued in accordance with these rules, and the person later seeks to have service restored; or

(c) Service has been voluntarily discontinued, and a request to restore service has not been made within 20 days.

(2) An application is a request for energy or telecommunications utility service. The energy or large telecommunications utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-021-0200 and 860-021-0205. However, the energy or large telecommunications utility may refuse a service application under OAR 860-021-0335.

(3) An energy or large telecommunications utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or,

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the energy or large telecommunications utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the energy or large telecommunications utility and the customer.

(7) A large telecommunications utility shall protect the identity of a customer at risk of domestic violence or other abuse. At its option, the large telecommunications utility shall provide the identity protection by allowing the customer to use a modified or alternative name for a directory listing or by providing, at no cost, a non-published listing in accordance with other applicable tariff provisions for the length of time the endangerment exists. A customer requesting a nonpublished listing under this section must provide:

(a) A copy of a court order that restrains another person from contact with the customer by reason of risk of domestic violence, as defined in ORS 135.230, or unwanted sexual contact, as defined in ORS 163.305, abuse, as defined by the Elderly and Disabled Person Abuse Prevention Act, ORS 124.005 et seq., or stalking, as defined by ORS 163.730 et seq.; and

(b) An affidavit, stating that the customer is financially unable to pay for the nonpublished listing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0021

Interruption of Utility Service

(1) Each energy or large telecommunications utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) Each energy or large telecommunications utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the energy or large telecommunications utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each energy or large telecommunications utility shall make reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work performed by a telecommunications utility that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the energy or large telecommunications utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

(4) In addition to the requirements above, electric utilities shall comply with OAR 860-023-0080 through 860-023-0160, which set additional requirements for electric service reliability and reporting.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); Renumbered from 860-021-0070; PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0067; PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0034

Annual Fees Payable to the Commission by an Energy Utility

(1) Each energy or large telecommunications utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) Each energy or large telecommunications utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the energy or large telecommunications utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each energy or large telecommunications utility shall make reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work performed by a telecommunications utility that results in an interruption of less than five minutes. In determining reasonable notice, the energy or large telecommunications utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

(4) In addition to the requirements above, electric utilities shall comply with OAR 860-023-0080 through 860-023-0160, which set additional requirements for electric service reliability and reporting.

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

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 shall provide the requested information for the subject year.

(2) Each large telecommunications utility shall pay:

(a) An annual fee in compliance with OARs 860-011-0020 and 860-011-0023. The annual fee shall be no less than \$100. The payment must be received by the Commission no later than 5 p.m. on the due date.

(b) A late statement fee of \$100, 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. 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 of \$25 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) For retail intrastate service rendered on or after January 1, 2000, 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.

(4) If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and the utility does not separately charge the customer an additional amount for the apportioned annual fee, then the utility may comply with section (3) of this rule by merely describing the apportioned amount of the charge on the retail customer's bill.

(5) 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 shall, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(6) If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and 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).

(7) Each large telecommunications utility shall:

(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.

(8) If the Commission receives a public record request for the confidential information required by this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

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

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 shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission shall 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 shall 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 shall 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

860-021-0125

Due and Payable Period

(1) Each energy or large telecommunications utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment for final bills, to the due date is not less than 15 days.

(2) If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0035; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

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860-021-0130

Meter Test

(1) Any customer may ask the energy utility to test a meter. Such tests shall be made within 20 working days of the request at no cost to the customer. If a customer requests more than one meter test within any 12-month period, the energy utility may charge the customer to recover the reasonable cost of the test. The energy utility may not charge the customer if the meter is found to register outside the 2 percent accepted tolerance standard under normal operating conditions.

(2) A customer and/or a designated representative shall have the right to be present at any meter test. The test shall be conducted at a mutually acceptable time during regular business hours.

(3) A written report showing the customer's name, the request date, the address where the meter has been installed, the meter's number, the date tested, and the test result shall be supplied to the customer within a reasonable time after completing the test.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.255

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0025; PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0200

Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous utility service of the same type applied for (energy or telecommunications) during the preceding 24 months and the utility can verify, either by contacting the former utility or through an authorized letter provided by former utility on utility letterhead to include dates of service and presented by the applicant, customer or former utility, that the applicant or customer voluntarily terminated service and timely paid for all services rendered;

(b) Meets Commission approved minimum credit requirements based on a third party credit report score or the energy or large telecommunications utility's own credit scoring formula; or

(c) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the energy or large telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the energy or large telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon energy or telecommunications utility, as defined in ORS 757.005 or 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon utility as defined in ORS 757.005 or 759.005, was found to have tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service.

(3) In lieu of paying a deposit, an applicant or customer may:

(a) Provide the energy or large telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit; or

(b) For energy utilities, elect to use demand limiter or "pay as you go" metering, if equipment is available.

(4) For energy utilities, a deposit required under this rule shall not exceed one-sixth the amount of reasonable estimated billing for 12 months at rates then in effect. This estimate shall be based upon actual use at the premises during the prior 12 months, if known, or will be estimated based upon the type and size of the equipment at the premises. Each deposit shall be rounded to the nearest whole dollar.

(5) For large telecommunication utilities, a deposit required under these rules shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The large telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(6) A new or additional deposit, calculated as provided by sections (4) and (5) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The energy or large telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The energy or large telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service;

(c) For energy utilities, a customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit; or

(d) For large telecommunications utilities, if service records for the customer indicates unbilled intraLATA toll activity under the utilities' tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the energy or large telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) An energy or large telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1981, f. & cert. ef. 8-10-81 (Order No. 81-498); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-21-040; PUC 5-1989(Temp), f. & cert. ef. 4-19-89 (Order No. 89-493); PUC 13-1989, f. & cert. ef. 9-12-89 (Order No. 89-1173); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0205

Deposit Payment Arrangements for Residential Electric and Gas Utility Service

(1) When a gas or electric utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment. Except for the last payment, installments shall be the greater of \$30 or one-third of the deposit.

(2) When an installment payment or a deposit is made with a payment for gas or electric utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) When the gas or electric utility requires the customer or applicant to pay an additional deposit, the customer shall pay one-third of the total deposit, or at least \$30, whichever is greater, within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer or applicant enters into an installment agreement for payment of a deposit under section (1) of this rule, the gas or electric utility shall provide written notice explaining its deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer or applicant that utility service will be disconnected if the gas or electric utility does not receive the payment when due. The notice shall also set forth the name and telephone number of the appropriate unit within the Department of Human Services or other agencies which may be able to help the customer obtain financial aid.

(5) If a customer fails to abide by the terms of a deposit installment agreement, the gas or electric utility may disconnect service after a five-day

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notice. The notice shall contain the information set forth in OAR 860-021-0405(2)(a), (b), (c), (e), (f), and (g) and shall be served as required by OAR 860-021-0405(5).

(6) When good cause exists, the Commission or the gas or electric utility may provide more liberal arrangements for payment of deposits than those set forth in this rule. The gas or electric utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit occurs, the customer disconnected shall pay the full amount of the deposit, any applicable reconnection fee, late-payment fee, and one-half the past due amount before service is restored. The customer shall pay the balance of the past-due amount within 30 days of the date service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments, the full deposit, and other applicable fees.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983 f. & ef. 10-7-83 (Order No. 83-623); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0206

Payment Arrangements for Deposit and Installation Charges for Residential Telecommunications Utility Service

(1) Time payments for deposits and nonrecurring charges shall be limited to charges for residential service and intraLATA toll. When the large telecommunications utility requires deposits and/or nonrecurring charges to establish or reestablish service from an applicant, the applicant shall pay one-fourth of the deposit and/or nonrecurring charges immediately. The customer or applicant shall pay the remainder in three equal installments, which shall be due 30, 60, and 90 days, respectively, after the date the payment agreement is executed. Except for the last payment, installments shall be the greater of \$20 or one-fourth of the total deposit. In communicating with an applicant to establish service or to require a deposit and/or nonrecurring charge, the large telecommunications utility shall inform the applicant of the availability of Link-Up America and Oregon Telephone Assistance Program benefits and inform the applicant that details are available from the Commission.

(2) When a customer makes an installment payment or a deposit with a payment for telecommunications utility service, the large telecommunications utility shall first apply the amount paid toward the amount due for deposit and/or nonrecurring charges.

(3) A customer who is required to pay an additional deposit shall pay one-fourth of the total deposit within five days to the large telecommunications utility. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer enters into an installment agreement for payment of a deposit and/or nonrecurring charges under section (1) of this rule, the large telecommunications utility shall provide written notice explaining its deposit and nonrecurring charges requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer that utility service will be disconnected if payment is not received when due.

(5) If a customer fails to abide by the terms of an installment agreement, the large telecommunications utility may disconnect local exchange service after providing a written five-day notice. The notice shall contain the information set forth in OAR 860-021-0505(3)(a) through (e) and shall be served as required by in OAR 860-021-0505(4) and (5). In lieu of permanent disconnection, the large telecommunications utility may curtail service pursuant to OAR 860-021-0505(7).

(6) When good cause exists, the large telecommunications utility may provide or the Commission may require, more liberal arrangements for payment of deposits and/or nonrecurring charges than those set forth in this rule. The large telecommunications utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit and/or nonrecurring charges occurs, the customer disconnected shall pay the full amount of the deposit, and/or nonrecurring charges, any applicable reconnection fee, late-payment fee, and past due tariff and price-listed amount before service is restored. A customer may continue with an existing medical certificate time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290 OL 1987

Hist.: PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0210

Interest on Deposits for Residential and Nonresidential Utility Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all energy and large telecommunications utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the energy or large telecommunications utility shall provide the customer documentation showing the date, name of the applicant or customer, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. An energy or large telecommunications utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OR Laws 1987

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-021-0420

Disconnect Visit Charge

A Commission approved fee may be charged whenever a gas or electric utility visits a residential service address intending to reconnect or disconnect service, but due to customer action, the gas or electric utility is unable to complete the reconnection of disconnection at the time of the visit.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & ORS 757.225

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-032-0095

Annual Fees Payable to the Commission by a Competitive Provider

(1) On statement forms prescribed by the Commission, each competitive provider shall provide the requested information for the subject year.

(2) Each competitive provider shall pay:

(a) An annual fee in compliance with OARs 860-011-0020 and 860-011-0023. The annual fee shall be no less than \$100. The payment must be received in the Commission's offices no later than 5 p.m. on the due date.

(b) A late statement fee of \$100, if the Commission has not received the competitive provider's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. 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 of \$25 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) For retail intrastate service rendered on or after January 1, 2000, 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.

(4) Each competitive provider shall:

(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. 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.

(5) 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 shall, at its discretion, recompense the competitive provider with a refund or a credit against annual fees subsequently due.

(6) If the Commission receives a public record request for the confidential information required by this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

(7) A cooperative that is a competitive provider shall 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 shall 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

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 shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100;

(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; and

(2) The Commission shall 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 shall 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

860-033-0005

Residential Service Protection Fund Definitions

For the purpose of this division:

(1) "Basic Service" means "basic telephone service" as defined in OAR 860-032-0190(2). For qualifying low-income recipients, basic service also includes access to toll-limitation services.

(2) "Eligible Telecommunications Provider" means a provider of telecommunications service, designated as such by the Commission to

receive universal service support throughout the service area for which the designation is received, who meets the following criteria:

(a) The telecommunications provider must offer the services supported by the federal universal service fund under 47 CFR Section 54.101 as adopted by the FCC on May 8, 1997, in CC Docket 96-45, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications provider throughout the service area;

(b) The telecommunications provider must advertise the availability of such services and the charges thereof using a medium of general distribution;

(c) A cellular, wireless, or other radio common carrier is eligible for designation as an "eligible telecommunications provider" for purposes of the Residential Service Protection Fund program.

(3) "Local Exchange Service" means a "local exchange telecommunications service" as defined in ORS 759.005(1)(c).

(4) "Monthly Billing" means the billing period between the first day and last day of a calendar month.

(5) "Oregon Telephone Assistance Program (OTAP)" means a program established by the Commission that offers reduced local exchange rates to eligible low-income residential customers.

(6) "Outstanding Accounts" means amounts owing to the Commission including, but not limited to, current accounts receivable and accounts, which the Commission has written off through appropriate legal procedures. The term does not include amounts owing to the Commission, which have been lawfully discharged through bankruptcy proceedings or amounts that are the subject of a proceeding pending before the Commission.

(7) "Quarterly Billing" means the billing periods for the four quarters in each calendar year, which are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(8) "Residential Service Protection Fund (RSPF)" means a legislatively approved fund in the Oregon State Treasury.

(9) "RSPF Surcharge" means a specified amount up to 35 cents per month against each paying retail subscriber who has telecommunications service with access to the telecommunications relay service:

(a) The RSPF surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the Oregon Telecommunications Relay Service (OTRS) shall be charged based on software design. For cellular, wireless, or other radio common carriers, the surcharge shall be applied on a per-instrument basis.

(b) The RSPF surcharge does not apply to interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications providers certified pursuant to ORS 759.020, radio common carriers, and interexchange carriers or other services exempt by the Constitution or laws of the United States or the State of Oregon.

(c) The Commission annually shall review the surcharge rate and the balance in the Residential Service Protection Fund and may adjust the amount of the surcharge to ensure the fund has adequate resources but does not exceed six months of projected expenses. The annual review by the Commission shall take place every January.

(10) "Remittance Report" means the RSPF remittance report completed on a form provided by the Commission.

(11) "Toll Limitation Service" means a service provided by eligible telecommunications providers that allows OTAP recipients to elect not to allow the completion of outgoing toll calls from their telecommunications circuits (toll blocking) or to specify a certain toll usage that may be incurred on their telecommunications circuits per month or per billing cycle (toll control).

(12) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the time period runs until the end of the next day which is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

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Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 7-1995(Temp), f. & cert. ef. 8-17-95 (Order No. 95-860); PUC 14-1995, f. & cert. ef. 12-20-95 (Order No. 95-1328); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 18-2000, f. & cert. ef. 10-24-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0006

Monthly and Quarterly RSPF Surcharge Remittance Reports and Fees

(1) Each telecommunications provider shall 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 shall 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 shall collect and submit the RSPF surcharge fee and remittance report monthly.

(b) Each telecommunications provider who has fewer than 1,000 customers shall collect the RSPF surcharge fee and submit the remittance report either monthly or quarterly at the telecommunication provider's discretion.

(2) Each telecommunications provider shall submit the remittance report and surcharge fee with no exceptions. If the surcharge collected is \$0.00, the telecommunications provider shall 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 Commission shall impose a late payment fee equal to 9 percent of the unpaid amount of the unpaid fee, up to a maximum of \$500. The Commission shall 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 Commission shall impose a late report fee of \$100. The Commission shall 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 shall add interest on the unpaid amount at the rate of 9 percent per annum from the day payment was due until paid.

(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.

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

860-033-0007

Estimated Report

(1) For any time period for which a telecommunications provider fails to file a remittance report as required by these rules, the Commission may make a proposed surcharge assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that reporting period.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the surcharge fee was originally due.

(4) The Commission's proposed assessment for a non-filed RSPF remittance report must be made no later than 3 years after the remittance report's due date.

(5) Notwithstanding section (4) of this rule, if the telecommunications provider did not hold a certificate of authority, if one was required by law, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed remittance report. The proposed assessment shall include all late payment fees as specified in this rule.

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its remittance report. The Commission shall accept the report and calculate late report fees, late payment fees, and interest in accordance with the original due date for the time period specified in these rules for the report and payment, if any, accompanying the report.

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

860-033-0008

Commission Audit and Proposed Assessment

(1) For any time period for which a telecommunications provider's remittance report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and appropriate.

(2) The Commission's audit must begin no later than three years after the remittance report's due date. After completion of the audit, the Commission may propose to assess an additional surcharge amount due from the telecommunications provider.

(3) If a telecommunications provider failed to file a remittance report the time period specified in these rules, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original surcharge amount was due.

(5) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, if one were required by law, the Commission shall have an unlimited time to audit the telecommunications provider for the surcharge fees.

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

860-033-0009

Notice and Hearing on Proposed Orders

(1) The Commission shall provide written notice of a proposed order or proposed assessment upon the telecommunications provider, as well as a proposal to revoke or suspend the telecommunications provider's certificate of authority. The Commission will allow the telecommunications provider an opportunity to request a hearing before the Commission on the notice of proposed action.

(2) Within 30 days after the service of the notice of a proposed order, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days' notice of the time and place of a hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the notice of proposed action. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings.

(4) A Commission decision regarding the outcome of the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

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

860-033-0010

OTAP Applicability

The Oregon Telephone Assistance Program (OTAP) is designed to provide reduced rates for an eligible telecommunications provider's basic service for low-income customers who meet eligibility requirements. Reduced rates apply to the single line, or service that is functionally equivalent to a single line, serving the eligible household's principal residence. The surcharge is levied on each local access line. All telecommunications utilities, public utilities, competitive providers, cooperative corporations, and unincorporated associations providing telecommunications service are required to follow these provisions.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0030

OTAP Eligibility

(1) Eligibility for OTAP can be demonstrated by one of the following methods:

(a) Application to the Commission by an individual currently receiving benefits from the federal food stamp program or receiving benefits from

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another low-income public assistance program for which eligibility requirements do not exceed 135 percent of the poverty level;

(b) Certification by an agency contracting with the Commission to qualify an individual as meeting eligibility criteria; or

(c) Certification of eligibility in a public assistance program which the Commission has determined to meet eligibility criteria.

(2) An applicant or recipient is required to furnish his/her social security number before his/her OTAP eligibility can be determined. Failure to do so will result in denial of benefits.

(3) An applicant must sign a written authorization (OTAP application) permitting the Commission to release necessary information to an eligible telecommunications provider and, as necessary, to the following: Department of Human Services, the applicant's personal representative or a legal guardian.

(4) The Commission must be able to verify an individual's continuing participation in a qualifying program. Continuing OTAP eligibility will be based on periodic recertification by the Commission.

(5) Eligible telecommunications providers and OTAP shall treat OTAP data as confidential information, to the extent allowed by law, to be used for OTAP program purposes only.

(6) An applicant or recipient is required to be the named subscriber to the local telecommunication service in order for that household to qualify for OTAP benefits. The Commission may waive this requirement if it determines that good cause exists.

(7) An applicant who did not receive his or her benefits from a telecommunications provider after being approved by the Commission may be reimbursed up to a maximum of one year of OTAP benefits credited to their telephone line. Applicants must submit their request to the Commission in writing in order to receive the OTAP credit.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 11-1995, f. & ef. 11-27-95 (Order No. 95-1217); PUC 6-1997, f. & ef. 1-10-97 (Order No. 97-005); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0045

OTAP Compensable Expenses

(1) Each eligible telecommunications provider shall be compensated from the Residential Service Protection Fund for specific costs incurred as a consequence of participating in OTAP. Eligible telecommunications providers shall request compensation by submitting invoices no later than 21 calendar days after the end of the billing period. A telecommunications provider with 1,000 or more OTAP customers must submit the invoice monthly. A telecommunications provider with less than 1,000 monthly customers shall submit an invoice either monthly or quarterly. Funds will be disbursed to a provider no more than 20 calendar days after the Commission receives a properly filed invoice:

(a) Each eligible telecommunications provider will be compensated for benefit costs. Compensation will equal the revenue the provider foregoes by providing local service to qualified low-income customers at a reduced rate. The telecommunications provider's invoices shall indicate the number of qualified customers who received the OTAP benefit during a specified period and the amount of revenue foregone during the same period;

(b) Each eligible telecommunications provider shall receive compensation for each customer it enrolls for the OTAP benefit at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers who were enrolled during a specified period;

(c) Each eligible telecommunications provider shall be compensated for the cost of preparing special administrative reports for OTAP. The telecommunications provider's invoices shall include the number and type of administrative reports prepared for the Commission during a specified period; and

(d) An eligible telecommunications provider may not authorize OTAP benefits for customers without Commission approval. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission.

(e) An eligible telecommunications provider shall be compensated for the cost of preparing and distributing educational materials about OTAP at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers receiving the materials and include an itemized accounting of the cost of preparing the materials. The

Commission must approve all expenses before the materials are distributed to customers.

(2) The Commission will determine the compensation amount based on the costs an eligible telecommunications provider would reasonably incur to accomplish each task referred to in section (1) of this rule.

(3) Each eligible telecommunications provider providing low-income telephone assistance under approved alternative plans shall be compensated for benefit and administrative costs. However, compensation from the Residential Service Protection Fund shall be no greater than the compensation providers would have received had they participated in OTAP.

(4) Governmental agencies contracting with the Commission to certify the eligibility requirements of individuals or to perform other administrative functions authorized by these rules shall be compensated based on the terms of the contract.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0050

Link-Up America Eligibility

(1) The Commission adopts the Federal Communications Commission (FCC) eligibility criteria for Link-Up America.

(2) Each applicant and recipient must:

(a) Be certified by an organization approved by the Commission as meeting the requirements of an established income test for a low-income assistance program offered through the Department of Human Resources or qualify for the Low Income Energy Assistance Program (LIEAP). LIEAP recipients must provide the Commission a document demonstrating their participation in the program.

(b) Submit their Link-Up America applications to the Commission. The Commission will forward their application to the applicant's telecommunication provider.

(c) Furnish his/her social security number before his/her eligibility in Link-Up America can be determined. Failure to do so will result in denial of benefits.

(2) Security deposit requirements will be waived for residential applicants who are eligible for Link-Up America and who satisfy the credit requirements of OAR 860, division 021, or if the qualifying low-income consumer voluntarily elects toll blocking from the provider, where available.

(3) If an applicant does not meet the credit requirements of OAR 860, division 021, or has an outstanding bill with the eligible telecommunications provider, the deposit will not be waived and the applicant will be subject to the conditions and payment arrangements contained in OAR 860, division 021.

(4) An eligible telecommunications provider shall offer a 50 percent reduction in its tariffed line connection charge, up to a maximum reduction of \$30, to eligible Link-Up America applicants. This assistance does not cover special features, services, or deposits. Eligible residents living on federally recognized tribal lands shall receive an additional reduction of up to \$70 to cover 100% of the charges between \$60 and \$130 for a total maximum support amount of \$100 per qualifying low-income subscriber on tribal lands with initial connection or line extension costs of \$130 or more as prescribed in FCC Order No. 00-208, Paragraph 59. Tribal Lifeline recipients must contact their telecommunications providers directly to submit Link-Up America Applications.

(5) An eligible telecommunications provider shall offer a deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to \$200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the provider customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(6) An eligible telecommunications provider's Link-Up America program shall allow a customer to receive the benefit of the Link-Up America program for a second or subsequent time only for a principal place of residence with an address different from the address at which the Link-Up America assistance was previously provided.

(7) An eligible telecommunications provider shall seek reimbursement from the National Exchange Carrier's Association (NECA), an authorized agent of the FCC.

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(8) Failure by a customer to make payments as agreed upon with the eligible telecommunications provider will result in disconnection of service pursuant to OAR 860, division 021.

(9) Upon FCC approval of a Commission OTAP and Link-Up America plan, an eligible telecommunications provider subject to Oregon Law 1987, Chapter 290, shall file appropriate tariffs or price lists with the Commission.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 756, 759 & Ch. 290 OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290 OL 1987
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 8-1989, f. & cert. ef. 6-8-89 (Order No. 89-724); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & cert. ef. 4-18-96 (Order 96-102); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0505

TDAP Definitions

(1) "Adaptive Equipment" means special telecommunications equipment that permits a person with a disability, other than a hearing- or speech-impairment, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment, and/or signal device.

(3) "Assistive Telecommunication Device" means a device that uses a keyboard, acoustic coupler, display screen, Braille display, speakerphone, or amplifier to enable people who are deaf, deaf-blind, severely hearing impaired, severely speech impaired or who have a disability that prevents them from using a standard phone to communicate effectively on the telephone.

(4) "Assistive Telecommunication Device or Adaptive Equipment Maintenance Service" means a facility authorized by the Commission to repair any reasonably damaged assistive telecommunication device or adaptive equipment.

(5) "Authorized Distributor" means a facility authorized by the Commission to distribute assistive telecommunication devices and adaptive equipment.

(6) "Disabled" means a physical condition other than hearing or speech impairment that requires use of adaptive equipment before a person can use the telephone.

(7) "Distribution Center" means a facility authorized by the Commission to distribute adaptive equipment.

(8) "Household" means all occupants living in one dwelling.

(9) "Local Exchange Carrier" means a "telecommunications utility" as defined in ORS 759.005(1)(c) or cooperative association that switches and transports communications between customers linked inside an exchange.

(10) "Recipient" means a person whose application for assistive telecommunication devices or adaptive equipment has been approved by the Commission and who receives assistive telecommunication devices or adaptive equipment.

(11) "TDAP Manager" means a person employed by the Commission to implement the Telecommunication Devices Access Program (TDAP).

(12) "TeleBraille" means a two-unit system designed for face-to-face and telephone communication through the use of a modified assistive telecommunication device equipped with a typewriter keyboard, visual display, and acoustical coupler, linked to a Braille display with a 20-cell dynamic Braille display.

(13) "Telecommunication Devices Access Program or TDAP" means a program established by the Commission which with the Telecommunication Devices Access Program Advisory Committee's advice provides assistive telecommunication devices or adaptive equipment and dual party relay services at no additional cost beyond telephone service for customers who are deaf, severely hearing-impaired, severely speech-impaired, or deaf-blind.

(14) "Telephone Relay Center" means a facility authorized by the Commission to provide telephone relay service.

(15) "TTY" is a telecommunication device for the deaf that uses a keyboard and a one-inch screen to transmit messages back and forth through a telephone line.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0530

TDAP Eligibility

(1) An applicant is eligible to receive assistive telecommunication devices or adaptive equipment from the TDAP if the applicant:

(a) Shows evidence of regular access to a specific telephone number in Oregon; and

(b) Shows he or she is an Oregon resident; and

(c) Submits to the Commission a written form:

(A) Provided by the TDAP, and

(B) Signed by a licensed physician, audiologist, speech pathologist, vocational rehabilitation counselor from the Oregon State Vocational Rehabilitation Division, or a person certified by the program as qualified to determine whether a person meets the eligibility requirements of TDAP, and

(C) A statement that the applicant is deaf, severely hearing-impaired, severely speech-impaired, deaf-blind, or has a disability that prevents him or her from using a standard phone.

(d) For an applicant under 18 years of age, or an adult applicant who is determined to require a legal guardian, a parent or a guardian must apply on the applicant's behalf and assume full responsibility for the assistive telecommunication device or adaptive equipment and services. Emancipated minors are considered adults. Applicants under the age of 18 years of age must sign a new Conditions of Acceptance form within 30 calendar days after they become 18 years of age. Failure to do so will result in the Commission billing the parent or guardian for the device.

(2) The TDAP shall only approve applications for persons who cannot use the telephone for expressive or receptive communication. The TDAP shall provide equipment suitable to access the telecommunications system.

(3) The TDAP shall provide one assistive telecommunication device or adaptive device per household. However, two assistive telecommunication devices or adaptive devices may be provided to a household if more than one eligible person permanently resides in the household.

(4) If the Commission purchases new devices that may benefit a current TDAP recipient more than the Commission-provided equipment the recipient is currently using, the Commission will allow the recipient to use both the current and new device for a two-week trial period. The recipient must return the equipment that is less beneficial to the Commission within five business days after the end of the trial period. If the recipient fails to return the equipment, the recipient is responsible for the cost of the more expensive equipment.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030, & Ch. 290, OL 1987
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0535

Ownership and Identification of Assistive Telecommunication Devices or Adaptive Equipment

The following are ownership and identification procedures:

(1) All assistive telecommunication devices or adaptive equipment purchased under the TDAP will remain the property of the State of Oregon. The distributors and distribution centers shall record the serial number of each assistive telecommunication device or adaptive equipment. A distribution center's failure to comply may terminate the center's contract with the State of Oregon.

(2) Any assistive telecommunication device or adaptive equipment distributed to eligible applicants under this program shall not be sold, loaned, or otherwise transferred from the possession of the original recipient. Unauthorized transfers will subject the recipient to repossession of the assistive telecommunication device or adaptive equipment, prosecution, or liability for the full purchase price of the equipment.

(3) Any recipient who moves to a different address within Oregon must report the new address to the Commission within 30 calendar days of the move. A recipient who moves out of Oregon, or who is no longer receiving telephone services, shall return all assistive telecommunication devices or adaptive equipment received through the TDAP to a distribution center or the Commission within 30 calendar days after termination of local exchange service or before leaving Oregon, whichever is sooner. However, a recipient may take assistive telecommunication devices or adaptive equipment on travel outside Oregon. The recipient must obtain written permission from the TDAP Manager if the travel will be for more than 90 calendar days.

(4) Recipients must sign the Conditions of Acceptance Agreement before they receive an assistive telecommunication device or adaptive equipment.

(5) Stolen Equipment or Equipment Damaged by Acts of Nature or Disasters:

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(a) If the equipment is stolen, a recipient must notify the local law enforcement agency within 24 hours of the time the recipient discovers the theft. A recipient shall forward a copy of the police report to the TDAP Manager or a distribution center within five Commission business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the Commission's TDAP Manager within two Commission business days after the theft was reported. The recipient shall forward his/her written report to the TDAP Manager that describes the theft and includes any witnesses' names, addresses, and telephone numbers.

(b) If the equipment is stolen outside the United States, the recipient must submit a copy of the police report to the TDAP Manager within five Commission business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the TDAP Manager within two Commission business days after returning to Oregon. The recipient shall forward to the TDAP Manager his/her written report that includes the purpose of the recipient's travel; includes any witnesses' names, addresses, and telephone numbers; and describes the theft.

(c) If the equipment is damaged due to acts of nature or disasters that include floods, storms, fire, or other acts of nature, the recipient must submit an insurance, fire department, police report, or other equivalent documentation about the event within five business days after the date the event occurred.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 860-033-0535(5) Renumbered to 860-033-0536; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0536

TDAP Recipients' Liability

The recipient will be held financially responsible for any damage to the equipment that is not caused by normal wear and tear or acts of nature or disasters. To avoid financial responsibility for damaged equipment, the recipient must prove to the Commission that the damage was caused by normal wear and tear or acts of nature or disasters. The Commission will also hold the recipient financially responsible for the full replacement cost of the equipment if the recipient moves out of Oregon without returning the equipment.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 Renumbered from 860-033-0535(5); PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0537

Billing Recipients for Assistive Telecommunication Devices or Adaptive Equipment

(1) Invoices:

(a) The Commission shall mail two invoice notices, at least 30 calendar days apart, indicating the amount of and the reason for such invoice to the responsible recipient at the last known address. The recipient shall have 30 calendar days to respond to each notice.

(b) The invoiced recipient may call or meet with the TDAP Manager to discuss and attempt to resolve the invoices. At the TDAP Manager's discretion, further investigation may be initiated. If the investigation finds that the invoice was issued in error (for example, there is no verifiable reason for the invoice having been sent), the invoice may be canceled.

(c) If the Commission does not receive payment, the TDAP Manager shall begin the complaint process pursuant to ORS 756.500.

(2) Incorrect address: When an invoice is returned with an incorrect address and the invoiced recipient has not notified the TDAP Manager of an address change as required by TDAP rules, the amount billed to the recipient shall become a liquidated debt.

(3) Recipients and applicants who request equipment must have paid all outstanding accounts with the Commission.

(4) Billing procedures for a household with more than two assistive telecommunication devices or adaptive equipment:

(a) The Commission shall mail a letter to the recipient who most recently applied for the equipment, asking the recipient to return the equipment within 30 calendar days, and

(b) If the Commission does not receive a response, the Commission shall send an invoice to the recipient. If the recipient does not pay the amount billed, the Commission may bill one or all the recipients in the household to either regain possession of the State of Oregon's equipment or receive the full replacement value of such equipment.

(c) When the Commission receives notice that a recipient is deceased, the Commission shall request that the estate return the equipment. The Commission may bill the estate for the cost of replacing the equipment if it has not been returned, or is returned in damaged condition.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0540

Distribution Procedures for Assistive Telecommunication Devices or Adaptive Equipment

(1) Subject to appropriation and approval of expenditures for assistive telecommunication devices or adaptive equipment and services purchased by the Commission, the Commission may contract with any governmental agency or other entity to establish authorized for assistive telecommunication devices or adaptive equipment distributors, an assistive telecommunication devices or adaptive equipment distribution center network, and an assistive telecommunication devices or adaptive equipment maintenance center network.

(2) If demand exceeds supply, the Commission will distribute assistive telecommunication devices or adaptive equipment to customers on a first-come first-serve basis.

(3) The authorized distributors shall inform the TDAP in writing of all incoming and outgoing shipping orders of assistive telecommunication devices or adaptive equipment. The written information shall include the serial number they engraved on all assistive telecommunication devices or adaptive equipment.

(4) The assistive telecommunication devices or adaptive equipment distribution centers shall inform the TDAP in writing of all incoming and outgoing shipping of assistive telecommunication devices or adaptive equipment with the engraved serial numbers.

(5) Upon notice from the TDAP Manager, the distribution centers shall distribute assistive telecommunication devices or adaptive equipment to eligible applicants.

(6) The distribution centers shall require all applicants, including parents and legal guardians, to sign the Conditions of Acceptance Agreement form supplied by the TDAP before they are provided an assistive telecommunication device or adaptive equipment. The distribution centers and maintenance centers shall forward all forms to the TDAP Manager.

(7) If needed, the Commission will contract with an agency or individual(s) to provide training on assistive telecommunication devices or adaptive equipment to specialized populations.

(8) Neither authorized assistive telecommunication devices or adaptive equipment distributors, distribution centers, maintenance centers, nor the TDAP shall provide replacement paper for the assistive telecommunication device or adaptive equipment, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

(9) The distribution center shall disseminate a copy of telephone rate reduction application forms, mailing forms for purchasing TTY paper, and telephone relay service information handouts.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 16-2004, f. & cert. ef. 12-1-04

860-033-0045

OTAP Compensable Expenses

(1) Each eligible telecommunications provider shall be compensated from the Residential Service Protection Fund for specific costs incurred as a consequence of participating in OTAP. Eligible telecommunications providers shall request compensation by submitting invoices no later than 21 calendar days after the end of the billing period. A telecommunications provider with 1,000 or more OTAP customers must submit the invoice monthly. A telecommunications provider with less than 1,000 monthly customers shall submit an invoice either monthly or quarterly. Funds will be disbursed to a provider no more than 20 calendar days after the Commission receives a properly filed invoice:

(a) Each eligible telecommunications provider will be compensated for benefit costs. Compensation will equal the revenue the provider foregoes by providing local service to qualified low-income customers at a reduced rate. The telecommunications provider's invoices shall indicate the number of qualified customers who received the OTAP benefit during a specified period and the amount of revenue foregone during the same period;

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(b) Each eligible telecommunications provider shall receive compensation for each customer it enrolls for the OTAP benefit at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers who were enrolled during a specified period;

(c) Each eligible telecommunications provider shall be compensated for the cost of preparing special administrative reports for OTAP. The telecommunications provider's invoices shall include the number and type of administrative reports prepared for the Commission during a specified period; and

(d) An eligible telecommunications provider may not authorize OTAP benefits for customers without Commission approval. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission.

(e) An eligible telecommunications provider shall be compensated for the cost of preparing and distributing educational materials about OTAP at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers receiving the materials and include an itemized accounting of the cost of preparing the materials. The Commission must approve all expenses before the materials are distributed to customers.

(2) The Commission will determine the compensation amount based on the costs an eligible telecommunications provider would reasonably incur to accomplish each task referred to in section (1) of this rule.

(3) Each eligible telecommunications provider providing low-income telephone assistance under approved alternative plans shall be compensated for benefit and administrative costs. However, compensation from the Residential Service Protection Fund shall be no greater than the compensation providers would have received had they participated in OTAP.

(4) Governmental agencies contracting with the Commission to certify the eligibility requirements of individuals or to perform other administrative functions authorized by these rules shall be compensated based on the terms of the contract.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-034-0030

Applications for Service from a Small Telecommunications Utility

(1) An application for telecommunications utility service must be made when:

(a) Service is requested by a person who has not previously been served by the small telecommunications utility; or

(b) Service has been involuntarily discontinued in accordance with these rules, and the person later seeks to have service restored.

(2) An application for telecommunications utility service may be requested when service has been voluntarily discontinued, and a request to restore service has not been made within 20 days.

(3) An application is a request for telecommunications utility service. The small telecommunications utility shall not accept an application for service until the applicant:

(a) Establishes credit as set forth in OAR 860-034-0140; or

(b) Pays a deposit or deposit installment to the small telecommunications utility.

(3) A small telecommunications utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the small telecommunications utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the small telecommunications utility and the customer.

(7) A small telecommunications utility shall protect the identity of a customer at risk of domestic violence or other abuse. At its option, the small telecommunications utility shall provide the identity protection by allowing the customer to use a modified or alternative name for a directory listing or by providing, at no cost, a non-published listing in accordance with other applicable tariff provisions for the length of time the endangerment exists. A customer requesting a nonpublished listing under this section must provide:

(a) A copy of a court order that restrains another person from contact with the customer by reason of risk of domestic violence, as defined in ORS 135.230, or unwanted sexual contact, as defined in ORS 163.305, abuse, as defined by the Elderly and Disabled Person Abuse Prevention Act, ORS 124.005 et seq., or stalking, as defined by ORS 163.730 et seq.; and

(b) An affidavit, stating that the customer is financially unable to pay for the nonpublished listing.

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 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-034-0090

Interruption of Utility Service

(1) Each small telecommunications utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) Each small telecommunications utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each small telecommunications utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. In determining reasonable notice, the small telecommunications utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

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 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

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 shall provide the requested information for the subject year.

(2) Each small telecommunications utility shall pay:

(a) An annual fee in compliance with OARs 860-011-0020 and 860-011-0023. The annual fee shall be no less than \$100. The payment must be received in the Commission's offices no later than 5 p.m. on the due date.

(b) A late statement fee of \$100, if the Commission has not received the utility's statement form, completed in compliance with section (1) of

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this rule, on or before 5 p.m. 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 of \$25 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) For retail intrastate service rendered on or after January 1, 2000, 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.

(4) Each small telecommunications utility shall:

(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.

(5) 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 shall, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(6) If the Commission receives a public record request for the confidential information required by this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS."

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

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 shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission shall 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 shall 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 & ORS 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

860-034-0110

Due and Payable Period

(1) Each small telecommunications utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of final bills, to the due date, is not less than 15 days.

(2) If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

Stat. Auth.: ORS 183, 756 & ORS 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 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-034-0140

Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous telecommunications utility service during the preceding 24 months and the small telecommunications utility can verify, either by contacting the former utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the small telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the small telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a small telecommunications utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon telecommunications utility or telecommunications cooperative, as defined in ORS 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon telecommunications utility or telecommunications cooperative as defined in ORS 759.005, was found to have tampered with other telecommunications utility facilities, or was otherwise found to have diverted telecommunications utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the small telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for telecommunications service shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The small telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

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(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The small telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The small telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service; or

(c) If service records for the customer indicates unbilled intraLATA toll activity under the small telecommunications utility's tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the small telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A small telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-034-0160

Interest on Deposits for Residential and Nonresidential Utility Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all small telecommunications utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the small telecommunications utility shall provide the customer documentation showing the date, name of the applicant or customer, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A small telecommunications utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0035

Applications for Water Utility Service

(1) An application for water utility service must be made when:

(a) Service is requested by an applicant who has not previously been served by the water utility;

(b) Service has been involuntarily discontinued in accordance with these rules and the customer or applicant later seeks to have service restored; or

(c) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.

(2) An application is a request for water utility service. The water utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-036-0040. However, the water utility may refuse a service application under OAR 860-036-0080.

(3) A water utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the water utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the water utility and the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0040

Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water utility service during the preceding 24 months and the water utility can verify, either by contacting the former water utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water utility service from it or any Oregon water utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water utility as defined in ORS 757.005, was found to have tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

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(5) Deposits for water utility service shall not exceed one-sixth the amount of reasonable billing for one year at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior year or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water utility discovers that the customer has stolen water utility service, has tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0050

Interest on Deposits for Residential and Nonresidential Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all water utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the water utility shall provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A water utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0075

Interruption of Service

(1) A water utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) A water utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the water utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each water utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the water utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

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

Stats. Implemented: ORS 756.040

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 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0095

Annual Fees Payable to the Commission by a Water Utility

(1) On statement forms prescribed by the Commission, each water utility shall provide the requested information for the subject year.

(2) The annual fee payment must be received by the Commission no later than 5 p.m. on the due date.

(3) Each water utility shall pay:

(a) An annual fee in compliance with OARs 860-011-0020 and 860-011-0024.

(b) A minimum annual fee of \$10.

(c) A late statement fee of \$100, 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. on the fifth business day following the due date.

(d) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(e) A service fee of \$25 for each payment returned for non-sufficient funds.

(f) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(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 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission shall, 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

860-036-0097

Estimated Annual Fees Payable to the Commission by a Water Utility

(1) For any year in which a water 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 shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission shall provide written notice of the proposed annual fee to the water utility.

(3) Within 30 days after service of the notice of proposed annual fee, the water 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 water utility has not filed a petition by the end of the 30-day period, the Commission shall 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 water utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission shall 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

860-036-0115

Customer Requested Meter Test

(1) Any customer may ask the water utility to test the water meter used to measure the customer's service. The water utility shall make such test within 20 working days of the request at no cost to the customer. If a customer requests more than one meter test within any 12-month period, the water utility may charge the customer to recover the reasonable cost of the test. The water utility may not charge the customer if the meter is found

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to register outside the 2 percent accepted tolerance standard under normal operating conditions.

(2) A customer or a designated representative shall have the right to be present at any meter test. The test shall be conducted at a mutually acceptable time during regular business hours.

(3) The water utility must provide a written report to the customer within 10 working days from the date the meter test showing the customer's name, the request date, the address where the meter is installed, the meter's identification number, the date tested, and the test result.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

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 16-2003, f. & cert. ef. 10-1-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-036-0125

Due and Payable Period; Time-Payment Agreements for Residential Service

(1) Each water utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of the final bill, to the due date is not less than 15 days. If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

(2) A water utility may not disconnect residential service for non-payment if a customer enters into a written time-payment plan. A water utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a leveled-payment plan and an equal-pay arrearage plan.

(3) A customer who selects a leveled-payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The monthly installment plan shall be reviewed by the water utility periodically. If necessary, due to changing rates or variations in the amount of service used by the customer, the installment amount may be adjusted in order to bring the account into balance within the time period specified in the original agreement.

(b) If a customer changes service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other scheduled or tariffed charges associated with the change in residence, the water utility shall recalculate the customer's deposit or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall be required to pay all past-due installments, together with any other applicable charges before service is provided at the new residence.

(4) A customer who selects an equal-pay arrearage plan will pay a down payment equal to 1/12 the amount owed for past water utility service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer). Each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for water utility service. If a customer changes service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the water utility provides service at the new address.

(5) The water utility and customer may agree in writing to an alternate payment arrangement, provided the water utility first informs the customer of the availability of the payment terms set forth in sections (3) and (4) of this rule.

(6) If a customer fails to abide by the time-payment agreement, the water utility may disconnect service after serving a 15-day disconnect notice. The notice shall comply with OAR 860-036-0245, except that subsection (5)(d) shall not be applicable. Such customers shall not be eligible for a renewal or renegotiation of a time-payment plan.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

860-037-0030

Applications for Water/Wastewater Utility Service

(1) An application for water/wastewater utility service must be made when:

(a) Service is requested by an applicant who has not previously been served by the water/wastewater utility;

(b) Service has been involuntarily discontinued in accordance with these rules and the customer or applicant later seeks to have service restored; or

(c) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.

(2) An application is a request for water/wastewater utility service. The water/wastewater utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-037-0035. However, the water/wastewater utility may refuse a service application under OAR 860-037-0075.

(3) A water/wastewater utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the water/wastewater utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the water/wastewater utility and the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-037-0035

Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water/wastewater utility service type during the preceding 24 months and the new water/wastewater utility can verify, either by contacting the former water/wastewater utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water/wastewater utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water/wastewater utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water/wastewater utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

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(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water/wastewater utility service from it or any Oregon water/wastewater utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water/wastewater utility as defined in ORS 757.005, was found to have tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water/wastewater utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water/wastewater utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water/wastewater utility service shall not exceed one-sixth the amount of reasonable billing for 12 months at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior 12 months or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water/wastewater utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water/wastewater utility discovers that the customer has stolen water/wastewater utility service, has tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water/wastewater utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water/wastewater utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-037-0045

Interest on Deposits for Residential and Nonresidential Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise water/wastewater utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the water/wastewater utility shall provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will

be prorated. A water/wastewater utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-037-0070

Interruption of Service

(1) A wastewater utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the date, time, duration, and cause of interruption, remedy, and steps taken to prevent recurrence.

(2) A wastewater utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the wastewater utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each wastewater utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the wastewater utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

860-037-0095

Annual Fees Payable to the Commission by a Wastewater Utility

(1) On statement forms prescribed by the Commission, each wastewater utility shall provide the requested information for the subject year.

(2) The annual fee payment must be received by the Commission no later than 5 p.m. on the due date.

(3) Each wastewater utility shall pay:

(a) An annual fee in compliance with OARs 860-011-0020 and 860-011-0024.

(b) A minimum annual fee of \$10. The payment must be received by the Commission no later than 5 p.m. on the due date.

(c) A late statement fee of \$100, 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. on the fifth business day following the due date.

(d) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(e) A service fee of \$25 for each payment returned for non-sufficient funds.

(f) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(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 shall, 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

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

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based upon any information available to the Commission. The proposed annual fee shall:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee of \$100; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission shall 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 Commission shall 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 wastewater utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission shall 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

860-037-0110

Due and Payable Period; Time-Payment Agreements for Residential Service

(1) Each wastewater utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of the final bill, to the due date is not less than 15 days. If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

(2) A wastewater utility may not disconnect residential water service for nonpayment of wastewater service charges if a customer enters into a written time-payment plan. A wastewater utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a levelized-payment plan and an equal-pay arrearage plan.

(3) A customer who selects a levelized-payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The monthly installment plan shall be reviewed by the wastewater utility periodically. If necessary, due to changing rates or variations, the installment amount may be adjusted in order to bring the account into balance within the time period specified in the original agreement;

(b) If a customer changes his/her service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other scheduled or tariffed charges associated with the change in residence, the wastewater utility shall recalculate the customer's deposit or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall be required to pay all past-due installments, together with any other applicable charges before service is provided at the new residence.

(4) A customer who selects an equal-pay arrearage plan will pay a down payment equal to 1/12 the amount owed for past water/wastewater utility service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer). Each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for wastewater service. If a customer changes his/her service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the wastewater utility provides service at the new address.

(5) The wastewater utility and customer may agree in writing to an alternate payment arrangement, provided the wastewater utility first informs the customer of the availability of the payment terms set forth in sections (3) and (4) of this rule.

(6) If a customer fails to abide by the wastewater time-payment agreement, the wastewater utility may disconnect water service after serving a

15-day disconnect notice. The notice shall comply with OAR 860-037-0245, except that subsection (5)(d) shall not be applicable. Such customers shall not be eligible for a renewal or renegotiation of a time-payment plan.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

Water Resources Department

Chapter 690

Adm. Order No.: WRD 9-2004

Filed with Sec. of State: 11-16-2004

Certified to be Effective: 11-16-04

Notice Publication Date: 6-1-04

Rules Adopted: 690-385-2000, 690-385-2200, 690-385-3110, 690-385-3120, 690-385-3130, 690-385-3140, 690-385-3150, 690-385-3500, 690-385-3520, 690-385-3600, 690-385-4000, 690-385-4100, 690-385-4200, 690-385-4300, 690-385-4400, 690-385-4500, 690-385-4580, 690-385-4600, 690-385-4700, 690-385-5600, 690-385-5680, 690-385-5700, 690-385-5800, 690-385-6000, 690-385-7000, 690-385-7100

Rules Repealed: 690-021-0070, 690-021-0100, 690-021-0120, 690-021-0130, 690-021-0400, 690-021-0500, 690-021-0080

Rules Ren. & Amended: 690-021-0000 to 690-385-0010, 690-021-0010 to 690-385-0100, 690-021-0020 to 690-385-3000, 690-021-0030 to 690-385-3100, 690-021-0040 to 690-385-3200, 690-021-0050 to 690-385-3300, 690-021-0060 to 690-385-3400, 690-021-0090 to 690-385-5000, 690-021-0110 to 690-385-5100, 690-021-0140 to 690-385-5200, 690-021-0160 to 690-385-5300, 690-021-0170 to 690-385-5400, 690-021-0200 to 690-385-5500, 690-021-0250 to 690-385-5900, 690-021-0300 to 690-385-7200, 690-021-0350 to 690-385-7400, 690-021-0600 to 690-385-7600, 690-021-0700 to 690-385-7800

Subject: The Water Resources Commission adopted rules relating to District Water Right Transfers (OAR Chapter 690, Division 385). These rules were reorganized and renumbered from OAR Chapter 690, Division 21.

The rules describe the process and procedures the Water Resources Department shall use to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district. The rules implement statutory authority for temporary district water right transfers under ORS 540.570, permanent district water right transfers under ORS 540.580, and the permanent district transfer of water rights due to nonuse under 540.572 - 540.578. The rules also implement permanent district transfer provisions enacted by the Oregon Legislature in 1995, and temporary district transfer provisions enacted in 2001 and 2003.

Rules Coordinator: Adam Sussman—(503) 986-0877

690-385-0010

Purpose

(1) The rules in chapter 690, division 385 establish requirements and procedures that shall be used by the Department to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district pursuant to ORS 540.570 and 540.580.

(2) The rules in chapter 690, division 385 also describe the process by which a district may submit an application to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578.

(3) Water right transfers by districts and other water users that do not fall under the purview of the rules described by chapter 690, division 385 may be made pursuant to ORS 540.510 to 540.532 and OAR 690, division 380.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510, 540.570, 540.572 - 540.578, 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0000, WRD 9-2004, f. & cert. ef. 11-16-04

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690-385-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-08-0001 (Statutory Ground Water Terms), 690-300-010 (Definitions), and 690-380-0100 (Water Right Transfers), apply to the rules in OAR 690, division 385. Where a term is defined in more than one rule, the definition in OAR 690-385-0100 applies.

(1) "Application" means a petition by a district to transfer water rights within district boundaries as used in ORS 540.570 through 540.580.

(2) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553, or a corporation formed under ORS Chapter 554.

(3) "District boundaries" means the extent and fixed limit of district jurisdictional authority under state law described by metes and bounds, public land survey, or assessor's map and tax lot numbers.

(4) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(5) "Full-Time Manager", as used in ORS 540.572 and OAR 690-385-5000, means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.

(6) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(7) "Manager" means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district.

(8) "No Longer Irrigated or Susceptible of Irrigation" means:

(a) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district.

(9) "Notice of Permanent District Transfer" means notification of a change in place of use allowed by a district prior to submitting a transfer application to make the change permanent.

(10) "Point of appropriation" means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right.

(11) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right.

(12) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(13) "Protest" means a written statement expressing disagreement with approval of a transfer application and includes the fee prescribed in ORS 536.050.

(14) "ODFW" means the Oregon Department of Fish and Wildlife.

(15) "Supplemental water right or permit" means an additional water right to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(16) "User" means an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred.

(17) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578, 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0010, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-2000

Application for Transfer

(1) Each application shall be prepared in ink or typewritten on forms acceptable to the Department, or in a digital format acceptable to the Department. Applications shall contain the following information about the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District's name, mailing address, and telephone number.

(b) Type of change(s) proposed.

(c) Name(s) appearing on permit, certificate, decree or proof of appropriation.

(d) Name(s) of decree and certificate number, if applicable.

(e) Certificate number and Permit number, if applicable.

(f) Source(s) of water (from permit, decree or certificate).

(g) Date(s) of priority.

(h) The authorized existing use of water.

(i) The existing points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(j) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.

(k) The proposed place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.

(l) A map as required in OAR 690-385-2200.

(m) A statement by the district manager or the district's authorized representative that the right has not been forfeited under ORS 540.610 due to nonuse.

(n) A statement that each user affected by the transfer has provided written authorization for the transfer and such authorization is on file with the district.

(o) A statement by the district manager or the district's authorized representative certifying that the information contained in the application and map is true and accurate.

(p) The signature of the district manager or the district's authorized representative.

(q) The appropriate fee as required under ORS 536.050.

(2) The application shall include any additional application requirements necessary to satisfy the specific transfer criteria for the type of transfer the applicant proposes as described in OAR 690-385-3000 (District Temporary Transfers), 690-385-4000 (District Permanent Transfers), and 690-385-5000 (District Permanent Transfers of Water Right for Nonuse).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578, 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-2200

Map Requirements

(1) A map certified by the district but which need not be prepared and stamped by a certified water right examiner shall be included with each district transfer application. The map shall meet the following criteria:

(a) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted except as described in subsection (1)(c) of this rule.

(b) The preferred map size is 8 1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8 1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(c) Notwithstanding subsection (1)(a) and (b) of this rule, a district may submit the following types of map to satisfy the application map requirement:

(A) A digital map on a medium and in a format acceptable to the Department; or

(B) A map containing color elements or up to 30" x 30" in size provided five copies of the map are submitted with the application.

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(d) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record, or of the map previously approved by the department as part of a petition under ORS 541.329;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(e) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(f) The map shall be plotted to the accuracy consistent with the map scale.

(g) The locations of points of diversion and places of use shall be described by bearing and distance, distance north or south and east or west from a recognized survey corner, or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, and clear legend;

(b) The location of each existing and proposed point of diversion or point of appropriation;

(c) For a change in place of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.

(d) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(e) Notwithstanding the requirements of subsection (2)(c) and (d), for place of use transfers involving a water right on a tract of land of five acres or less, the place of use may be identified on a county assessor map provided:

(A) The county assessor map scale is not smaller than 1" = 1,320';

(B) Tax lot boundaries and numbers are legible;

(C) The map contains a title, legend and appropriate location information, such as public land survey corners or quarter-quarter corners, necessary to accurately locate tax lots by public land survey subdivisions; and

(D) Within each affected tax lot, the map lists and clearly identifies the number of acres for each affected water right transferred from or transferred onto the tax lot.

(f) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(g) Notwithstanding the requirements of subsection (1)(f), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features necessary to demonstrate that users are able to put water to beneficial use as proposed by the transfer according to the terms and conditions of the water right;

(h) Notwithstanding the requirements of subsection (1)(f), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(i) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 – 540.578, 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3000

District Temporary Transfer Criteria Renumbered from 690-21-020

(1) Pursuant to ORS 540.570, the Department may approve a district temporary transfer application for a period of time not to exceed one irrigation season provided:

(a) The district has a manager;

(b) The application does not propose to change the type of use except for a right to store water under OAR 690-385-3120 or change a primary right to a supplemental right under OAR 690-385-3130;

(c) The district has, prior to submitting the application, reviewed and approved a request by a user or a user's agent to temporarily transfer the use of water to different locations elsewhere within the boundaries of the district;

(d) The proposed transfer involves the use of water on lands located within the district boundaries;

(e) The proposed transfer will not result in injury or enlargement; and

(f) The land from which water is transferred does not receive water under the water use subject to transfer during the irrigation season in which the change in place of use occurs.

(2) A district may allow proposed changes to occur upon submission of a district temporary transfer application to the Department.

(3) The Department, may at any time upon determining a change allowed by a district under section (2) of this rule or a final order under OAR 690-385-3500 results in injury to an existing water right:

(a) Impose conditions to avoid injury; or

(b) Reject or revoke the change.

(4) Pursuant to ORS 536.900, a district and user may be subject to civil penalties for allowing the use of water on both the land from which water is transferred, and the lands to which the water is transferred, during the same irrigation season or calendar year.

(5) All uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by a district.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0020, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3100

Types of District Temporary Transfers

District temporary transfers include:

(1) A change in place of use;

(2) A change in type of use of a water right to store water;

(3) A change in point of diversion or appropriation;

(4) A change in type of use from a primary right to a supplemental right; and

(5) A change from a surface water point of diversion to a ground water appropriation.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0030, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3110

Temporary Change in Place of Use

(1) A change in place of use may be made as approved by the Department.

(2) When an application for a temporary change in place of use for a primary water right is submitted according to OAR 690-385-3200, the district also shall identify whether the lands described in the application have an appurtenant supplemental water right or permit.

(3) The district also shall apply to temporarily transfer the appurtenant supplemental water right or permit unless the district specifies that the supplemental water right or permit is to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3120

Temporary Change in Type of Use of a Water Right to Store Water

A change in the type of use of a water right to store water (reservoir right) may be made provided:

(1) The district receives the written consent of the operator of the reservoir; and

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(2) The district is a lessor or co-lessor in a proposed instream lease pursuant to OAR 690-077-0077.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.570
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3130

Temporary Change in Type of Use from a Primary Right to a Supplemental Right

(1) A district may apply to change a primary right to a supplemental right. The use of water on the lands covered by a right temporarily diminished to supplemental is restricted to the total rate and duty described by the primary right.

(2) The right temporarily diminished to supplemental may be used only to the extent of any supply deficiency for the primary right.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.570
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3140

Temporary Change in Point of Diversion or Appropriation

(1) As provided in ORS 540.570, a temporary change in point of diversion or appropriation may be made in combination with, or as necessary to facilitate, a change in place of use.

(2) A change in point of diversion is restricted to the same source of surface water. A change in point of appropriation is restricted to the same aquifer.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.570
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3150

Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation

(1) A district may, in accordance with the standards established by ORS 540.531(2), apply to transfer a point of diversion to allow the appropriation of groundwater. An application for such a transfer is subject to the requirements under section (2) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if the district temporary transfer application demonstrates:

(a) The new point of diversion appropriates groundwater from an unconfined aquifer that is hydraulically connected to the authorized surface source;

(b) The use of water at the proposed point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(c) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(d) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(4) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(5) If after approving an application under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of

the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(6) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(7) For any transfer allowed under sections (1) to (5) of this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6).

(8) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects only the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Unconfined aquifer" means an aquifer in which the pressure at the upper surface of saturation is equal to atmospheric pressure.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.570
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3200

District Temporary Transfer Applications

(1) Each district temporary transfer application shall contain the standard information required by OAR 690-385-2000.

(2) Pursuant to ORS 540.570(3), a district temporary transfer application shall include a statement certifying the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right.

(3) In addition to the standard application information required under OAR 690-385-2000, temporary district transfer applications shall include the following information:

(a) For a change in point of diversion or appropriation, or a change from surface water point of diversion to ground water appropriation, the application shall include:

(A) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(B) If the request is for a change in point of appropriation, or a change in point of diversion to a ground water appropriation (well), copies of water well reports for the authorized and proposed point of appropriation. Each water well report shall be labeled to correctly identify and locate the well, and identify the well report as either the authorized or proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(b) For a change in type of use from a primary right to a supplemental right, the application shall identify the change from primary to supplemental for the applicable authorized and proposed place of use by its location within the public land survey, tax lot number, and the name of each user.

(c) For a change in type of use of a water right to store water, the application shall include:

(A) Written consent to the change in type of use from the operator of the reservoir, and

(B) If the water right to store water is issued in the name of a federal governmental agency, include written consent from the agency to the change in type of use.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 536.050, 540.570, 540.574
Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0040, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3300

District Temporary Transfer Application Map Requirements

(1) A temporary district transfer application map shall meet the standards of OAR 690-385-2200.

(2) In addition, for the following transfers, the application map shall include:

(a) For a change from a surface water point of diversion to a ground water appropriation, if the proposed point of appropriation is intended to serve the entire right of record, a copy of the existing final proof survey or

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approved ORS 541.329 (House Bill 3111) map for the right of record may be submitted to satisfy this requirement. If the proposed point of appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of acres to be served by the new point of appropriation shall be listed.

(b) For a change in type of use from primary right to supplemental right, the location of the authorized and proposed place of use of the water. If the use is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be uniquely shaded or hachured to clearly identify affected lands, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.

(c) For a change in type of use of a water right to store water, a copy of the final proof map for the water right subject to transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0050, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3400

District Temporary Transfer Application Notice and Review

(1) On receipt of a temporary district transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-3200 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0060, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3500

District Temporary Transfer Approval and Final Orders

A district temporary transfer application submitted according to ORS 540.570 and OAR 690-385-3200 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), the proof of completion has been approved under OAR 690-385-7300;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district temporary water right transfers are met.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3520

Fish Screening Devices

(1) Pursuant to ORS 540.570, when an application includes a temporary change in point of diversion, the Department shall consult with ODFW to determine whether a fish screen device is necessary to prevent fish from leaving the body of water and entering the diversion.

(2) The Department's consultation with ODFW shall determine whether the diversion is equipped with an appropriate fish screen device.

(3) If requested by ODFW, a condition requiring a proper fish screen device at the new point of diversion shall be included in any order of the Department approving a temporary change in point of diversion.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-3600

Appeal of a Final Order Approving a District Temporary Transfer

A final order approving a district temporary transfer under OAR 690-385-3500 may be appealed by:

(1) Petitioning for judicial review of the final order pursuant to ORS 536.075(1); or

(2) Petitioning the Department for reconsideration of the final order pursuant to OAR 137, division 004.

(3) A petition for reconsideration may include a request for a stay of the final order if the petition complies with the requirements of OAR 137, division 004.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4000

District Permanent Transfer Criteria

Pursuant to ORS 540.580, the Department may approve a district permanent transfer application to permanently change the place of use provided:

(1) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(2) The use authorized under the water use subject to transfer does not change;

(3) The use of water under the water use subject to transfer will not result in enlargement of the right;

(4) The change in place of use will not result in injury to any other existing water right; and

(5) The district submits the permanent district transfer application to the Department:

(a) Before the change is allowed by the district, or

(b) Prior to the end of the calendar year in which the change occurred if notification of a change was submitted in accordance with OAR 690-385-4100.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4100

Notice of District Permanent Transfer

(1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:

(a) The district files notice of the change in place of use under section (2) of this rule prior to making the change;

(b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and

(c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:

(A) Direct the district to cease delivery of water; or

(B) Require mitigation to avoid injury to other water rights.

(2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District name, mailing address, and phone number;

(b) Certificate number, or permit number if applicable, subject to the change;

(c) Names of affected users;

(d) Location of the affected lands according to public land survey description and tax lot number; and

(e) A map meeting the requirements of OAR 690-385-4300.

(3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.

(4) A district delivering notice to the local area Department Watermaster shall concurrently mail the form(s) (but not the map) described in section (2) of this rule to the Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).

(5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:

(a) Direct the district to cease delivery of water to the affected lands;

or

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(b) Direct the district to mitigate the injury caused by the change.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4200

District Permanent Transfer Applications

Each district permanent transfer application shall contain the standard information required by OAR 690-385-2000.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 536.050, 540.574, 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4300

District Permanent Transfer Application Map Requirements

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4400

District Permanent Transfer Application Notice and Review

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-4200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4500

District Permanent Transfer Approval and Final Orders

A district permanent transfer application submitted according to ORS 540.580 and OAR 690-385-4000 shall be approved if the Department determines that:

(1) The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), that proof of completion has been approved under OAR 690-385-7400;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district permanent water right transfers are met.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4580

Original Right Terminated by Final Order

Issuance of a final order approving a permanent change in place of use terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4600

Protests and Requests for Hearings

Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:

(1) Within 30 days of mailing of the Department's weekly notice;

(2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and

(3) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.

(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

(5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:

(a) Refer the protest to the district to resolve; and

(b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 536.050, 183.310–ORS 183.550, 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4700

Hearings

(1) If a protest is filed under OAR 690-385-4600, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the water rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 183
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5000

District Permanent Transfer Criteria

Pursuant to ORS 540.572, the Department may approve a district permanent transfer application to permanently change the place of use of the water right appurtenant to land no longer irrigated or susceptible to irrigation provided:

(1) The district employs a full-time manager;

(2) The district is implementing an approved water management and conservation plan consistent with the requirements of OAR 690, division 086;

(3) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(4) The district has determined a user has not made beneficial use of water for four successive years; and

(5) The district provides notice to the user of intent to transfer the right and provides the user an opportunity to resolve the matter in the manner described by ORS 540.572 and OAR 690-385-5400 and 690-385-5600.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.572
Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0090, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5100

Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572

(1) Prior to submitting a district permanent transfer application under OAR 690-385-5200, a district shall provide written notice to the user and any security interest holders of record in the land to which the water right is appurtenant.

(2) Notice shall be sent by certified mail to the last known address of the user with a return receipt requested.

(3) The notice shall include:

(a) A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to submit an application to permanently transfer the water right pursuant to ORS 540.572.

(b) A statement that the user has a 30-day period, from the mailing date of the notice, in which to submit to the district a written objection to the proposed transfer application;

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(c) A statement that the user shall notify the district, within the 30-day period described in subsection (3)(b) of this rule, if the user intends to demonstrate that the nonuse is excused by one of the provisions under ORS 540.610.

(d) A statement that the user may demonstrate beneficial use of the water right by:

(A) Beneficially irrigating the lands to which the water right is appurtenant prior to the end of the irrigation season of the fifth consecutive year of nonuse, or

(B) Making beneficial use of water under one of the qualifying programs of the Water Resources Department such as, but not limited to, submitting a water right transfer under OAR 690, division 380 or a transfer to instream use under OAR 690, division 077, prior to the end of the irrigation season of the fifth consecutive year of nonuse.

(e) A general description of the land according to public land survey description to which the water right is appurtenant;

(f) The number of acres of water right, by tax lot, for which the user is charged or assessed by the district and which the district intends to propose for transfer under OAR 690-385-5200;

(g) A description of the type of use described by the water right of record;

(h) A list of the name and address of security interest holders of record in the land to which the water right is appurtenant; and

(i) A request for the user to respond confirming that the information in the notice is correct.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0110, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5200

District Permanent Transfer of Water Right for Nonuse Applications

(1) Each district permanent transfer of water right for nonuse application shall contain the standard information required by OAR 690-385-2000; and

(2) Include the following:

(a) A copy of the notice required under OAR 690-385-5100 mailed by the district to the user;

(b) A copy of any objections to the proposed transfer received by the district within the 30-day time period following the mailing of notice under OAR 690-385-5100; and

(c) A copy of findings, determinations and conclusions resulting from any hearing held by the district to consider unresolved objections received in response to the notice required under OAR 690-385-5100.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.574, 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0140, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5300

District Permanent Transfer of Water Right for Nonuse Application Map Requirements

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.574, 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0160, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5400

Notice of Filing District Permanent Transfer of Water Right for Nonuse Application

(1) Upon submitting a district permanent transfer application to the Department pursuant to ORS 540.572 and OAR 690-385-5000, a district shall:

(a) Provide notice to the users of affected lands that a district permanent transfer application was submitted to the Department;

(b) Provide the users of affected lands a copy of the application and map; and

(c) Mail the notice, application, and map to the last known address of the affected users by certified mail with a request for a return receipt.

(2) The notice under subsection 1(a) of this rule shall inform the users of affected lands that:

(a) The Department shall approve the district permanent transfer application as provided under OAR 690-385-5600 unless:

(A) The application does not include the information required under OAR 690-385-5200; or

(B) The user, of lands from which water rights are to be transferred, submits a protest pursuant to OAR 690, division 002.

(b) The user has the right to protest the application as described in OAR 690-385-5700.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.576

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0170, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5500

District Permanent Transfer of Water Right for Nonuse Application Notice and Review

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-5200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572, 540.574, 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0200, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5600

District Permanent Transfer of Water Right for Nonuse Approval and Final Orders

A district permanent transfer application submitted under ORS 540.572 and OAR 690-385-5000 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), that proof of completion has been approved under OAR 690-385-7400;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6);

(4) Any other applicable requirements for district permanent transfers of water right for nonuse are met;

(5) The district submitted the application no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610(1); and

(a) The district received no written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100; or

(b) The district board of directors submitted the permanent district transfer application after having:

(A) Received written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100;

(B) Failed to resolve the objections; and

(C) Held a hearing to review and consider the objections.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572 - 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5680

Original Right Terminated by Final Order

Issuance of a final order approving a permanent change in place of use for nonuse terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

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690-385-5700

Protests and Requests for Hearings

(1) Approval of a district permanent transfer of water right for nonuse application under ORS 540.572 and OAR 690-385-5000, may be protested:

- (a) By any user; and
 - (b) Within 60 days of mailing the notice under OAR 690-385-5400.
- (2) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.

(3) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.578
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5800

Hearings

(1) If a protest is filed under OAR 690-385-5700, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 183, 540.578
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-5900

Time Period to Process Permanent Transfer Application Exempt from Forfeiture

If a district submits a permanent transfer application under OAR 690-385-5000 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610(1), the forfeiture provision of ORS 540.610 shall not apply to the subject lands pending completion of the processing of the transfer application. The time required to process the application, including any time required for hearings, appeals and completion of the authorized changes, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.612
Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0250, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-6000

Multiple Primary Water Rights on the Same Lands

If the water right records show two or more rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7000

Time for Completion

(1) The time for a district to complete a transfer as authorized by a final order shall be one full year from the approval date plus an additional time until the next October 1. A longer time for completion may be allowed for good cause shown.

(2) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

(3) Extensions of time to complete a transfer may be granted pursuant to OAR 690-385-7200.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7100

Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon issuance of a final order approving a transfer the water use subject to transfer becomes inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not used beneficially under the terms of the transfer final order, or within any extension of time allowed for completion, is deemed lost and constitutes a loss of water right.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7200

Extension of the Time Limits

(1) If the transfer is not completed within the time allowed in the final order, a district may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence was made to complete the project within the initial time specified in the final order.

(2) A separate application requesting an extension of time to complete a transfer shall be submitted for each final order that authorizes the transfer of the water use subject to the extension request.

(3) The Department shall consider an application for extension of time received no later than the date specified in the final order for a district to submit proof of use under OAR 690-385-7400. The Department shall review and issue an order within 90 days of receipt of the application.

(4) Failure of a district to submit an application and receive an order of the Department authorizing an extension of time to complete a transfer may lead to loss of the water right for failure to complete the transfer in accordance with OAR 690-385-7100(2).

(5) The Department may grant extensions for a 12 month time period, from October 1 to October 1. Extensions may be granted for longer time periods if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(6) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-385-7000. Applications for extension of time shall include:

(a) A listing and description of all construction and purchases related to installation of the water delivery system during the previous use perfection period;

(b) A description of any expansion or restructuring of the existing delivery system during the same period;

(c) A description of the extent to which the applicant has made actual use of water according to the terms of the transfer final order; and

(d) Information to indicate whether the applicant has complied with any conditions contained in the transfer final order.

(7) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (6) of this rule.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0300, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7400

Proof of Use; Noncompliance

(1) No later than one year following the date specified in a final order for a district to complete a transfer and apply water to beneficial use, a district shall provide the Department proof of use by submitting a final proof map according to OAR 690-385-7400(3) and a claim of beneficial use report according to OAR 690-385-7400(4).

(2) Districts may self-certify proof of use and are not required to have a certified water rights examiner prepare a final proof map and file a claim of beneficial use report.

(3) Districts shall file a final proof map consistent with the map standards of OAR 690-385-2200 within the time limit specified in the transfer final order, and certify the map as accurate.

(4) Districts shall file a claim of beneficial use report on forms acceptable to the Department. The claim of beneficial use report shall contain the following information:

(a) The district's name, mailing address, and telephone number;

(b) The transfer number assigned by the Department to the application;

(c) The district assigned number for Notice of Permanent District Transfer, if applicable;.

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- (d) The certificate number, or permit number if no certificate has been issued for the subject water right;
- (e) The date of priority;
- (f) The type of use;
- (g) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user;
- (h) A description of the diversion, headgate, canal, or district conveyance system used to deliver water to the authorized place of use;
- (i) A description of the method for applying water to beneficial use at the authorized place of use;
- (j) A description of the beneficial use to which water is applied;
- (k) A description of the method used to calculate the extent of beneficial use on the lands or place of use authorized by the final order approving a transfer;
- (l) A statement that the district has inspected the authorized place of use and confirms the change has been made consistent with the terms and conditions of the final order; and
- (m) The signature of the District Board Chairperson, or if the Board has delegated authority, the signature of the district manager.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0350, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7600

Proof of Completion of Change

- (1) The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:
 - (a) A determination by the Department that the application of water to beneficial use under the terms of the transfer final order was completed to the extent authorized; or
 - (b) A determination by the Department that the application of water to a beneficial use under the terms of the transfer final order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the water right.
- (2) The Department shall prepare a proposed water right certificate if it determines that proof has been made to an extent different or less than that approved. The proposed certificate shall describe the right determined completed under the provisions of the transfer final order. The proposed certificate shall be mailed first class to the district and affected user, together with notice that the district and affected user has a period of 60 days from date of mailing to request the Department reconsider the contents of the proposed water right certificate. If no request for reconsideration is received within the 60-day period, the Department shall issue a water right certificate pursuant to ORS 540.530(2).

(3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:

- (a) Whether the district or users within the district requested issuance of a new certificate;
- (b) The number of permanent district transfers for which satisfactory proof has been determined;
- (c) The frequency and trend in transfer applications submitted by a district; and
- (d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0600, WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7800

Request for Reconsideration

- (1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the district or user. The petition shall describe the disagreement with the proposed certificate.
- (2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.
- (3) The director may allow reasonable time beyond the time set under OAR 690-385-7600(2) for a district or user to complete and submit a written petition for reconsideration.
- (4) Upon receipt of a petition for reconsideration, the director shall:
 - (a) Approve the petition without verification and issue a certificate with the changes included; or
 - (b) Schedule field verification of the requested changes and pursuant thereto approve or deny the petition; or
 - (c) Deny it by letter to the requesting person.
- (5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-385-7600(2).
- (6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by order of the director. The order shall provide for either issuance of a water right certificate in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 002.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0700, WRD 9-2004, f. & cert. ef. 11-16-04

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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
125-246-0450	3-1-05	Adopt	1-1-05	125-247-0480	3-1-05	Adopt	1-1-05
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
125-246-0500	3-1-05	Adopt	1-1-05	125-247-0525	3-1-05	Adopt	1-1-05
125-246-0550	3-1-05	Adopt	1-1-05	125-247-0550	3-1-05	Adopt	1-1-05
125-246-0555	3-1-05	Adopt	1-1-05	125-247-0575	3-1-05	Adopt	1-1-05
125-246-0560	3-1-05	Adopt	1-1-05	125-247-0600	3-1-05	Adopt	1-1-05
125-246-0570	3-1-05	Adopt	1-1-05	125-247-0610	3-1-05	Adopt	1-1-05
125-246-0575	3-1-05	Adopt	1-1-05	125-247-0620	3-1-05	Adopt	1-1-05
125-246-0580	3-1-05	Adopt	1-1-05	125-247-0630	3-1-05	Adopt	1-1-05
125-246-0600	3-1-05	Adopt	1-1-05	125-247-0640	3-1-05	Adopt	1-1-05
125-246-0605	3-1-05	Adopt	1-1-05	125-247-0650	3-1-05	Adopt	1-1-05

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125-247-0660	3-1-05	Adopt	1-1-05	125-249-0430	3-1-05	Adopt	1-1-05
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
125-249-0100	3-1-05	Adopt	1-1-05	125-249-0900	3-1-05	Adopt	1-1-05
125-249-0110	3-1-05	Adopt	1-1-05	125-249-0910	3-1-05	Adopt	1-1-05
125-249-0120	3-1-05	Adopt	1-1-05	137-076-0010	11-22-04	Amend	1-1-05
125-249-0130	3-1-05	Adopt	1-1-05	137-076-0016	11-22-04	Adopt	1-1-05
125-249-0140	3-1-05	Adopt	1-1-05	137-076-0018	11-22-04	Adopt	1-1-05
125-249-0150	3-1-05	Adopt	1-1-05	137-076-0020	11-22-04	Amend	1-1-05
125-249-0160	3-1-05	Adopt	1-1-05	137-076-0025	11-22-04	Amend	1-1-05
125-249-0200	3-1-05	Adopt	1-1-05	137-084-0001	11-22-04	Amend	1-1-05
125-249-0210	3-1-05	Adopt	1-1-05	137-086-0000	11-22-04	Adopt	1-1-05
125-249-0220	3-1-05	Adopt	1-1-05	137-086-0010	11-22-04	Adopt	1-1-05
125-249-0230	3-1-05	Adopt	1-1-05	137-086-0020	11-22-04	Adopt	1-1-05
125-249-0240	3-1-05	Adopt	1-1-05	137-086-0030	11-22-04	Adopt	1-1-05
125-249-0250	3-1-05	Adopt	1-1-05	137-086-0040	11-22-04	Adopt	1-1-05
125-249-0260	3-1-05	Adopt	1-1-05	137-086-0050	11-22-04	Adopt	1-1-05
125-249-0270	3-1-05	Adopt	1-1-05	170-060-1010	11-18-04	Amend	1-1-05
125-249-0280	3-1-05	Adopt	1-1-05	177-050-0027	11-29-04	Amend(T)	1-1-05
125-249-0290	3-1-05	Adopt	1-1-05	250-025-0020	12-7-04	Amend(T)	1-1-05
125-249-0300	3-1-05	Adopt	1-1-05	250-025-0020(T)	12-7-04	Suspend	1-1-05
125-249-0310	3-1-05	Adopt	1-1-05	309-046-0100	1-1-05	Am. & Ren.	1-1-05
125-249-0320	3-1-05	Adopt	1-1-05	309-046-0110	1-1-05	Am. & Ren.	1-1-05
125-249-0330	3-1-05	Adopt	1-1-05	309-046-0120	1-1-05	Am. & Ren.	1-1-05
125-249-0340	3-1-05	Adopt	1-1-05	309-046-0130	1-1-05	Am. & Ren.	1-1-05
125-249-0350	3-1-05	Adopt	1-1-05	309-046-0140	1-1-05	Am. & Ren.	1-1-05
125-249-0360	3-1-05	Adopt	1-1-05	309-046-0150	1-1-05	Am. & Ren.	1-1-05
125-249-0370	3-1-05	Adopt	1-1-05	309-046-0160	1-1-05	Am. & Ren.	1-1-05
125-249-0380	3-1-05	Adopt	1-1-05	309-046-0170	1-1-05	Am. & Ren.	1-1-05
125-249-0390	3-1-05	Adopt	1-1-05	309-046-0180	1-1-05	Am. & Ren.	1-1-05
125-249-0400	3-1-05	Adopt	1-1-05	309-046-0190	1-1-05	Am. & Ren.	1-1-05
125-249-0410	3-1-05	Adopt	1-1-05	309-046-0200	1-1-05	Am. & Ren.	1-1-05
125-249-0420	3-1-05	Adopt	1-1-05	309-046-0210	1-1-05	Am. & Ren.	1-1-05

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309-046-0220	1-1-05	Am. & Ren.	1-1-05	333-102-0030(T)	12-1-04	Repeal	1-1-05
309-046-0230	1-1-05	Repeal	1-1-05	333-102-0035	12-1-04	Amend	1-1-05
309-046-0240	1-1-05	Am. & Ren.	1-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-024-0210	12-7-04	Amend	1-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-024-0210(T)	12-7-04	Repeal	1-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
333-024-0215	12-7-04	Amend	1-1-05	333-102-0075	12-1-04	Amend	1-1-05
333-024-0215(T)	12-7-04	Repeal	1-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-024-0220	12-7-04	Amend	1-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-024-0225	12-7-04	Amend	1-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-024-0225(T)	12-7-04	Repeal	1-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-024-0230	12-7-04	Amend	1-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-024-0230(T)	12-7-04	Repeal	1-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-024-0231	12-7-04	Amend	1-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-024-0231(T)	12-7-04	Repeal	1-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-024-0232	12-7-04	Amend	1-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-024-0232(T)	12-7-04	Repeal	1-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-024-0235	12-7-04	Amend	1-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-024-0235(T)	12-7-04	Repeal	1-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-024-0240	12-7-04	Amend	1-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-024-0240(T)	12-7-04	Repeal	1-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-024-0241	12-7-04	Adopt	1-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-024-0241(T)	12-7-04	Repeal	1-1-05	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
333-100-0005	12-1-04	Amend	1-1-05	333-102-0200	12-1-04	Amend	1-1-05
333-100-0005(T)	12-1-04	Repeal	1-1-05	333-102-0200(T)	12-1-04	Repeal	1-1-05
333-100-0057	12-1-04	Adopt	1-1-05	333-102-0203	12-1-04	Amend	1-1-05
333-100-0057(T)	12-1-04	Repeal	1-1-05	333-102-0203(T)	12-1-04	Repeal	1-1-05
333-100-0060	12-1-04	Amend	1-1-05	333-102-0225	12-1-04	Repeal	1-1-05
333-100-0060(T)	12-1-04	Repeal	1-1-05	333-102-0235	12-1-04	Amend	1-1-05
333-100-0065	12-1-04	Amend	1-1-05	333-102-0235(T)	12-1-04	Repeal	1-1-05
333-100-0065(T)	12-1-04	Repeal	1-1-05	333-102-0240	12-1-04	Repeal	1-1-05
333-100-0070	12-1-04	Amend	1-1-05	333-102-0245	12-1-04	Amend	1-1-05
333-100-0070(T)	12-1-04	Repeal	1-1-05	333-102-0245(T)	12-1-04	Repeal	1-1-05
333-100-0080	12-1-04	Adopt	1-1-05	333-102-0247	12-1-04	Adopt	1-1-05
333-100-0080(T)	12-1-04	Repeal	1-1-05	333-102-0247(T)	12-1-04	Repeal	1-1-05
333-101-0001	12-1-04	Amend	1-1-05	333-102-0250	12-1-04	Amend	1-1-05
333-101-0001(T)	12-1-04	Repeal	1-1-05	333-102-0250(T)	12-1-04	Repeal	1-1-05
333-101-0003	12-1-04	Adopt	1-1-05	333-102-0255	12-1-04	Amend	1-1-05
333-101-0003(T)	12-1-04	Repeal	1-1-05	333-102-0255(T)	12-1-04	Repeal	1-1-05
333-101-0010	12-1-04	Amend	1-1-05	333-102-0260	12-1-04	Amend	1-1-05
333-101-0010(T)	12-1-04	Repeal	1-1-05	333-102-0260(T)	12-1-04	Repeal	1-1-05
333-102-0001	12-1-04	Amend	1-1-05	333-102-0265	12-1-04	Amend	1-1-05
333-102-0001(T)	12-1-04	Repeal	1-1-05	333-102-0265(T)	12-1-04	Repeal	1-1-05
333-102-0005	12-1-04	Amend	1-1-05	333-102-0270	12-1-04	Amend	1-1-05
333-102-0005(T)	12-1-04	Repeal	1-1-05	333-102-0270(T)	12-1-04	Repeal	1-1-05
333-102-0010	12-1-04	Amend	1-1-05	333-102-0275	12-1-04	Amend	1-1-05
333-102-0010(T)	12-1-04	Repeal	1-1-05	333-102-0275(T)	12-1-04	Repeal	1-1-05
333-102-0015	12-1-04	Amend	1-1-05	333-102-0285	12-1-04	Amend	1-1-05
333-102-0015(T)	12-1-04	Repeal	1-1-05	333-102-0285(T)	12-1-04	Repeal	1-1-05
333-102-0020	12-1-04	Amend	1-1-05	333-102-0287	12-1-04	Repeal	1-1-05
333-102-0020(T)	12-1-04	Repeal	1-1-05	333-102-0290	12-1-04	Amend	1-1-05
333-102-0025	12-1-04	Amend	1-1-05	333-102-0290(T)	12-1-04	Repeal	1-1-05
333-102-0025(T)	12-1-04	Repeal	1-1-05	333-102-0293	12-1-04	Amend	1-1-05
333-102-0030	12-1-04	Amend	1-1-05	333-102-0293(T)	12-1-04	Repeal	1-1-05

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333-102-0295	12-1-04	Repeal	1-1-05	333-105-0330	12-1-04	Repeal	1-1-05
333-102-0300	12-1-04	Amend	1-1-05	333-105-0335	12-1-04	Repeal	1-1-05
333-102-0300(T)	12-1-04	Repeal	1-1-05	333-105-0420	12-1-04	Adopt	1-1-05
333-102-0305	12-1-04	Amend	1-1-05	333-105-0420(T)	12-1-04	Repeal	1-1-05
333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05
333-102-0330	12-1-04	Amend	1-1-05	333-105-0460(T)	12-1-04	Repeal	1-1-05
333-102-0330(T)	12-1-04	Repeal	1-1-05	333-105-0470	12-1-04	Adopt	1-1-05
333-102-0335	12-1-04	Amend	1-1-05	333-105-0470(T)	12-1-04	Repeal	1-1-05
333-102-0335(T)	12-1-04	Repeal	1-1-05	333-105-0480	12-1-04	Adopt	1-1-05
333-102-0340	12-1-04	Amend	1-1-05	333-105-0480(T)	12-1-04	Repeal	1-1-05
333-102-0340(T)	12-1-04	Repeal	1-1-05	333-105-0490	12-1-04	Adopt	1-1-05
333-102-0350	12-1-04	Adopt	1-1-05	333-105-0490(T)	12-1-04	Repeal	1-1-05
333-102-0350(T)	12-1-04	Repeal	1-1-05	333-105-0500	12-1-04	Adopt	1-1-05
333-102-0355	12-1-04	Adopt	1-1-05	333-105-0500(T)	12-1-04	Repeal	1-1-05
333-102-0355(T)	12-1-04	Repeal	1-1-05	333-105-0510	12-1-04	Adopt	1-1-05
333-102-0360	12-1-04	Adopt	1-1-05	333-105-0510(T)	12-1-04	Repeal	1-1-05
333-102-0360(T)	12-1-04	Repeal	1-1-05	333-105-0520	12-1-04	Adopt	1-1-05
333-102-0365	12-1-04	Adopt	1-1-05	333-105-0520(T)	12-1-04	Repeal	1-1-05
333-102-0365(T)	12-1-04	Repeal	1-1-05	333-105-0530	12-1-04	Adopt	1-1-05
333-103-0015	12-1-04	Amend	1-1-05	333-105-0530(T)	12-1-04	Repeal	1-1-05
333-103-0015(T)	12-1-04	Repeal	1-1-05	333-105-0540	12-1-04	Adopt	1-1-05
333-105-0001	12-1-04	Amend	1-1-05	333-105-0540(T)	12-1-04	Repeal	1-1-05
333-105-0001(T)	12-1-04	Repeal	1-1-05	333-105-0550	12-1-04	Adopt	1-1-05
333-105-0003	12-1-04	Adopt	1-1-05	333-105-0550(T)	12-1-04	Repeal	1-1-05
333-105-0003(T)	12-1-04	Repeal	1-1-05	333-105-0560	12-1-04	Adopt	1-1-05
333-105-0005	12-1-04	Amend	1-1-05	333-105-0560(T)	12-1-04	Repeal	1-1-05
333-105-0005(T)	12-1-04	Repeal	1-1-05	333-105-0570	12-1-04	Adopt	1-1-05
333-105-0050	12-1-04	Adopt	1-1-05	333-105-0570(T)	12-1-04	Repeal	1-1-05
333-105-0050(T)	12-1-04	Repeal	1-1-05	333-105-0580	12-1-04	Adopt	1-1-05
333-105-0075	12-1-04	Adopt	1-1-05	333-105-0580(T)	12-1-04	Repeal	1-1-05
333-105-0075(T)	12-1-04	Repeal	1-1-05	333-105-0590	12-1-04	Adopt	1-1-05
333-105-0101	12-1-04	Repeal	1-1-05	333-105-0590(T)	12-1-04	Repeal	1-1-05
333-105-0105	12-1-04	Repeal	1-1-05	333-105-0600	12-1-04	Adopt	1-1-05
333-105-0110	12-1-04	Repeal	1-1-05	333-105-0600(T)	12-1-04	Repeal	1-1-05
333-105-0115	12-1-04	Repeal	1-1-05	333-105-0610	12-1-04	Adopt	1-1-05
333-105-0120	12-1-04	Repeal	1-1-05	333-105-0610(T)	12-1-04	Repeal	1-1-05
333-105-0125	12-1-04	Repeal	1-1-05	333-105-0620	12-1-04	Adopt	1-1-05
333-105-0130	12-1-04	Repeal	1-1-05	333-105-0620(T)	12-1-04	Repeal	1-1-05
333-105-0135	12-1-04	Repeal	1-1-05	333-105-0630	12-1-04	Adopt	1-1-05
333-105-0140	12-1-04	Repeal	1-1-05	333-105-0630(T)	12-1-04	Repeal	1-1-05
333-105-0201	12-1-04	Repeal	1-1-05	333-105-0640	12-1-04	Adopt	1-1-05
333-105-0202	12-1-04	Repeal	1-1-05	333-105-0640(T)	12-1-04	Repeal	1-1-05
333-105-0205	12-1-04	Repeal	1-1-05	333-105-0650	12-1-04	Adopt	1-1-05
333-105-0210	12-1-04	Repeal	1-1-05	333-105-0650(T)	12-1-04	Repeal	1-1-05
333-105-0301	12-1-04	Repeal	1-1-05	333-105-0660	12-1-04	Adopt	1-1-05
333-105-0305	12-1-04	Repeal	1-1-05	333-105-0660(T)	12-1-04	Repeal	1-1-05
333-105-0310	12-1-04	Repeal	1-1-05	333-105-0670	12-1-04	Adopt	1-1-05
333-105-0315	12-1-04	Repeal	1-1-05	333-105-0670(T)	12-1-04	Repeal	1-1-05
333-105-0320	12-1-04	Repeal	1-1-05	333-105-0680	12-1-04	Adopt	1-1-05
333-105-0325	12-1-04	Repeal	1-1-05	333-105-0680(T)	12-1-04	Repeal	1-1-05

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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
333-106-0101(T)	12-1-04	Repeal	1-1-05	333-116-0125(T)	12-1-04	Repeal	1-1-05
333-106-0105	12-1-04	Amend	1-1-05	333-116-0140	12-1-04	Amend	1-1-05
333-106-0105(T)	12-1-04	Repeal	1-1-05	333-116-0140(T)	12-1-04	Repeal	1-1-05
333-106-0210	12-1-04	Amend	1-1-05	333-116-0150	12-1-04	Amend	1-1-05
333-106-0210(T)	12-1-04	Repeal	1-1-05	333-116-0150(T)	12-1-04	Repeal	1-1-05
333-106-0220	12-1-04	Amend	1-1-05	333-116-0160	12-1-04	Amend	1-1-05
333-106-0220(T)	12-1-04	Repeal	1-1-05	333-116-0160(T)	12-1-04	Repeal	1-1-05
333-106-0325	12-1-04	Amend	1-1-05	333-116-0165	12-1-04	Adopt	1-1-05
333-106-0325(T)	12-1-04	Repeal	1-1-05	333-116-0165(T)	12-1-04	Repeal	1-1-05
333-106-0575	12-1-04	Amend	1-1-05	333-116-0170	12-1-04	Amend	1-1-05
333-106-0575(T)	12-1-04	Repeal	1-1-05	333-116-0170(T)	12-1-04	Repeal	1-1-05
333-106-0700	12-1-04	Amend	1-1-05	333-116-0180	12-1-04	Amend	1-1-05
333-106-0700(T)	12-1-04	Repeal	1-1-05	333-116-0180(T)	12-1-04	Repeal	1-1-05
333-106-0710	12-1-04	Amend	1-1-05	333-116-0190	12-1-04	Amend	1-1-05
333-106-0710(T)	12-1-04	Repeal	1-1-05	333-116-0190(T)	12-1-04	Repeal	1-1-05
333-106-0720	12-1-04	Amend	1-1-05	333-116-0200	12-1-04	Amend	1-1-05
333-106-0720(T)	12-1-04	Repeal	1-1-05	333-116-0200(T)	12-1-04	Repeal	1-1-05
333-106-0730	12-1-04	Amend	1-1-05	333-116-0250	12-1-04	Amend	1-1-05
333-106-0730(T)	12-1-04	Repeal	1-1-05	333-116-0250(T)	12-1-04	Repeal	1-1-05
333-106-0750	12-1-04	Adopt	1-1-05	333-116-0260	12-1-04	Amend	1-1-05
333-106-0750(T)	12-1-04	Repeal	1-1-05	333-116-0260(T)	12-1-04	Repeal	1-1-05
333-111-0010	12-1-04	Amend	1-1-05	333-116-0265	12-1-04	Adopt	1-1-05
333-111-0010(T)	12-1-04	Repeal	1-1-05	333-116-0265(T)	12-1-04	Repeal	1-1-05
333-116-0010	12-1-04	Amend	1-1-05	333-116-0290	12-1-04	Amend	1-1-05
333-116-0010(T)	12-1-04	Repeal	1-1-05	333-116-0290(T)	12-1-04	Repeal	1-1-05
333-116-0020	12-1-04	Amend	1-1-05	333-116-0300	12-1-04	Amend	1-1-05
333-116-0020(T)	12-1-04	Repeal	1-1-05	333-116-0300(T)	12-1-04	Repeal	1-1-05
333-116-0025	12-1-04	Adopt	1-1-05	333-116-0310	12-1-04	Amend	1-1-05
333-116-0025(T)	12-1-04	Repeal	1-1-05	333-116-0310(T)	12-1-04	Repeal	1-1-05
333-116-0035	12-1-04	Adopt	1-1-05	333-116-0320	12-1-04	Amend	1-1-05
333-116-0035(T)	12-1-04	Repeal	1-1-05	333-116-0320(T)	12-1-04	Repeal	1-1-05

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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
333-116-0460(T)	12-1-04	Repeal	1-1-05	333-116-0905	12-1-04	Adopt	1-1-05
333-116-0470	12-1-04	Amend	1-1-05	333-116-0905(T)	12-1-04	Repeal	1-1-05
333-116-0470(T)	12-1-04	Repeal	1-1-05	333-116-0910	12-1-04	Adopt	1-1-05
333-116-0480	12-1-04	Amend	1-1-05	333-116-0910(T)	12-1-04	Repeal	1-1-05
333-116-0480(T)	12-1-04	Repeal	1-1-05	333-116-0915	12-1-04	Adopt	1-1-05
333-116-0490	12-1-04	Amend	1-1-05	333-116-0915(T)	12-1-04	Repeal	1-1-05
333-116-0490(T)	12-1-04	Repeal	1-1-05	333-118-0020	12-1-04	Amend	1-1-05
333-116-0495	12-1-04	Adopt	1-1-05	333-118-0020(T)	12-1-04	Repeal	1-1-05
333-116-0495(T)	12-1-04	Repeal	1-1-05	333-118-0040	12-1-04	Amend	1-1-05
333-116-0510	12-1-04	Repeal	1-1-05	333-118-0040(T)	12-1-04	Repeal	1-1-05
333-116-0515	12-1-04	Adopt	1-1-05	333-118-0050	12-1-04	Amend	1-1-05
333-116-0515(T)	12-1-04	Repeal	1-1-05	333-118-0050(T)	12-1-04	Repeal	1-1-05
333-116-0525	12-1-04	Adopt	1-1-05	333-118-0060	12-1-04	Amend	1-1-05
333-116-0525(T)	12-1-04	Repeal	1-1-05	333-118-0060(T)	12-1-04	Repeal	1-1-05
333-116-0530	12-1-04	Amend	1-1-05	333-118-0070	12-1-04	Amend	1-1-05
333-116-0530(T)	12-1-04	Repeal	1-1-05	333-118-0070(T)	12-1-04	Repeal	1-1-05
333-116-0540	12-1-04	Amend	1-1-05	333-118-0080	12-1-04	Amend	1-1-05
333-116-0540(T)	12-1-04	Repeal	1-1-05	333-118-0080(T)	12-1-04	Repeal	1-1-05
333-116-0560	12-1-04	Amend	1-1-05	333-118-0090	12-1-04	Amend	1-1-05
333-116-0560(T)	12-1-04	Repeal	1-1-05	333-118-0090(T)	12-1-04	Repeal	1-1-05
333-116-0570	12-1-04	Amend	1-1-05	333-118-0100	12-1-04	Amend	1-1-05
333-116-0570(T)	12-1-04	Repeal	1-1-05	333-118-0100(T)	12-1-04	Repeal	1-1-05
333-116-0573	12-1-04	Adopt	1-1-05	333-118-0110	12-1-04	Amend	1-1-05
333-116-0573(T)	12-1-04	Repeal	1-1-05	333-118-0110(T)	12-1-04	Repeal	1-1-05
333-116-0577	12-1-04	Adopt	1-1-05	333-118-0120	12-1-04	Amend	1-1-05
333-116-0577(T)	12-1-04	Repeal	1-1-05	333-118-0120(T)	12-1-04	Repeal	1-1-05
333-116-0580	12-1-04	Amend	1-1-05	333-118-0130	12-1-04	Amend	1-1-05
333-116-0580(T)	12-1-04	Repeal	1-1-05	333-118-0130(T)	12-1-04	Repeal	1-1-05
333-116-0583	12-1-04	Adopt	1-1-05	333-118-0140	12-1-04	Amend	1-1-05
333-116-0583(T)	12-1-04	Repeal	1-1-05	333-118-0140(T)	12-1-04	Repeal	1-1-05
333-116-0585	12-1-04	Adopt	1-1-05	333-118-0150	12-1-04	Amend	1-1-05

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333-118-0160	12-1-04	Amend	1-1-05	333-120-0400	12-1-04	Amend	1-1-05
333-118-0160(T)	12-1-04	Repeal	1-1-05	333-120-0400(T)	12-1-04	Repeal	1-1-05
333-118-0170	12-1-04	Amend	1-1-05	333-120-0420	12-1-04	Amend	1-1-05
333-118-0170(T)	12-1-04	Repeal	1-1-05	333-120-0420(T)	12-1-04	Repeal	1-1-05
333-118-0180	12-1-04	Amend	1-1-05	333-120-0430	12-1-04	Amend	1-1-05
333-118-0180(T)	12-1-04	Repeal	1-1-05	333-120-0430(T)	12-1-04	Repeal	1-1-05
333-118-0190	12-1-04	Amend	1-1-05	333-120-0450	12-1-04	Amend	1-1-05
333-118-0190(T)	12-1-04	Repeal	1-1-05	333-120-0450(T)	12-1-04	Repeal	1-1-05
333-118-0200	12-1-04	Amend	1-1-05	333-120-0460	12-1-04	Amend	1-1-05
333-118-0200(T)	12-1-04	Repeal	1-1-05	333-120-0460(T)	12-1-04	Repeal	1-1-05
333-118-0800	12-1-04	Adopt	1-1-05	333-120-0520	12-1-04	Amend	1-1-05
333-118-0800(T)	12-1-04	Repeal	1-1-05	333-120-0520(T)	12-1-04	Repeal	1-1-05
333-119-0030	12-1-04	Amend	1-1-05	333-120-0540	12-1-04	Amend	1-1-05
333-119-0030(T)	12-1-04	Repeal	1-1-05	333-120-0540(T)	12-1-04	Repeal	1-1-05
333-119-0040	12-1-04	Amend	1-1-05	333-120-0550	12-1-04	Amend	1-1-05
333-119-0040(T)	12-1-04	Repeal	1-1-05	333-120-0550(T)	12-1-04	Repeal	1-1-05
333-119-0080	12-1-04	Amend	1-1-05	333-120-0560	12-1-04	Amend	1-1-05
333-119-0080(T)	12-1-04	Repeal	1-1-05	333-120-0560(T)	12-1-04	Repeal	1-1-05
333-119-0090	12-1-04	Amend	1-1-05	333-120-0600	12-1-04	Amend	1-1-05
333-119-0090(T)	12-1-04	Repeal	1-1-05	333-120-0600(T)	12-1-04	Repeal	1-1-05
333-119-0100	12-1-04	Amend	1-1-05	333-120-0610	12-1-04	Amend	1-1-05
333-119-0100(T)	12-1-04	Repeal	1-1-05	333-120-0610(T)	12-1-04	Repeal	1-1-05
333-119-0120	12-1-04	Amend	1-1-05	333-120-0640	12-1-04	Amend	1-1-05
333-119-0120(T)	12-1-04	Repeal	1-1-05	333-120-0640(T)	12-1-04	Repeal	1-1-05
333-120-0015	12-1-04	Adopt	1-1-05	333-120-0650	12-1-04	Amend	1-1-05
333-120-0015(T)	12-1-04	Repeal	1-1-05	333-120-0650(T)	12-1-04	Repeal	1-1-05
333-120-0017	12-1-04	Adopt	1-1-05	333-120-0660	12-1-04	Amend	1-1-05
333-120-0017(T)	12-1-04	Repeal	1-1-05	333-120-0660(T)	12-1-04	Repeal	1-1-05
333-120-0100	12-1-04	Amend	1-1-05	333-120-0670	12-1-04	Amend	1-1-05
333-120-0100(T)	12-1-04	Repeal	1-1-05	333-120-0670(T)	12-1-04	Repeal	1-1-05
333-120-0110	12-1-04	Amend	1-1-05	333-120-0680	12-1-04	Amend	1-1-05
333-120-0110(T)	12-1-04	Repeal	1-1-05	333-120-0680(T)	12-1-04	Repeal	1-1-05
333-120-0130	12-1-04	Amend	1-1-05	333-120-0700	12-1-04	Amend	1-1-05
333-120-0130(T)	12-1-04	Repeal	1-1-05	333-120-0700(T)	12-1-04	Repeal	1-1-05
333-120-0170	12-1-04	Amend	1-1-05	333-120-0710	12-1-04	Amend	1-1-05
333-120-0170(T)	12-1-04	Repeal	1-1-05	333-120-0710(T)	12-1-04	Repeal	1-1-05
333-120-0180	12-1-04	Amend	1-1-05	333-120-0720	12-1-04	Amend	1-1-05
333-120-0180(T)	12-1-04	Repeal	1-1-05	333-120-0720(T)	12-1-04	Repeal	1-1-05
333-120-0190	12-1-04	Amend	1-1-05	340-016-0055	11-19-04	Amend	1-1-05
333-120-0190(T)	12-1-04	Repeal	1-1-05	340-200-0040	12-15-04	Amend	1-1-05
333-120-0200	12-1-04	Amend	1-1-05	340-204-0090	12-15-04	Amend	1-1-05
333-120-0200(T)	12-1-04	Repeal	1-1-05	340-242-0440	12-15-04	Amend	1-1-05
333-120-0210	12-1-04	Amend	1-1-05	410-050-0860	12-3-04	Amend(T)	1-1-05
333-120-0210(T)	12-1-04	Repeal	1-1-05	410-121-0030	12-1-04	Amend	1-1-05
333-120-0215	12-1-04	Adopt	1-1-05	410-121-0040	12-1-04	Amend	1-1-05
333-120-0215(T)	12-1-04	Repeal	1-1-05	410-121-0300	12-10-04	Amend(T)	1-1-05
333-120-0220	12-1-04	Amend	1-1-05	410-124-0000	12-10-04	Amend(T)	1-1-05
333-120-0220(T)	12-1-04	Repeal	1-1-05	410-124-0000(T)	12-10-04	Suspend	1-1-05
333-120-0230	12-1-04	Amend	1-1-05	410-130-0240	12-1-04	Amend	1-1-05
333-120-0230(T)	12-1-04	Repeal	1-1-05	410-142-0300	12-16-04	Amend	1-1-05
333-120-0240	12-1-04	Amend	1-1-05	411-034-0000	12-1-04	Amend	1-1-05
333-120-0240(T)	12-1-04	Repeal	1-1-05	411-034-0010	12-1-04	Amend	1-1-05
333-120-0250	12-1-04	Amend	1-1-05	411-034-0020	12-1-04	Amend	1-1-05
333-120-0250(T)	12-1-04	Repeal	1-1-05	411-034-0030	12-1-04	Amend	1-1-05
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411-034-0050	12-1-04	Amend	1-1-05	459-005-0525	12-15-04	Amend(T)	1-1-05
411-034-0055	12-1-04	Adopt	1-1-05	459-005-0535	12-15-04	Amend(T)	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	459-005-0545	12-15-04	Amend(T)	1-1-05
411-034-0090	12-1-04	Amend	1-1-05	459-005-0560	12-15-04	Amend(T)	1-1-05
411-335-0010	1-1-05	Adopt	1-1-05	459-005-0590	12-15-04	Amend(T)	1-1-05
411-335-0020	1-1-05	Adopt	1-1-05	459-005-0591	12-15-04	Amend(T)	1-1-05
411-335-0030	1-1-05	Adopt	1-1-05	459-005-0595	12-15-04	Amend(T)	1-1-05
411-335-0040	1-1-05	Adopt	1-1-05	459-007-0220	3-15-05	Amend	1-1-05
411-335-0050	1-1-05	Adopt	1-1-05	459-007-0230	3-15-05	Amend	1-1-05
411-335-0060	1-1-05	Adopt	1-1-05	459-007-0240	3-15-05	Amend	1-1-05
411-335-0070	1-1-05	Adopt	1-1-05	459-007-0250	3-15-05	Amend	1-1-05
411-335-0080	1-1-05	Adopt	1-1-05	459-007-0260	3-15-05	Amend	1-1-05
411-335-0090	1-1-05	Adopt	1-1-05	459-007-0270	3-15-05	Amend	1-1-05
411-335-0100	1-1-05	Adopt	1-1-05	459-007-0280	3-15-05	Repeal	1-1-05
411-335-0110	1-1-05	Adopt	1-1-05	459-007-0290	3-15-05	Amend	1-1-05
411-335-0120	1-1-05	Adopt	1-1-05	459-007-0530	11-23-04	Amend	1-1-05
411-335-0130	1-1-05	Adopt	1-1-05	459-050-0040	11-23-04	Amend	1-1-05
411-335-0140	1-1-05	Adopt	1-1-05	459-050-0070	11-23-04	Amend	1-1-05
411-335-0150	1-1-05	Adopt	1-1-05	459-050-0072	11-23-04	Adopt	1-1-05
411-335-0160	1-1-05	Adopt	1-1-05	459-050-0080	11-23-04	Amend	1-1-05
411-335-0170	1-1-05	Adopt	1-1-05	459-050-0150	11-23-04	Amend	1-1-05
411-335-0180	1-1-05	Adopt	1-1-05	459-070-0100	11-23-04	Amend	1-1-05
411-335-0190	1-1-05	Adopt	1-1-05	459-070-0110	11-23-04	Amend	1-1-05
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411-335-0250	1-1-05	Adopt	1-1-05	580-043-0110	12-15-04	Adopt(T)	1-1-05
411-335-0260	1-1-05	Adopt	1-1-05	589-020-0225	11-30-04	Adopt	1-1-05
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411-335-0330	1-1-05	Adopt	1-1-05	603-041-0015	11-30-04	Repeal	1-1-05
411-335-0340	1-1-05	Adopt	1-1-05	603-041-0030	11-30-04	Repeal	1-1-05
411-335-0350	1-1-05	Adopt	1-1-05	603-041-0035	11-30-04	Repeal	1-1-05
411-335-0360	1-1-05	Adopt	1-1-05	603-041-0040	11-30-04	Repeal	1-1-05
411-335-0370	1-1-05	Adopt	1-1-05	603-041-0050	11-30-04	Repeal	1-1-05
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635-006-0910	12-15-04	Amend	1-1-05	690-021-0030	11-16-04	Am. & Ren.	1-1-05
635-006-0930	12-15-04	Amend	1-1-05	690-021-0040	11-16-04	Am. & Ren.	1-1-05
635-011-0050	1-1-05	Amend	1-1-05	690-021-0050	11-16-04	Am. & Ren.	1-1-05
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635-013-0003	1-1-05	Amend	1-1-05	690-021-0090	11-16-04	Am. & Ren.	1-1-05
635-013-0004	1-1-05	Amend	1-1-05	690-021-0100	11-16-04	Repeal	1-1-05
635-014-0080	1-1-05	Amend	1-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
635-014-0090	11-20-04	Amend(T)	1-1-05	690-021-0120	11-16-04	Repeal	1-1-05
635-014-0090	1-1-05	Amend	1-1-05	690-021-0130	11-16-04	Repeal	1-1-05
635-014-0090(T)	11-20-04	Suspend	1-1-05	690-021-0140	11-16-04	Am. & Ren.	1-1-05
635-016-0080	1-1-05	Amend	1-1-05	690-021-0160	11-16-04	Am. & Ren.	1-1-05
635-016-0090	1-1-05	Amend	1-1-05	690-021-0170	11-16-04	Am. & Ren.	1-1-05
635-017-0080	1-1-05	Amend	1-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-017-0090	1-1-05	Amend	1-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-018-0080	1-1-05	Amend	1-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-018-0090	1-1-05	Amend	1-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
635-019-0080	1-1-05	Amend	1-1-05	690-021-0400	11-16-04	Repeal	1-1-05
635-019-0090	1-1-05	Amend	1-1-05	690-021-0500	11-16-04	Repeal	1-1-05
635-021-0080	1-1-05	Amend	1-1-05	690-021-0600	11-16-04	Am. & Ren.	1-1-05
635-021-0090	1-1-05	Amend	1-1-05	690-021-0700	11-16-04	Am. & Ren.	1-1-05
635-023-0080	1-1-05	Amend	1-1-05	690-385-2000	11-16-04	Adopt	1-1-05
635-023-0090	1-1-05	Amend	1-1-05	690-385-2200	11-16-04	Adopt	1-1-05
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635-023-0125	1-1-05	Amend	1-1-05	690-385-3120	11-16-04	Adopt	1-1-05
635-023-0128	1-1-05	Adopt	1-1-05	690-385-3130	11-16-04	Adopt	1-1-05
635-023-0130	1-1-05	Amend	1-1-05	690-385-3140	11-16-04	Adopt	1-1-05
635-023-0134	1-1-05	Adopt	1-1-05	690-385-3150	11-16-04	Adopt	1-1-05
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635-039-0090	1-1-05	Amend	1-1-05	690-385-3600	11-16-04	Adopt	1-1-05
635-039-0090	1-1-05	Amend	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
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635-412-0030	11-17-04	Amend	1-1-05	690-385-4200	11-16-04	Adopt	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-385-4300	11-16-04	Adopt	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-385-4400	11-16-04	Adopt	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-385-4500	11-16-04	Adopt	1-1-05
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635-430-0070	11-26-04	Amend	1-1-05	690-385-5700	11-16-04	Adopt	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-385-5800	11-16-04	Adopt	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-385-6000	11-16-04	Adopt	1-1-05
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731-030-0060	11-17-04	Repeal	1-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
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731-030-0080	11-17-04	Amend	1-1-05	812-003-0015	12-10-04	Repeal	1-1-05
731-030-0090	11-17-04	Amend	1-1-05	812-003-0020	12-10-04	Repeal	1-1-05
731-030-0100	11-17-04	Amend	1-1-05	812-003-0025	12-10-04	Repeal	1-1-05
731-030-0110	11-17-04	Amend	1-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
731-030-0120	11-17-04	Amend	1-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
731-030-0130	11-17-04	Amend	1-1-05	812-003-0050	12-10-04	Repeal	1-1-05
731-030-0140	11-17-04	Repeal	1-1-05	812-003-0100	12-10-04	Adopt	1-1-05
731-030-0150	11-17-04	Amend	1-1-05	812-003-0110	12-10-04	Adopt	1-1-05
731-030-0160	11-17-04	Amend	1-1-05	812-003-0120	12-10-04	Adopt	1-1-05
735-001-0020	11-17-04	Amend	1-1-05	812-003-0130	12-10-04	Adopt	1-1-05
735-001-0050	11-17-04	Amend	1-1-05	812-003-0140	12-10-04	Adopt	1-1-05
735-070-0030	1-1-05	Amend	1-1-05	812-003-0150	12-10-04	Adopt	1-1-05
735-070-0054	11-17-04	Amend	1-1-05	812-003-0160	12-10-04	Adopt	1-1-05
735-070-0060	11-17-04	Amend	1-1-05	812-003-0170	12-10-04	Adopt	1-1-05
735-070-0110	11-17-04	Amend	1-1-05	812-003-0180	12-10-04	Adopt	1-1-05
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735-090-0000	11-17-04	Amend	1-1-05	812-003-0210	12-10-04	Adopt	1-1-05
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735-152-0050	11-17-04	Amend	1-1-05	812-003-0300	12-10-04	Adopt	1-1-05
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808-008-0030	12-15-04	Amend(T)	1-1-05	812-003-0350	12-10-04	Adopt	1-1-05
808-008-0051	12-15-04	Adopt(T)	1-1-05	812-003-0360	12-10-04	Adopt	1-1-05
808-008-0060	12-15-04	Amend(T)	1-1-05	812-003-0370	12-10-04	Adopt	1-1-05
808-008-0085	12-15-04	Amend(T)	1-1-05	812-003-0380	12-10-04	Adopt	1-1-05
808-008-0140	12-15-04	Amend(T)	1-1-05	812-003-0410	12-10-04	Adopt	1-1-05
808-008-0240	12-15-04	Suspend	1-1-05	812-003-0420	12-10-04	Adopt	1-1-05
808-008-0280	12-15-04	Amend(T)	1-1-05	812-003-0430	12-10-04	Adopt	1-1-05
808-008-0291	12-15-04	Adopt(T)	1-1-05	812-004-0001	12-10-04	Amend	1-1-05
808-008-0400	12-15-04	Amend(T)	1-1-05	812-004-0240	12-10-04	Amend	1-1-05
808-008-0420	12-15-04	Amend(T)	1-1-05	812-004-0260	12-10-04	Amend	1-1-05
808-008-0425	12-15-04	Amend(T)	1-1-05	812-004-0320	12-10-04	Amend	1-1-05
808-008-0430	12-15-04	Amend(T)	1-1-05	812-004-0470	12-10-04	Amend	1-1-05
808-008-0440	12-15-04	Amend(T)	1-1-05	812-004-0530	12-10-04	Amend	1-1-05
808-008-0460	12-15-04	Amend(T)	1-1-05	812-004-0540	12-10-04	Amend	1-1-05
808-008-0500	12-15-04	Amend(T)	1-1-05	812-004-0560	12-10-04	Amend	1-1-05
808-008-0511	12-15-04	Adopt(T)	1-1-05	812-004-0590	12-10-04	Amend	1-1-05
808-008-0521	12-15-04	Adopt(T)	1-1-05	812-004-0600	12-10-04	Amend	1-1-05
811-030-0030	12-10-04	Amend	1-1-05	812-005-0005	12-10-04	Amend	1-1-05
812-001-0015	12-10-04	Amend	1-1-05	812-006-0020	12-10-04	Amend	1-1-05
812-001-0040	12-10-04	Amend	1-1-05	812-008-0020	12-10-04	Amend	1-1-05
812-002-0260	12-10-04	Amend	1-1-05	812-008-0070	12-10-04	Amend	1-1-05
812-002-0555	12-10-04	Amend	1-1-05	812-008-0110	12-10-04	Amend	1-1-05

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812-010-0040	12-10-04	Amend	1-1-05	860-033-0007	12-1-04	Adopt	1-1-05
812-010-0050	12-10-04	Amend	1-1-05	860-033-0008	12-1-04	Adopt	1-1-05
812-010-0200	12-10-04	Amend	1-1-05	860-033-0009	12-1-04	Adopt	1-1-05
812-010-0220	12-10-04	Amend	1-1-05	860-033-0010	12-1-04	Amend	1-1-05
812-010-0260	12-10-04	Amend	1-1-05	860-033-0030	12-1-04	Amend	1-1-05
812-010-0300	12-10-04	Amend	1-1-05	860-033-0045	12-1-04	Amend	1-1-05
812-010-0320	12-10-04	Amend	1-1-05	860-033-0050	12-1-04	Amend	1-1-05
812-010-0340	12-10-04	Amend	1-1-05	860-033-0505	12-1-04	Amend	1-1-05
812-010-0360	12-10-04	Amend	1-1-05	860-033-0530	12-1-04	Amend	1-1-05
812-010-0380	12-10-04	Amend	1-1-05	860-033-0535	12-1-04	Amend	1-1-05
812-010-0420	12-10-04	Amend	1-1-05	860-033-0536	12-1-04	Amend	1-1-05
812-010-0480	12-10-04	Amend	1-1-05	860-033-0537	12-1-04	Amend	1-1-05
813-003-0001	11-23-04	Adopt	1-1-05	860-033-0540	12-1-04	Amend	1-1-05
813-003-0006	11-23-04	Adopt	1-1-05	860-033-0545	12-1-04	Amend	1-1-05
813-003-0011	11-23-04	Adopt	1-1-05	860-034-0030	12-1-04	Amend	1-1-05
813-003-0015	11-23-04	Adopt	1-1-05	860-034-0090	12-1-04	Amend	1-1-05
813-003-0021	11-23-04	Adopt	1-1-05	860-034-0095	12-1-04	Amend	1-1-05
813-003-0025	11-23-04	Adopt	1-1-05	860-034-0097	12-1-04	Amend	1-1-05
813-003-0031	11-23-04	Adopt	1-1-05	860-034-0110	12-1-04	Amend	1-1-05
813-003-0035	11-23-04	Adopt	1-1-05	860-034-0140	12-1-04	Amend	1-1-05
818-021-0011	12-1-04	Amend	1-1-05	860-034-0160	12-1-04	Amend	1-1-05
818-021-0025	12-1-04	Amend	1-1-05	860-036-0035	12-1-04	Amend	1-1-05
818-042-0050	12-1-04	Amend	1-1-05	860-036-0040	12-1-04	Amend	1-1-05
818-042-0060	12-1-04	Amend	1-1-05	860-036-0050	12-1-04	Amend	1-1-05
818-042-0120	12-1-04	Amend	1-1-05	860-036-0075	12-1-04	Amend	1-1-05
818-042-0130	12-1-04	Amend	1-1-05	860-036-0095	12-1-04	Amend	1-1-05
836-053-0510	11-19-04	Amend	1-1-05	860-036-0097	12-1-04	Amend	1-1-05
837-012-0510	12-13-04	Amend(T)	1-1-05	860-036-0115	12-1-04	Amend	1-1-05
837-012-0515	11-17-04	Amend(T)	1-1-05	860-036-0125	12-1-04	Amend	1-1-05
837-012-0520	12-13-04	Amend(T)	1-1-05	860-037-0030	12-1-04	Amend	1-1-05
837-012-0525	12-13-04	Amend(T)	1-1-05	860-037-0035	12-1-04	Amend	1-1-05
837-012-0530	11-17-04	Amend(T)	1-1-05	860-037-0045	12-1-04	Amend	1-1-05
837-012-0540	12-13-04	Amend(T)	1-1-05	860-037-0070	12-1-04	Amend	1-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	860-037-0095	12-1-04	Amend	1-1-05
839-016-0700	12-13-04	Amend	1-1-05	860-037-0097	12-1-04	Amend	1-1-05
845-004-0101	1-1-05	Amend	1-1-05	860-037-0110	12-1-04	Amend	1-1-05
845-010-0905	12-1-04	Amend	1-1-05	918-305-0005	4-1-05	Amend	1-1-05
845-010-0915	12-1-04	Amend	1-1-05	918-305-0010	4-1-05	Amend	1-1-05
851-050-0131	11-30-04	Amend	1-1-05	918-305-0030	4-1-05	Amend	1-1-05
860-012-0007	12-1-04	Amend	1-1-05	918-305-0100	4-1-05	Amend	1-1-05
860-021-0009	12-1-04	Amend	1-1-05	918-305-0105	4-1-05	Adopt	1-1-05
860-021-0021	12-1-04	Amend	1-1-05	918-305-0110	4-1-05	Amend	1-1-05
860-021-0034	12-1-04	Amend	1-1-05	918-305-0120	4-1-05	Amend	1-1-05
860-021-0036	12-1-04	Amend	1-1-05	918-305-0130	4-1-05	Amend	1-1-05
860-021-0037	12-1-04	Amend	1-1-05	918-305-0150	4-1-05	Amend	1-1-05
860-021-0125	12-1-04	Amend	1-1-05	918-305-0160	4-1-05	Amend	1-1-05
860-021-0130	12-1-04	Amend	1-1-05	918-305-0165	4-1-05	Amend	1-1-05
860-021-0200	12-1-04	Amend	1-1-05	918-305-0180	4-1-05	Amend	1-1-05
860-021-0205	12-1-04	Amend	1-1-05	918-305-0250	4-1-05	Amend	1-1-05
860-021-0206	12-1-04	Amend	1-1-05	918-305-0270	4-1-05	Amend	1-1-05
860-021-0210	12-1-04	Amend	1-1-05	918-305-0280	4-1-05	Adopt	1-1-05
860-021-0420	12-1-04	Amend	1-1-05	918-305-0290	4-1-05	Adopt	1-1-05
860-032-0095	12-1-04	Amend	1-1-05	918-305-0300	4-1-05	Adopt	1-1-05
860-032-0097	12-1-04	Amend	1-1-05	918-305-0310	4-1-05	Adopt	1-1-05
860-033-0005	12-1-04	Amend	1-1-05	918-305-0320	4-1-05	Adopt	1-1-05

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918-750-0110	4-1-05	Amend	1-1-05				
951-002-0000	11-26-04	Adopt	1-1-05				
951-002-0001	11-26-04	Adopt	1-1-05				
951-002-0005	11-26-04	Adopt	1-1-05				
951-002-0010	11-26-04	Adopt	1-1-05				
951-002-0020	11-26-04	Adopt	1-1-05				
951-003-0000	11-26-04	Adopt	1-1-05				
951-003-0001	11-26-04	Adopt	1-1-05				
951-003-0005	11-26-04	Adopt	1-1-05				